EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (ENGLAND AND WALES) AND THE REPRESENTATION OF THE PEOPLE (COMBINATION OF POLLS) (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2007

2007 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Regulations make changes consequential to the decision not to implement provisions in the Electoral Administration Act 2006 which require a voter in a polling station to provide a signature before he is issued with a ballot paper.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Regulations in part correct drafting errors introduced by S.I. 2006/2910, however, because these only form a small part of the instrument, a decision has been taken not to offer copies of the instrument free of charge to purchasers of S.I. 2006/2910.

4. Legislative Background

4.1 The Regulations make amendments to the Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341) and the Representation of the People (Combination of Polls) (England and Wales) Regulations 2004 (S.I. 2004/294). The Regulations also correct drafting errors introduced by the Representation of the People (England and Wales) (Amendment) (No.2) Regulations 2006 (S.I. 2006/2910).

5. Extent

5.1 These Regulations apply to England and Wales

6. European Convention on Human Rights

6.1 The Minister of State, Bridget Prentice, MP has made the following statement regarding Human Rights:

"In my view, the provisions of the draft Representation of the People (England and Wales) and the Representation of the People (Combination of Polls) (England and Wales) (Amendment) Regulations 2007 are compatible with the Convention Rights."

7. Policy background

7.1 Paragraph 75 of Schedule 1 to the Electoral Administration Act 2006 inserts a new rule 37 into the Parliamentary Election Rules, found at Schedule 1 to the Representation of the People Act 1983, concerning the voting procedure at elections. New rule 37(1)(d) provides for the elector in the polling station, immediately before delivery of a ballot paper, to sign the Corresponding Number List (that is created by the Act) beside the number of the elector

marked on the list. The original intention was to commence these provisions on 1 January 2007, and for them to take effect at the elections on 3 May 2007. As such, in anticipation of this, the Representation of the People (England and Wales) (Amendment) (No. 2) Regulations 2006, and the Representation of the People (Combination of Polls) (Amendment) Regulations 2006 (S.I. 2006/3278) include provisions relating to the requirement for voters to sign for their ballot paper.

7.2 In its consultation response to the draft Representation of the People (England and Wales) (Amendment) (No. 2) Regulations 2006, the Electoral Commission had noted that there did not appear to be provision for an elector to be refused a ballot paper if he refused to provide a signature. In response, the Government stated that it did not believe that the legal drafting gave the Presiding Officer the power to refuse to issue a ballot paper to an elector who refuses to sign. Subsequently, the Electoral Commission again highlighted this issue in its consultation response of 15 November 2006 to the separate draft Local Elections (Principal Areas) (England and Wales) Rules 2006 and the draft Local Elections (Parishes and Communities) (England and Wales) Rules 2006, which included provisions relating to voters signing for their ballot papers. The Commission commented that the implementation of the signing provisions must be based on clarity and certainty and it believed that there should be a clear sanction giving Presiding Officers an explicit power to withhold the ballot paper from electors who refuse to sign. The Commission was concerned that proceeding on the basis of no sanction would give rise to confusion and inconsistency of practice, and this would make it difficult for the Commission to produce clear guidance on this issue. The Commission concluded that for these reasons, it opposed the commencement of the signing for ballot paper provisions until the relevant primary and secondary legislation has been corrected. Similar concerns were expressed by electoral administrators about implementation of these provisions.

7.3 After careful consideration of the wording provided in the Electoral Administration Act 2006, the Government has agreed that there is a lack of a clear sanction to withhold the ballot paper should an elector refuse to sign. As such, this may give rise to confusion, inconsistency of practice, and potential legal challenge. Accordingly, the Government agrees with the Electoral Commission that the best approach is not to commence the signing for ballot papers provision until it can be amended to make the sanction unequivocal. The Government plans to clarify the primary legislation at the earliest opportunity, to bring in a clearer requirement for signatures in polling stations. However, such an amendment will not be made before the elections in May 2007.

7.4 Consequently, the Electoral Administration Act 2006 (Commencement No. 2, Transitional and Savings Provisions) Order 2006 (S.I. 2006/3412) did not commence paragraph 75 of Schedule 1 to, nor the related provision in section 31(4) of, the Electoral Administration Act 2006. The decision not to commence these provisions means that consequential changes are needed to:

- The Representation of the People (England and Wales) Regulations 2001, as amended by the Representation of the People (England and Wales) (Amendment) (No. 2) Regulations 2006; and

- The Representation of the People (Combination of Polls) (England and Wales) Regulations 2004, as amended by the Representation of the People (Combination of Polls) (Amendment) Regulations 2006.

Amendments to the Representation of the People (England and Wales) Regulations 2001
7.5 We also wish to use this opportunity to correct a couple of minor drafting errors introduced by the Representation of the People (England and Wales) (Amendment) (No. 2) Regulations 2006.

7.6 The draft Regulations remove references in new regulation 63A(2) and (4) to rule 37(1)(d) of the Parliamentary Election Rules, which provides for electors in polling stations to sign for their ballot paper. We are also correcting in regulation 63A(3) and (4) references to the Local Government Act 2000, by substituting "section 45(6)" for "section 44(6)".

Prescribed Forms
7.7 It was envisaged that the elector would sign the Corresponding Number List before delivery of their ballot paper. The Corresponding Number List replaces the current requirement for the ballot paper to be attached to a counterfoil, which is designed to assist with the printing of ballot papers. The Corresponding Number List is being retained and will contain the numbers of the ballot papers to be issued at the election, and the number of the elector will be inserted beside the number of the ballot paper that is issued to that elector. However, the draft Regulations remove the signature column in Form L2 (Corresponding Number List to be used in polling stations at a parliamentary election taken alone) and in Form M2 (Corresponding Number List to be used in polling stations when a parliamentary election is combined with another election/referendum) as the signature column is now unnecessary.

7.8 Minor consequential changes are being made to Form A (Official Poll Card) and Form B (Official Proxy Poll Card) in order to remove references to electors signing for their ballot paper. A minor correction is being made to Form B1 (Official Proxy Postal Poll Card): the heading to Form B1 is amended, so that "From B1" is changed to "Form B1".

7.9 The Regulations also correct minor drafting errors in regulation 116 (interpretation of Part 7), regulation 117 (supply of marked registers and lists after an election) and regulation 120 (fees relating to the supply of marked registers and lists), which were introduced by the Representation of the People (England and Wales) (Amendment) (No. 2) Regulations 2006.

Amendment to the Representation of the People (Combination of Polls) (England and Wales) Regulations 2004
7.10 The draft Regulations delete paragraph 1 of the Guidance for Voters at Combined Polls, found in paragraph 28 of Schedule 2 to the above Regulations, which specifies that electors will be asked to sign for their ballot paper.

7.11 The decision not to commence the provisions relating to signing for ballot papers was made after taking into account views of the Electoral Commission and electoral administrators. The Government has consulted the Electoral Commission over the draft Regulations which make changes consequential from this decision. The Electoral Commission has indicated that it is content with the draft Regulations.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

9.1 Any queries about the content of this memorandum should be addressed to: Peter Richardson at the Department for Constitutional Affairs, e-mail: peter.richardson@dca.gsi.gov.uk