EXPLANATORY MEMORANDUM TO

THE NATIONAL ASSEMBLY FOR WALES (REPRESENTATION OF THE PEOPLE) (AMENDMENT) ORDER 2016 ("NAW ORDER")

2016 No. 272

AND

THE POLICE AND CRIME COMMISSIONER ELECTIONS (AMENDMENT) ORDER 2016 ("PCC ORDER")

2016 No. 300

1. Introduction

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

2. Purpose of the instruments

2.1 The NAW Order and the PCC Order, respectively, make changes to the rules for the administration and conduct of elections to the National Assembly for Wales (NAW) and of Police and Crime Commissioners (PCCs). In particular, they make provision for the combination of polls at NAW and PCC elections when they are held on the same day. This will ensure that the NAW and PCC elections scheduled to be held on 5 May 2016 in Wales can be combined, and that any future NAW and PCC elections that are held on the same date can be combined. The instrument relating to NAW elections also applies electoral conduct provisions that were contained in the Electoral Registration and Administration Act 2013 (the "ERA Act") and associated secondary legislation for the purposes of NAW elections (these changes have already been made in respect of PCC elections[1]).

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 These entire instruments apply only to England and Wales.

3.3 Both instruments apply only to England and Wales as they concern only matters relating to elections to the NAW and elections of PCCs (provision for which is only made in England and Wales). These instruments do not have minor or consequential effects outside England and Wales.

3.4 NAW Order: in the view of the Wales Office, for the purposes of House of Commons Standing Order 83P the subject-matter of this instrument would not be within the devolved legislative competence of the Northern Ireland Assembly as a transferred matter, the Scottish Parliament or the National Assembly for Wales if equivalent in

[1] S.I. 2014/921.

relation to the relevant territory were included in an Act of the relevant devolved legislature.

3.5 PCC Order: in the view of the Cabinet Office, for the purposes of Standing Order 83P the subject matter of part of this instrument would not be within the devolved legislative competence of the Northern Ireland Assembly as a transferred matter or the Scottish Parliament or the National Assembly for Wales if equivalent in relation to the relevant territory were included in an Act of the relevant devolved legislature.

3.6 The subject matter of part of the PCC Order would be within the legislative competence of both the Scottish Parliament and the Northern Ireland Assembly for English votes purposes. The Cabinet Office has reached this view because it considers that the primary purpose of the instrument relates to elections of PCCs which is within the devolved legislative competence of both those legislatures: the primary purpose of the subject matter of the PCC Order is not within Schedule 5 to the Scotland Act 1998 and not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); and the primary purpose of the subject matter of the PCC Order is not within Schedules 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act).

4. Legislative Context

4.1 The NAW Order amends the National Assembly for Wales (Representation of the People) Order 2007 (S.I. 2007/236) (the "2007 NAW Order") which sets out the rules governing the conduct of elections to the National Assembly for Wales.

4.2 Many of the provisions in the NAW Order replicate, for NAW elections, amendments that have been made for the conduct of UK Parliamentary elections by the ERA Act and the Representation of the People (England and Wales) (Description of Electoral Registers and Amendment) Regulations 2013 (S.I. 2013/3198) (the "2013 Regulations").

4.3 The NAW Order is therefore part of a wider package of Statutory Instruments which make various changes to the rules for conducting elections and referendums and which also includes the European Parliamentary Elections (Amendment) Regulations 2013 (S.I. 2013/2876) and the 2013 Regulations.

4.4 The NAW Order also makes provision for the combination of Assembly election polls and PCC election polls where they are to be held on the same day. This is in addition to the existing provision in the 2007 NAW Order whereby Assembly elections can be combined with local government elections.

4.5 The PCC Order amends the Police and Crime Commissioner Elections Order 2012 (S.I 2012/1917) (the "2012 PCC Order") which sets out the rules governing the conduct of elections of PCCs, and the Police and Crime Commissioner Elections (Functions of Returning Officers) Regulations 2012 (S.I. 2012/1918) (the "2012 PCC Regulations") that confer functions on police area returning officers and local returning officers at PCC elections.

4.6 The PCC Order makes equivalent provision for the combination of NAW and PCC elections and also amends the definition of a "voting area" in Wales in both the 2012 PCC Order and the 2012 PCC Regulations where the polls are combined. Voting areas are the areas on which the polls are administered. The voting areas at PCC elections would otherwise be local authority areas. Where the polls are required to be combined with a NAW election, the voting areas will now be Assembly constituencies.

5. Extent and Territorial Application

5.1 Both instruments extend throughout the UK.

5.2 The territorial application of this instrument is set out in section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 The Rt Hon Stephen Crabb, the Secretary of State for Wales, has made the following statement regarding Human Rights:

"In my view the provisions of the National Assembly for Wales (Representation of the People) (Amendment) Order 2016 are compatible with the Convention rights."

