EXPLANATORY MEMORANDUM TO

THE EUROPEAN UNION REFERENDUM (DATE OF REFERENDUM ETC.) REGULATIONS 2016

2016 No. 278

1. Introduction

1.1 This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations set the date of the referendum on whether the United Kingdom should remain a member of the European Union or leave the European Union. They also prescribe the time period during which certain regulatory provisions will apply to campaigners ("the referendum period"), the start of the period for applications to become the lead campaigner for each outcome of the referendum and periods in respect of which campaigners must report donations and loans.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 Part 7 of the Political Parties, Elections and Referendums Act 2000 ("the 2000 Act") provides a framework which regulates national and regional referendums that take place pursuant to an Act of Parliament. However, in relation to a particular referendum, specific legislation is needed for setting the date, and for the question and entitlement to vote at the referendum.

4.2 The European Union Referendum Act 2015 ("the 2015 Act") provides for a referendum on whether the United Kingdom should remain a member of the European Union or leave the European Union ("the referendum") to take place. It establishes that the framework provided for in Part 7 of the 2000 Act applies to the referendum, subject to the additions and modifications made in Schedules 1 to 3 to the 2015 Act or in powers under either of those Acts.

4.3 The 2015 Act itself does not set a date for the referendum, except for establishing that it must take place no later than 31 December 2017 and cannot take place on either 5 May 2016 or 4 May 2017. The 2015 Act provides that the date of the referendum and the length of the referendum period are to be set by regulations. The Act also provides that the referendum period cannot be less than 10 weeks and must end with the date of the referendum.

4.4 The 2000 Act imposes certain requirements on "permitted participants", the individuals and bodies who register with the Electoral Commission for the purposes of campaigning at the referendum. The 2015 Act introduces further requirements for permitted participants (other than registered political parties who are not minor parties) to provide reports on the sources of their funding through donations and regulated transactions ("loans"). The 2015 Act provides for the first reporting period and the deadline for the submission of a report in respect of that period. It provides that the subsequent reporting periods and deadlines for the submission of reports in respect of those periods are to be set by regulations.

4.5 The 2015 Act also makes changes to the application of the 2000 Act to the referendum in relation to the start of the process for permitted participants to apply for designation as a lead campaigner. The 2000 Act sets the start date of this process as the first day of the referendum period. The 2015 Act modifies this to provide that the start date of the designation process is to be set by regulations.

4.6 Other statutory instruments will be required to implement the 2015 Act. The European Union Referendum (Conduct) Regulations 2016, a draft of which is currently before Parliament, contains the rules that will govern the administration of the referendum in the United Kingdom. An Order will be made containing Welsh or dual language versions of the ballot paper and other referendum forms (this Order will be laid before Parliament after making). Regulations will be made to set maximum recoverable amounts in respect of counting officers' services and expenses (these Regulations are not subject to Parliamentary procedure).

5. Extent and Territorial Application

5.1 The extent of this instrument is the whole of the United Kingdom and Gibraltar (see regulation 1(2)).

5.2 The territorial application of this instrument is the whole of the United Kingdom and Gibraltar

6. European Convention on Human Rights

6.1 David Lidington, the Minister for Europe, Foreign and Commonwealth Office has made the following statement regarding Human Rights:

"In my view the provisions of the European Union Referendum (Date of Referendum etc.) Regulations 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 As stated above, the 2015 Act provides for a referendum on the United Kingdom's membership of the European Union to be held in the United Kingdom and Gibraltar before the end of 2017. This follows a manifesto commitment to hold a referendum on the UK's membership of the European Union by the end of 2017.

Referendum Date

7.2 On 20 February 2016, the Prime Minister announced that, subject to Parliament's approval, the referendum will take place on Thursday 23 June 2016. Major electoral events in the UK are typically held on a Thursday by convention. They are also

typically held during periods of the year when daylight hours are longer. The Electoral Commission pointed out in its report on the 2011 Police and Crime Commissioner elections that there are risks that arise from holding a poll in winter, namely that the election period would coincide with the annual canvass and that there are half as many daylight hours on 15 November than 3 May. The annual canvass is the process by which local authorities contact electors to update their register with up to date address, residence details and voter eligibility. It usually starts on 1 July and concludes with the publication of the register on 1 December.

7.3 Major electoral events in the UK normally avoid holiday periods. Thursday 23 June is the day before the earliest start date of the school summer holidays in the UK and Gibraltar, which begin in some parts of Scotland on Friday 24 June.

7.4 A referendum date of Thursday 23 June allows for a period of just over 4 months between the announcement of the date and the referendum itself.

7.5 The Prime Minister announced the renegotiation deal on 19 February 2016. The Government has previously said that the referendum would follow the deal. Several prominent campaign groups on both sides are established and are now highly active. A referendum on Thursday 23 June will allow sufficient time for campaigners to absorb the details of the renegotiation deal, prepare a strong application for designation, where appropriate, and to prepare and run an effective campaign.

