EXPLANATORY MEMORANDUM TO

THE MAGISTRATES' COURTS (FORFEITURE OF POLITICAL DONATIONS) (AMENDMENT) RULES 2016

2016 No. 745 (L. 10)

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Magistrates' Courts (Forfeiture of Political Donations) Rules 2003 ('the 2003 Rules'), which prescribe the procedure for applications by the Electoral Commission for forfeiture from registered parties, regulated donees, recognised third parties, permitted participants in referendums or candidates or election agents of amounts equal to the value of any prohibited donations. This instrument amends the 2003 Rules to include the forfeiture of donations made to an accredited campaigner in respect of a recall petition, pursuant to the Recall of MPs Act 2015, and to prescribe the appropriate form ("Form C") for such applications.

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 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Recall of MPs Act 2015 was passed on 26th March with various provisions of the Act coming into force on that day. The Act was fully commenced on 4th March 2016 and the Recall of MPs (Recall Petition) Regulations 2016, which sets out the procedures and offences pertaining to the conduct of a recall petition, also came into force on that day.

4.2 Schedule 4 of the Act sets out the provisions relating to the control of donations to accredited campaigners. Part 2 of that Schedule prohibits the acceptance of donations from impermissible or unidentifiable donors, and places a duty upon an accredited campaigner to take immediate reasonable steps to verify the identity of a donor if he or she receives a donation that is not immediately refused.

4.3 Where an accredited campaigner accepts a relevant donation in contravention of the Act, paragraph 17 of Schedule 4 enables the court, on an application by the Electoral Commission, to order the forfeiture by an accredited campaigner of an amount equal to the amount of the donation or value of the donation. Paragraph 18 of that Schedule enables an accredited campaigner to appeal against such a forfeiture order.

4.4 Paragraph 19 of Schedule 4 enables provision to be made by the rules of court in respect of any of the procedures under paragraphs 17 and 18 before the court.

4.5 The Magistrates' Courts (Forfeiture of Political Donations) Rules 2003 ("2003 Rules") prescribe the procedure for applications by the Electoral Commission for forfeiture from registered parties, regulated donees, recognised third parties, permitted participants in referendums or candidates or election agents of amounts equal to the value of any prohibited donations.

4.6 This instrument seeks to amend the Magistrates' Courts (Forfeiture of Political Donations) Rules 2003 so that those rules apply to applications to the court for the forfeiture of donations made in respect of a recall petition.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The Recall of MPs Act 2015 gives constituents the power to remove their sitting MP between elections, if the MP is found to have committed serious wrongdoing by either Parliament or the Courts. A recall petition will be triggered should any of the following conditions be met:

a) the MP is given a custodial sentence, including a suspended sentence, of up to 12 months (sentences of over 12 months already result in an MP being removed);

b) following a report from the Committee on Standards in relation to the MP, the House of Commons orders the suspension of the MP for 10 working days or more;

c) the MP is convicted of an offence under section 10 of the Parliamentary Standards Act 2009 (offence of providing false or misleading information for allowances claims).

7.2 The petition may be signed by eligible electors in the MP's constituency during the petition signing period, which is set at 6 weeks. If at the end of the petition signing period the petition has attracted signatures from less than 10% of eligible electors then no further action is taken. If 10% or more sign the petition the MP ceases to be an MP and a by-election is triggered. The unseated MP is free to stand at the subsequent by-election.

7.3 A person can apply to be an accredited campaigner in respect of a recall petition and may receive donations for the purpose of meeting petition expenses ("relevant donation"). Schedule 4 of the Act sets out the controls that apply to relevant donations to accredited campaigners who are not registered parties or who are registered parties but are minor parties ("registered party" and "minor party" have the same meaning as in the Political Parties Elections and Referendums Act 2000 (PPERA)). Donations to

registered parties that are not minor parties will be reported as part of, and in line with, their reporting obligations under Part 4 of PPERA.

7.4 A duty is also placed upon an accredited campaigner to return donations from impermissible donors and unidentifiable donors within 30 days of receipt of the donation.

7.5 The courts can, following an application from the Electoral Commission, order the forfeiture of a donation from an impermissible or unidentifiable donor (with the amount paid into the Consolidated Fund). Schedule 4 to the Act sets out the appeal process against such an order and gives the power to make supplementary court rules relating to forfeiture.

7.6 It is therefore necessary to amend the Magistrates' Courts (Forfeiture of Political Donations) Rules 2003 to enable the court to make a forfeiture order in respect of donations made to an accredited campaigner in a recall petition.

8. Consultation outcome

8.1 No specific consultation was undertaken on this instrument due to the technical nature of the rules and the existing precedents for the approach taken in them.

9. Guidance

9.1 No specific guidance was considered necessary given the existing precedents for the approach taken by the rules.

10. Impact

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

10.2 The impact on the public sector will be minor. It is anticipated that recall petitions will be a rare occurrence.

10.3 A full Regulatory Impact Assessment has not been prepared for this instrument as no impact on the private or voluntary sectors is foreseen.

11. Regulating small business

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

12. Monitoring & review

12.1 It is proposed to review the Magistrates' five years after enactment and the rules will be considered as part of that review.

13. Contact

13.1 James Murdoch at the Cabinet Office Telephone: 020 7271 8449 or email: James.Murdoch@CabinetOffice.gsi.gov.uk can answer any queries regarding the instrument.