6.2 John Penrose, the Minister for Constitutional Reform, Cabinet Office, has made the following statement regarding Human Rights:

"In my view the provisions of the Police and Crime Commissioner Elections (Amendment) Order 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The NAW Order requires the polls to be combined where a general election of the Assembly and an ordinary PCC election take place on the same day. Where they are otherwise taking place on the same day, they may be combined. Both instruments then make the necessary changes to the administration and conduct of the elections to facilitate this. These changes are being made now so they can have effect at polls that take place on 5 May 2016 (the next scheduled date for general NAW elections and ordinary PCC elections). Combining these elections when they are held on the same day will enable the polls to be run effectively and facilitate participation by voters at the polls.

7.2 The NAW Order also makes provision for a number of changes to the administration and conduct of elections to the NAW. Many of these changes have already been made for UK Parliamentary elections by Part 2 of the ERA Act 2013 and the 2013 Regulations, and for other types of elections, including PCC elections. These changes are designed to improve the accessibility and security of the voting process, and implement a number of recommendations which have been made by (amongst others) the Electoral Commission and the Association of Electoral Administrators.

NAW Order

7.3 The instrument will do the following for NAW elections:

Combination provisions

- The NAW Order makes provision for a poll at a NAW election to be combined with a poll at a PCC election when the polls are held on the same day, as will happen in May 2016.

- Where polls are combined, the Order designates the lead Returning Officer for the combined polls, and ensures that voters will cast their vote at the same polling station for both the polls, and that a different coloured ballot paper is used for each poll. Returning Officers will be able to issue a single poll card to electors for all the polls, and may issue postal voters with one postal ballot pack with two different sets of voting papers inside, instead of two separate packs for each election.

Electoral administration and conduct provisions

- Change the timing of certain proceedings which will ensure there is greater consistency with the position at other elections, and will facilitate the earlier despatch of postal votes. In particular: the deadline for candidates to submit their nomination papers becomes 4pm on the 19th working day before polling day; the deadline for candidates to withdraw their nomination is moved from noon on the 17th working day before polling day to 4pm on the 19th working day before polling day; and the deadline for the publication of the statement of persons nominated becomes 4pm on the 18th working day before polling day. These changes will, as they have in respect of other elections, enable postal votes to be issued to postal voters sooner than at present.

- Remove the restriction on postal votes being despatched earlier than the 11th working day before the day of the poll.

- Enable postal voters to cancel their postal vote following receipt and arrange instead to vote in person or by proxy, provided they do this before the postal vote application deadline (i.e. at least 11 working days before the poll) and that the postal ballot papers have not been completed and returned to the Returning Officer. This ensures the current flexibility afforded to voters to change their voting arrangements is maintained when postal voting packs are dispatched earlier than they are at present.

- Update forms used by voters to improve their accessibility and to provide greater consistency across elections. The intention is to ensure that the forms which voters use at elections are as clear and easy to use as possible to improve the voter's experience and encourage more effective engagement in the voting process. The ballot paper for a regional election will include the names of those candidates standing for each party so that voters are aware of the candidates standing at the poll.

- Provide that voters waiting in a queue at the close of poll (i.e. at 10pm on polling day), for the purpose of voting, may be issued with a ballot paper, and that those in the queue for the purpose of returning a postal ballot paper or postal voting statement may return it.

- Enable police community support officers to enter polling stations and counting venues under the same conditions as police constables. This ensures that the changes made by the ERA Act to the parliamentary elections rules are reflected for these elections.

- Establish a system of postal vote identifier rejection notifications. Electoral Registration Officers (EROs) will inform electors after a poll where the signature or date of birth (known as "postal vote identifiers") which they supply on the postal voting statement failed to match those held on record or had simply been left blank. This is to help to ensure those voters can participate effectively in future elections and not have their ballot papers rejected at successive polls because of a signature degradation or because they are making inadvertent errors. EROs will not be obliged to inform individuals where fraud is suspected.

- Ensure that 100% of postal vote identifiers on postal voting statements are checked against those held on record, rather than the current minimum of 20%. This reflects current practice by Returning Officers at Assembly elections (and the changes that have been made in respect of other elections), and ensures all postal votes are subject to the same high level of scrutiny.

- Extend "emergency" proxy vote provisions to those absent on the grounds of business or military service. This is to ensure that those who are absent at short notice for business or service reasons are eligible to apply for an emergency proxy vote in the days before the referendum.

- Reflect for NAW elections the provision in the ERA Act whereby the fee of a Returning Officer may be reduced following a recommendation of the Electoral Commission in the event of inadequate performance.