7.6 The First Ministers of the Devolved Administrations have raised the concern of voter fatigue or confusion related to holding the referendum in the month of June (and there are also local Government, mayoral and Police and Crime Commissioner elections in May). The Government does not accept this as a valid argument against a June referendum. The evidence suggests that voters in the UK and Gibraltar are perfectly capable of voting twice in two months. There are many precedents for electoral events and other polls taking place on the same day as each other as combined polls, or within a short period of each other. For example, the referendum on the Parliamentary voting system in 2011 was combined with a series of other May elections, including elections to the Northern Ireland Assembly, Scottish Parliament and National Assembly for Wales.

7.7 The Electoral Commission noted in their report on the 2011 referendum that voters appear to have understood how to participate in the range of polls, and received enough information to enable them to make an informed decision. The combination with other polls "did not cause significant problems for voters, campaigners or electoral administrators". They also noted that the vast majority of voters "appear to have been able to complete their ballot papers without error". The Electoral Commission concluded that any future proposals for combination for referendums should be considered on a case-by-case basis. Combination with scheduled polls has been effectively ruled out for the referendum, as the dates of 5 May 2016 and 4 May 2017 are ruled out in the 2015 Act.

7.8 In light of the above, the Government has concluded that holding the referendum 7 weeks after the elections to the devolved legislatures should not create any major issues that affect the ability of voters in Scotland, Wales and Northern Ireland to cast a properly informed vote in a referendum on 23 June, or that call into question the legitimacy of the poll in those countries.

7.9 The Electoral Commission has advised the Government to avoid a referendum on Thursday 2 or 9 June. It has not advised against 23 June but has indicated that, in the

event of a June referendum, it would ensure that the poll card for the referendum would not be received by voters until after the 5 May elections. The Electoral Commission will undertake a public awareness campaign to make sure people know: when the poll is taking place, how to register to vote and by when they need to register in order to be able to vote, and how to vote in the referendum.

7.10 As there will be an overlap between the regulated periods for the elections to the devolved legislatures and the referendum there will be an impact on political parties and on third parties who wish to campaign at both the elections and the referendum. Political parties and third parties are subject to the restrictions on spending set out in Parts 5 and 6 of the 2000 Act. Administratively, they will need to separately record spending for campaigning at the election campaigns and at the referendum. The Electoral Commission has already issued guidance on how spending should be split and will produce further specific guidance.

7.11 In line with established practice, the UK Government will exercise particular care in its activities during the purdah period prior to the elections taking place on the 5 May, including those to the devolved legislatures. This will not limit the UK Government in terms of meeting the duties contained in the 2015 Act that require the Government to publish certain information 10 weeks ahead of the referendum. It is for the Devolved Administrations to consider any restrictions on their own referendum-related activity during the sensitive period in the run up to their elections.

7.12 The lead campaign organisations that will be designated by the Electoral Commission are expected to have the primary voice in the referendum campaign and lead the arguments on both sides of the debate, across all parts of the UK and Gibraltar. Their ability to campaign in the referendum will not be impaired by the elections taking place in May.

7.13 Ministers, government departments and local authorities in the UK and Gibraltar, and other organisations whose expenses are met wholly or mainly from public funds, will be subject to statutory restrictions on publications in the final 28 days of the referendum campaign. This is the effect of section 125 of the 2000 Act, which is applied to the referendum by the 2015 Act. The case was made in debates on the Bill that the UK Government, and the Governments of the Devolved Administrations and the Government of Gibraltar, should not produce publications on the subject of remaining in or leaving the European Union in the final 28 days ending with the referendum and should leave the field to the designated lead campaigners. This will apply equally to all Governments of the UK and Gibraltar.

Referendum Period

7.14 The instrument provides for a referendum period of 10 weeks, beginning on Friday 15 April and ending with the date of the referendum. The referendum period is the period during which all campaigners are subject to spending limits.

7.15 A campaigner must register with the Electoral Commission as a permitted participant if it wishes to spend more than £10,000 on referendum expenses during the referendum period. Permitted participants (other than designated organisations, and registered political parties for whom a certain percentage of votes were cast at the last General Election, where special rules apply) may spend a maximum of £700,000 during the referendum period. "Referendum expenses" are defined in the 2000 Act. They include expenses of certain types incurred for the purposes of promoting or procuring a particular outcome at the referendum.

Designation Process

7.16 The 2000 Act also provides for one campaign organisation to be designated as lead campaigner for each outcome in the referendum, if the Electoral Commission is satisfied that they adequately represent those campaigning for that outcome. A designated lead campaigner will be able to spend up to £7m during the 10 week referendum period. Designated lead campaigners also have access to certain benefits: a grant from public funds of up to £600,000, eligibility to make a referendum campaign broadcast, free delivery of a mailout to every household or voter, and the use of certain public rooms. The grant from public funds and eligibility to make a referendum campaign broadcast are not available if the Electoral Commission only designates a campaigner for one referendum outcome. It has the ability to do this where no applications are made from one side that satisfy the Commission that they adequately represent those campaigning for that outcome.

