EXPLANATORY MEMORANDUM TO

THE COMBINED AUTHORITIES (MAYORAL ELECTIONS) (AMENDMENT) ORDER 2019

2019 No. 350

AND

THE LOCAL AUTHORITIES (MAYORAL ELECTIONS) (ENGLAND AND WALES) (AMENDMENT) (ENGLAND) REGULATIONS 2019

2019 No. 351

1. Introduction

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instruments

2.1 These instruments amend the rules that apply to combined authority mayoral elections and local authority mayoral elections. The rules are amended to remove the requirement that each candidate's home address must be published during the election process and be included on the ballot paper. The instruments also remove the requirement for each candidate's qualifying address to be published during that process. A candidate's qualifying address is the address that qualifies the candidate to stand for election.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These instruments have been withdrawn and re-laid with amendments to their savings provisions. These provisions have been amended to ensure the changes made by the instruments will only apply to elections which are to be held on or after 2 May 2019 (see article 4 of the Combined Authorities (Mayoral Elections) (Amendment) Order 2019 and regulation 4 of the Local Authorities (Mayoral Elections) (England and Wales) (Amendment) (England) Regulations 2019).

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 These instruments make provision only about local authority mayoral elections or, as the case may be, combined authority mayoral elections, in England.

3.3 The instruments do not have any minor or consequential effects outside England.

3.4 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this entire instrument would be within the devolved legislative competence of the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.5 The Cabinet Office has reached this view because it considers that the primary purpose of the provisions in these instruments relate to conduct of local government/mayoral elections, which is within the devolved legislative competence of the Scottish Parliament and National Assembly for Wales. The primary purpose of the subject matter of these instruments is not within Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act). The primary purpose of the subject matter of these instruments is not within Schedule 7A to the Government of Wales Act 2006 and is not otherwise outside the legislative competence of the National Assembly for Wales (see section 108A of that Act).

4. Extent and Territorial Application

4.1 The territorial extent of the instruments is England and Wales.

4.2 The territorial application of the instruments is set out in Section 3 under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

5. European Convention on Human Rights

5.1 Chloe Smith MP, the Minister for the Constitution, Cabinet Office has made the following statement regarding Human Rights:

"In my view the provisions of the Combined Authorities (Mayoral Elections) (Amendment) Order 2019 and the Local Authorities (Mayoral Elections) (England and Wales) (Amendment) (England) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 These instruments are being made to amend the Combined Authorities (Mayoral Elections) Order 2017 (S.I. 2017/67) ("the 2017 Order") which sets out the rules for the election of combined authority mayors and the Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007 (S.I. 2007/1024) ("the 2007 Regulations") which set out the rules for the election of local authority mayors.

6.2 Candidates in those elections are required to be nominated by nomination paper. That paper must currently include a candidate's home address. Those addresses will be published in the statement of persons who have been nominated to stand for election and also on the ballot papers. The only exception to this rule currently being made is for persons who have police and crime commissioner (PCC) functions and are standing for election as a combined authority mayor. These candidates may currently require that their home address is not made public.

6.3 The changes made by these instruments mean that in future all candidates in local authority and combined authority mayoral elections will be able to request that their

home address is not made public. In addition, candidates will in future provide their "qualifying addresses" separately. A candidate's qualifying address is the address that qualifies the candidate to stand at the election – it may be, for example, a work address or the address at which the candidate is registered to vote.

6.4 These instruments also make various consequential amendments to the rules set out in the 2007 Regulations and 2017 Order.

7. Policy background

What is being done and why?

7.1 The Committee on Standards in Public Life (CSPL) in its December 2017 Report 'Intimidation in Public Life A Review by the Committee on Standards in Public Life' recommended:

"The government should bring forward legislation to remove the requirement for candidates standing as local councillors to have their home addresses published on the ballot paper. Returning Officers should not disclose the home addresses of those attending a count."

7.2 The Government accepted this recommendation in its response to the CSPL report published in March 2018. The Government indicated that it will look to bring forward secondary legislation at a suitable opportunity to remove the requirement for candidates standing as local councillors to have their home addresses published on the ballot paper. The Government also stated that this practice should be applied equally to all those standing for election to public office and should apply to those standing at any level of local authority elections including for mayoral positions. The Government wishes to avoid capable individuals being deterred from standing for office because they believe the process risks their safety, or makes them vulnerable to abusive activity.

7.3 We are making and laying separately before Parliament statutory instruments that implement identical changes for local government and parish council elections in England. The instruments amend the Local Elections (Principal Areas) (England and Wales) Rules 2006 (S.I. 2006/3304) and the Local Elections (Parishes and Communities) (England and Wales) Rules 2006 (S.I. 2006/3305).