PCC Order

7.4 The PCC Order makes the necessary changes to the administration and conduct of the election where polls are combined with the polls at an Assembly election. The requirement for the polls to be combined, as noted above, is contained within the NAW Order.

7.5 As already noted, the PCC Order also amends the definition of voting area in both the 2012 PCC Order and the 2012 PCC Regulations where the elections are combined with Assembly elections so that both sets of elections can be administered on the basis of the same voting areas. Ordinarily, PCC elections are administered by local returning officers on the basis of local authority areas, whilst NAW elections are

administered by (Assembly) constituency returning officers on the basis of NAW constituencies. Local authority areas and NAW constituencies are not contiguous with each other. Aligning the voting areas will assist in the effective running of the combined NAW/PCC poll and will mean that constituency returning officers (who will be the lead returning officers at the combined elections) are not administering PCC elections for a number of different PCC voting areas. The Electoral Commission and electoral administrators in Wales requested an alignment of the voting areas.

Consolidation

7.6 The Law Commission is currently conducting a review into the desirability and feasibility of consolidating electoral law. In the meantime there are no plans at this time to consolidate amendments that have been made to the 2007 Order, the 2012 PCC Order or the 2012 PCC Regulations.

8. Consultation outcome

8.1 The Electoral Commission has been consulted on both instruments. In addition, the Cabinet Office and the Wales Office have consulted informally with representatives of the Association of Electoral Administrators, the Society of Local Authority Chief Executives, electoral administrators in Wales and the Welsh Government. The changes to the voter forms are in line with changes made to forms for other polls in other instruments on which we have consulted interested bodies, in particular, SCOPE, and which were subject to a programme of public user testing.

8.2 The Electoral Commission's response welcomed the Government's approach in the two instruments. The Commission was pleased that they take account of recent changes to electoral law, notably those in the ERA Act, and apply them for NAW elections, and also that the PCC Order provides that voting areas for PCC elections when combined with NAW elections, will be based on NAW constituencies and not local authorities. The Commission commented that this change reflects the view of the Commission and of Returning Officers in Wales and avoids a potential risk to the effective administration of the election.

8.3 We have made a number of changes to the instruments in light of the Commission's response. We agreed with the Commission that the spending limits for candidates at NAW elections should be increased to take into account the effects of inflation and therefore have included provision in the NAW Order increasing the maximum amount that a candidate standing in a NAW constituency may spend from £7,150 to £8,700, together with an additional 9p (up from 7p) for every elector in a county constituency, and an additional 6p (up from 5p) for every elector in a borough constituency. We have also made changes to the wording in the statement as to postal ballot papers form in order to simplify the form and make it clearer for administrators to use.

8.4 The Electoral Commission has recommended that the regional ballot paper for use at NAW elections should not include the names of candidates standing for a party, as this may result in longer unwieldy ballot papers. However, while the Government welcomes the work done by the Electoral Commission on this issue, it notes that the responses to the Commission's earlier consultation in 2014 show that there was support from those political parties who responded to the consultation (all except the

Labour Party) for names to be returned to regional ballot papers (they were omitted for the NAW election in 2011) so that voters are aware of the candidates standing at the election. There was no consensus in the consultation responses as to how many candidates' names should be displayed on the ballot paper, and the Government considers that the ballot paper should reflect the existing legislation (see section 7(4) of the Government of Wales Act 2006), and that up to 12 names may appear on the regional ballot paper. The Commission also recommended that the emergency proxy vote facility should be extended to those who have unforeseen caring responsibilities or who have experienced the death of a close relative. The Government understands that the recommendation seeks to facilitate participation at elections. There is already provision for electors to apply for an emergency proxy in the event of a medical emergency. The NAW Order extends the facility further to persons absent on business or military service (and it has already been so extended for other polls). The Government considers that the provision should not be drawn too widely in order to maintain the integrity of the electoral process and therefore has no plans to extend the facility further.

9. Guidance

9.1 The Electoral Commission issues guidance to electoral administrators relating to the administration and conduct of NAW and PCC elections and will update the guidance as necessary to cover the changes set out in these instruments.

10. Impact

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

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument as no impact on business 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 The Electoral Commission will produce reports on the administration and conduct of the NAW and PCC elections in May 2016, and the Cabinet Office will consider any findings or recommendations made by the Commission about the provisions introduced by 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.

13. Contact

13.1 Peter Richardson at the Cabinet Office, Telephone: 020 7271 6433 or email: peter.richardson@cabinetoffice.gov.uk and Peter Newbitt at the Wales Office, Telephone 029 2092 4205 or email: peter.newbitt@walesoffice.gsi.gov.uk can answer any queries regarding these instruments.