7.17 The instrument prescribes that the period for making applications to become a designated lead campaigner begins on Friday 4 March. Only permitted participants may apply. The 2000 Act provides permitted participants with 28 days to apply to the Electoral Commission for designation as a lead campaigner, and up to 14 days for the Electoral Commission to make its designation. This will give adequate time for permitted participants who wish to apply for designation to prepare an application. The Electoral Commission has already produced guidance on the designation process.

7.18 As the Electoral Commission must make its decision by Thursday 14 April, the day before the referendum period begins, the lead campaigners will have at least 10 weeks before the date of the poll to use the benefits of designation. This is in line with the recommendation that the Electoral Commission made to the Government following the Scottish Independence referendum (see paragraph 8.1 below).

Reporting of donations and loans

7.19 The 2015 Act provides for additional reporting of donations and loans, beyond that required by the 2000 Act. This applies to permitted participants that are not registered political parties or are minor parties and requires that donations and loans over £7,500 be reported. The 2015 Act provides for the first reporting period, which begins on the day that the provision of the 2015 Act was commenced (1 February 2016) and ends with the 7th day of the referendum period (21 April 2016), and that the report must be sent to the Electoral Commission within a further period of seven days (by 28 April 2016).

7.20 The Schedule to the instrument sets out the subsequent reporting periods and the dates on or before which the reports must be delivered to the Electoral Commission. Except in relation to the final period, which runs up to the day before the referendum, the information reported will be available to voters before the referendum takes place. The Government considers that these periods and reporting points strikes a reasonable balance between the obligations of permitted participants and transparency for voters.

7.21 The Electoral Commission strongly supports this approach (see paragraph 8.3 below), which is similar to the model used at the Scottish Independence Referendum.

7.22 The instrument also makes provision in respect of circumstances where an individual or body (other than a non-minor registered political party) becomes a permitted participant during one of the reporting periods set out in the Schedule. In this event, the report for that period must cover that period and also all preceding reporting

periods. This is simpler both for the campaigner and also for anyone reading the report, but still ensures the same level of transparency in the funding of campaigners.

Consolidation

7.23 This instrument does not amend another instrument and therefore no consolidation is planned.

8. Consultation outcome

8.1 Although there has been no formal consultation on this instrument, it takes on board many of the recommendations of the Electoral Commission. For example in its report on the Scottish Independence Referendum, the Electoral Commission recommended: "The legislation for future referendums, not only in Scotland but also those held across or in other parts of the UK, should ensure that designation is able to take place shortly before, rather than during the first six weeks of, the referendum period. We also recommend that consideration be given to the benefits of early designation when setting the legislative timetable. If circumstances mean that the legislative timetable is such that early designation is not possible, then our 2011 recommendation to extend the length of the referendum period to at least 16 weeks should be adopted. This would go some way to giving designated lead campaign groups more time to plan and use the benefits available."

8.2 The Government has taken this into account and this instrument provides for designation to take place before the start of the referendum period (see paragraph 7.18 above).

8.3 The Electoral Commission also recommended: "The legislation for future referendums, not only in Scotland but also those held across or in other parts of the UK, should ensure that pre-poll reporting of donations and loans over £7,500 received by registered campaigners (except political parties) for referendum purposes is again included as a reporting requirement." The 2015 Act therefore provides for such reporting of donations and loans and this instrument sets reporting periods (see paragraph 7.20 above).

9. Guidance

9.1 The Electoral Commission issues guidance to political parties and other campaigners relating to campaigning at the referendum which reflects the relevant provisions of the 2000 Act, the 2015 Act and this instrument.

10. Impact

10.1 The impact on business, charities or voluntary bodies is not significant. The only additional burden imposed by this instrument (beyond those that flow inevitably from the 2015 Act) is a requirement to report at a further three points in time on donations and loans above £7,500. This only applies to business, charities or voluntary bodies which have chosen to register with the Electoral Commission as a permitted participant, which is only necessary for those spending more than £10,000 on referendum expenses during the referendum period. The benefits of reporting on donations and loans are from increased transparency but are not easily quantifiable.

10.2 The impact on the public sector is that the Electoral Commission will be required to receive and process these reports.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses beyond the impact set out at paragraph 10.1.

12. Monitoring & review

12.1 The Cabinet Office keeps all electoral legislation, including that which applies to referendums, under review to ensure it continues to support electors' participation and effective administration of elections and referendums.

12.2 Under section 5 of the 2000 Act the Electoral Commission will, following the referendum, be required to prepare and publish a report on the administration of the referendum. The Cabinet Office will consider any findings or recommendations made by the Commission, including about the provisions in this instrument.

13. Contact

13.1 Catherine Webster at the Cabinet Office, Telephone: 0207 271 6441 or email: Catherine.Webster@cabinetoffice.gov.uk can answer any queries regarding the instrument.