7.4 These instruments that are subject of this explanatory memorandum make changes in relation to elections of combined authority mayors and local mayors. Currently, at combined authority mayoral elections, where the elected combined authority mayor will not have PCC functions, and at all local mayoral elections, candidates are required to have their home address appear on the ballot paper. Where the elected combined authority mayor will have PCC functions, there is no requirement for the candidate's home address to appear on the ballot paper (reflecting that at PCC elections, there is no requirement for a candidate's home address to appear on the ballot paper).

7.5 These instruments will provide that candidates standing at any combined authority mayoral election (whether or not the combined authority mayor will also have PCC functions), and all local mayoral elections can elect not to have their home addresses published on the ballot paper. Where a candidate elects that their home address is not made public, the candidate must provide a statement of residence based on the local authority area (or country) within which the candidate lives, rather than having to

include a specific address. This will be in line with the existing provisions in place for candidates at UK parliamentary elections. It is planned to have the changes in place so that they apply for the local elections in England scheduled for May 2019, when local mayoral elections are scheduled to be held in five local authority areas, and the election of the mayor for the North of Tyne combined authority is due to be held, and all future elections of combined authority mayors and local mayors in England after then.

7.6 Currently, at elections of combined authority mayors (without PCC functions) and local mayors, a candidate's 'home address in full' is required to be included on the nomination form. As a result of the changes, candidates at all elections of combined authority mayors and local mayors will be required to provide their home address on a separate 'home address form'. The candidate may require that the address is not made public (ie not included on the ballot paper or in the statement of persons nominated). If the candidate requires their address not to be made public, the candidate must state the name of the "relevant area" (as defined in the instruments) in which they live and this will appear on the ballot paper and certain other election documents instead of the home address.

7.7 We have considered the level of location information that is appropriate for a candidate to provide. It can be argued that with larger authorities such as Birmingham and Manchester giving the name of the local authority may not be seen as very informative for voters. That said, stating the ward where the candidate lives may not be very meaningful for voters, given that public knowledge of wards and their geographical location may be sketchy and also that the candidate does not need to live in the ward they are contesting, and they may not necessarily live in the local authority area in which they are standing, if their qualification to stand for election arises from their main place of work being located in the relevant local authority area. Also, there is the concern that providing the ward may not assist the aim of avoiding potential for intimidation or abuse if this information can be used to readily identify someone's actual address by reference to the local ward electoral register, for example, given that some wards may contain a relatively small number of electors.

7.8 We wish to adopt a consistent approach for all polls on the alternate information to be provided that supports the aim to give security to candidates who do not wish their home address to be made public and appear on the ballot paper. We therefore propose that candidates who wish to withhold their home address should instead give the name of the "relevant area" within which their home address is located. We propose that candidates living in England will use the relevant one of the following areas as an alternative to their home address:

- a district in England for which there is a district council;
- a county in England in which there are no districts with councils;
- a London borough;
- the City of London (including the Inner and Middle Temples);
- the Isles of Scilly.

7.9 It is proposed that if the candidate lives in Wales they would state the borough or county borough within which their home address is located. If the home address of the candidate is in Scotland, they would state the local government area within which their home address is located. If the home address of the candidate is in Northern Ireland, the candidate would state the local government district within which their

home address is located. If the home address of the candidate is outside of the UK, they would state the country within which their home address is located.

7.10 This information would appear on the ballot paper, statement of persons nominated and notice of poll.

7.11 Currently, a candidate must also consent to their nomination by submitting a consent to nomination form. The candidate must give their home address on the form. Additionally, the form includes four statements that set out criteria for standing, and a candidate must comply with one of them in order to be eligible to stand. The candidate must indicate the statement(s) that are applicable to them, and qualifies them to stand, and provide the relevant qualifying address for each statement that is applicable to them.

7.12 The consent to nomination form must also be attested by one witness and the witness must sign and include their name and address on the form. Under the proposed changes, candidate will no longer be required to disclose addresses of any description on the consent to nomination form. Candidates will be required to indicate which of the four statements are applicable to them. The witness will no longer be required to give their address on the form. These addresses (for candidates and witnesses) are to be disclosed on the separate home address form.

7.13 It is proposed that candidates will be required to deliver to the Returning Officer by the deadline for nominations the completed home address form along with the nomination form and consent to nomination form. Failure to provide the completed home address form would invalidate the candidacy – this is in line with the provision for UK Parliamentary elections.

