EXPLANATORY MEMORANDUM TO

The Electoral Registration and Administration Act 2013 (Commencement No.4 and Consequential Provision) Order 2013

2013 No. [XXXX]

1. 1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order brings into force section 19 of the Electoral Registration and Administration (ERA) Act 2013 which provides for voters queuing at a polling station for the purposes of voting at close of poll to be issued with ballot papers and vote despite the time of close of poll having passed. The Order makes the same provision for the return of postal ballot papers. The Order makes further, consequential, provision to allow persons queuing at a polling station at close of poll in order to return a postal ballot paper despite the time of close of poll having passed. It does not apply to Northern Ireland as different arrangements for postal voting apply there.

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

3.1 None.

4. Legislative Context

4.1 This Order brings section 19 of the Electoral Registration and Administration Act 2013 (c.6) ("the ERA Act") into force. That section provides for voters queuing at a polling station for the purposes of voting at close of poll to be issued with ballot papers and vote despite the time of close of poll having passed and applies at UK Parliamentary elections across the UK. The Order makes further, consequential, provision to allow persons queuing at a polling station at close of poll in order to return a postal ballot paper or postal voting statement, to return it despite the time of close of poll having passed. This provision has effect at UK Parliamentary elections in England, Wales, and Scotland only. It does not apply to Northern Ireland as different arrangements for postal voting apply there.

4.2. The intention is to ensure consistency of close of poll provisions across all elections. To that end, amendments have been made to the conduct of European Parliamentary Elections by the European Parliamentary Elections (Amendment) Regulations 2013 and similar amendments will be included in amending instruments for the conduct of Local and Mayoral elections.

5. Territorial Extent and Application

5.1 This Order and the commencement of section 19 of the ERA Act extend throughout the UK, however the consequential provision contained at article 3 of the Order has effect in England, Wales and Scotland only.

6. European Convention on Human Rights

6.1 Greg Clark, the Minister of State for Cities and the Constitution, has made the following statement regarding Human Rights: "In my view the provisions of the Electoral Registration and Administration Act 2013 (Commencement No.4 and Consequential Provision) Order 2013 are compatible with the Convention rights."

7. Policy background

7.1 During the passage of the ERA Act, the Government listened to considerable Parliamentary concern about the need to ensure that there is a mechanism in place to deal with any queues which form at polling stations at close of poll given the isolated instances of queues at polling stations at the 2010 General Election.

7.2 In order to address the potential for queues forming, the Order provides for voters in the queue at the close of the poll to cast their vote. It also enables those returning a postal ballot paper to do so, despite the close of the poll. This will provide returning officers and their staff with the necessary flexibility to allow electors who are waiting in a queue at 10pm to hand in a postal ballot paper, thereby reducing the queue and allowing postal ballots to get to the count sooner.

8. Consultation outcome

8.1 We have shared a final version of the Order with the Electoral Commission and sought its views. The Commission has previously raised concerns around the drafting of the close of poll provisions, specifically in relation to the return of postal votes, as set out in the European Parliamentary Elections (Amendment) Regulations 2013. This Order closely follows the wording of the close of poll provisions in those Regulations.

8.2 The Electoral Commission was concerned that the provisions as drafted in those Regulations could risk creating an open ended period for the delivery of postal ballot papers and statements to a Returning Officer or their staff.

8.3 The Government's view is that that this is a slim, near impossible, eventuality and genuine concerns can be adequately and more appropriately dealt with in the guidance that the Electoral Commission will produce for Returning Officers on close of poll arrangements.

8.4 The Society of Local Authority Chief Executives who represent Returning Officers, and the Association of Electoral Administrators, support the legislation and have welcomed the flexibility the drafting provides.

9. Guidance

9.1 The Electoral Commission will continue to issue guidance relating to the conduct of elections. They will issue specific guidance on the new arrangements for close of poll.

10. Impact

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

10.2 A regulatory impact assessment has not been prepared for this instrument because no impacts on the private, public or voluntary sectors are foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Cabinet Office keeps all electoral legislation under review to ensure it continues to support electors' participation in elections and effective electoral administration.

13. Contact

Roy Williams at the Cabinet Office, tel 020 7271 2757: email: roy.williams@cabinet-office.gsi.gov.uk can answer any queries regarding the instrument.