7.14 The instruments require the destruction of home address forms by Returning Officers for security reasons after a specified period.

7.15 The statement of persons nominated currently requires the candidate's home address to be disclosed on this notice; this will no longer be required. Where a candidate chooses on the home address form that their address is not made public the "relevant area" in which the candidate's address is situated (as given on the home address form) will appear instead on the statement of persons nominated.

7.16 The notice of poll requires the notice to include the particulars of the candidates as they appear on the statement of persons nominated. This would currently include the candidate's home address but the amendment to the statement of persons nominated will follow through to the notice of poll, and the area in which the candidate's home address is situated will appear on this notice instead of the home address.

7.17 Currently, at elections of combined authority mayors, the nomination papers of candidates are not made publicly available. Certain specified persons may attend proceedings during the time for the delivery of nomination papers and may inspect any nomination paper for any candidate (at elections of combined authority mayors, this is a period of at least 6 working days ending on the 19th working day before polling day).

7.18 At local mayoral elections, after the close of nominations and before the date of the poll, during ordinary office hours, any person may inspect and take copies of, or extracts from, nomination papers and consents to nomination.

7.19 It is not proposed to make significant changes to the nominations process at elections of combined authority mayors and local mayors. It is proposed that changes are made

that are necessary to implement the proposals concerning home addresses on ballot papers at these elections that are consistent with the approach taken at UK Parliamentary elections.

7.20 We therefore propose to continue that at elections of local mayors, nomination forms and consent to nomination forms will be open to public inspection. These forms though will in future no longer contain addresses of any description in relation to candidates and witnesses.

7.21 It is proposed that certain authorised persons will be able to inspect home address forms at elections of combined authority mayors during the time for the delivery of nomination papers and at elections local mayors, in the period following close of nominations and before polling day. To be consistent with the procedure at UK Parliamentary elections, and to provide for transparency in the nominations process, we will specify that at these elections during the above periods, the following specified persons may inspect (though not take copies of) the home address form of any candidate standing at the poll:

- Candidates;
- Election agent, proposer or seconder of a candidate;
- Where a candidate is their own election agent, a person nominated by the candidate.

7.22 We propose to make changes to certain prescribed forms at combined authority mayoral and local mayoral elections as a consequence of the proposed changes, as follows:

- Ballot paper – the image of the ballot paper needs to give an example of a candidate not giving their home address, with the name of the area where they live appearing instead.
- Nomination paper - the prescribed form needs to be amended so that the home addresses of candidates do not appear on this form.
- Consent to nomination form – the prescribed form needs to be amended so that the home and qualifying addresses of candidates do not appear on this form. The candidate would still be required to state which of the four statements listed on the form are applicable to them, though not give their home/qualifying addresses. The address of the witness will no longer appear on this form.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 The Law Commission has conducted a review into the desirability and feasibility of reforming and consolidating electoral law. The Government is working with the Law Commission on taking forward this programme of work.

10. Consultation outcome

10.1 The Electoral Commission has been consulted on these instruments as required by sections 7(1) and (2)(d) of the Political Parties, Elections and Referendums Act 2000. We have also shared details of the proposed changes with the Association of Electoral Administrators (AEA), Society of Local Authority Chief Executives (SOLACE) and the Parliamentary Parties Panel.

10.2 The Electoral Commission agree that these changes should help to reduce the risk of abuse and intimidation of mayoral election candidates and their families. There is broad support among stakeholders for the proposed changes. The AEA suggested some changes to the drafting of the consent to nomination form in each instrument to make the wording clearer which we have taken into account in the final versions of the forms.

11. Guidance

11.1 The Electoral Commission issues guidance to electoral administrators and candidates relating to the administration and conduct of elections of combined authority mayors and local mayors and will update the guidance as necessary in advance of future polls in light of the changes set out in these instruments.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there is no impact on business.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the Electoral Commission will produce reports on the administration and conduct of combined authority mayoral and local mayoral elections, and the Cabinet Office will consider any findings or recommendations made by the Electoral Commission about the changes in these instruments that will apply at those polls. The Cabinet Office will continue to keep all electoral legislation under review to ensure it continues to support electors' participation in elections and effective electoral administration.

15. Contact

15.1 Peter Richardson at the Cabinet Office Telephone: 020 7271 6433 or email: peter.richardson@cabinetoffice.gov.uk can be contacted with any queries regarding these instruments.

15.2 Simon James, Deputy Director for the Elections Policy area, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chloe Smith MP, Minister for the Constitution at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.