EXPLANATORY MEMORANDUM TO

THE ELECTORAL REGISTRATION AND ADMINISTRATION ACT 2013 (TRANSITIONAL PROVISIONS) ORDER 2013

2013 No. [XXXX]

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 will require electoral registration officers throughout England, Wales and Scotland to undertake activities specific to the transition to individual electoral registration (IER), including confirmation data matching to 'confirm' electors onto the electoral register, and the letter and invitations sent to electors thereafter. The Order sets the dates for these activities and the annual canvasses in 2014 and 2015.

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

3.1 None

4. Legislative Context

4.1 This Order is made under Schedule 5 to the Electoral Registration and Administration Act 2013. Schedule 5 provides that provision be made for activities required to enable the transition to individual electoral registration.

4.2 This Order is closely linked to the provisions in the draft Representation of the People (England and Wales) (Description of Electoral Registers and Amendment) Regulations 2013 and the draft Representation of the People (Scotland) (Description of Electoral Registers and Amendment) Regulations 2013, which include provisions relating to the ongoing IER process; this explanatory memorandum should be read alongside the memorandum for those Regulations.

4.3 Under section 11 of the ERA Act, the making of this instrument is subject to the affirmative resolution procedure.

4.4 The order-making power is conferred on 'the Minister' which under section 25(1) of the ERA Act means the Lord President of the Council or the Secretary of State.

5. Territorial Extent and Application

5.1 This instrument does not extend to Northern Ireland, except for article 25, which applies to electoral registration officers throughout the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister for Political and Constitutional Reform has made the following statement regarding Human Rights:

> In my view the provisions of the Electoral Registration and Administration Act 2013 (Transitional Provisions) Order 2013 are compatible with the Convention rights.

7. Policy background

7.1 The Electoral Registration and Administration Act 2013 amends the Representation of the People Act 1983 to replace the existing household registration system with Individual Electoral Registration (IER). Under IER electors will be asked to provide identifying information which will be used to verify their identity before they are added to the electoral register, helping to tackle fraud and improve the integrity of our electoral system.

7.2 The implementation of IER will begin on the date that Schedule 5 to the ERA Act is commenced, under a commencement order that will be laid towards the end of 2013, but this Order sets out the timing of the activities that will take place during the transition period. A key element of the transition is the data-matching of existing entries on the electoral register against data held by the Department for Work and Pensions in order to 'confirm' as individually-registered those whose details are successfully matched, without the elector having to make a new registration application or provide personal identifiers.

7.3 As part of the preparations for the transition to individual registration, pilots under the Electoral Registration Data Schemes Order 2011 (S.I. 2011/1466) identified that data matching could be used as a mechanism for confirming existing electors for the purposes of individual electoral registration in this way to simplify the transition to individual electoral registration for the majority of electors.

7.4 More specific testing of confirmation matching carried out in the autumn of 2012 indicated that, on average, it should be possible for electoral registration officers (EROs) to 'confirm' approximately 70% of the electors on the register and therefore treat them as being individually registered.

7.5 A full-scale "dry run" of the process is taking place in summer 2013 under the Electoral Registration (Disclosure of Electoral Registers) Regulations 2013 (S.I. 2013/760), which will provide registration officers with information about the state of their registers and their preparedness for the digital transfer of information. This will allow them to plan effectively for the data-matching process this Order would permit.

7.6 Following the introduction of Individual Electoral Registration in England and Wales in June 2014 and in Scotland in September 2014, the only way onto the register for new entries (including home-movers and newly-eligible electors) is through an IER application. Confirmation will greatly reduce the number of individuals who need to be directly invited to make an IER application, and allow registration officers to target their work on those who do need to be invited and those who were not already on the register.

7.7 The articles in this Order cover all confirmation and post confirmation matching activities during the transition period. EROs in England and Wales must carry out the confirmation data-matching of their registers from 16 June 2014, using the electoral register as updated on that day, and finish by 30 November 2014. They must also write to all those who have been 'confirmed' on the register during that period. Canvass forms, and invitations to register (for those who have not been 'confirmed'), will be sent out for the first new canvass between 16 June 2014 and 30 September 2014. The revised register will be published, as usual by 1 December 2014. Canvass forms for the second new canvass will be sent out between 1 July 2015 and 30 November 2015. From this point EROs are required to send out invitations to register within 28 days of finding out that a potentially eligible elector is resident at an address. The canvass will be an annual occurrence thereafter, under section 9D of the Representation of the People Act 1983 (inserted by the ERA Act).

7.8 The UK Government is working closely with the Scottish Government to ensure that the implementation of IER in Scotland is as effective and convenient for voters as possible, particularly because the referendum on Scottish independence is due to take place on 18 September 2014. This means that the dates for the start of IER and the first transitional activities (through the commencement of the relevant provisions of the ERA Act and under this Order) will be different in Scotland. In Scotland, the transition will begin on 19 September 2014, with confirmation data matching. The canvass period and write-outs will start on 1 October 2014, the canvass forms and invitations being sent out by 31 December 2014, and letters sent to 'confirmed' electors by 27 February 2015, with a revised register published by 28 February. The 5 day period in which people can object to an application to register is disapplied in Scotland between 11 and 18 September 2014 to ensure that as many pre-IER applicants' details can be sent for confirmation as possible.

7.9 The Representation of the People (England and Wales) (Description of Electoral Registers and Amendment) Regulations 2013 and the Representation of the People (Scotland) (Description of Electoral Registers and Amendment) Regulations 2013 describe the process for inviting potential electors to register and following up those invitations, which are repeated in this Order regarding invitations sent to those who are not 'confirmed' by data-matching. The Regulations and Order also include the requirement to register and the Order enables EROs to check the registration status of proxies with EROs in other local authorities. A civil penalty is also available for when an individual refuses to make an application to register when required to do so by a registration officer.

8. Consultation outcome

8.1 The Electoral Commission and the Information Commissioner have been consulted on this instrument as required by section 53(5) of the Representation of the People Act 1983. In addition, the Cabinet Office has conducted weekly meetings with the Electoral Commission and the Association of Electoral Administrators from March to June 2013 to draw out issues ahead of formal consultation. Following the period of informal consultation the Electoral Commission had very few comments on the Order when it came to the formal consultation. In their consultation response the Electoral Commission supported

the decision to allow the Electoral Commission to design and user test forms to ensure consistency. The Commission recommended that the user testing of forms should be stipulated in the Order, but the Government felt that although user-testing is essential, it would be inappropriate to include this in legislation.

8.2 The Information Commissioner's Office welcomes the limitations placed on disclosure of information set out in the Order, noting that in addition to electoral purposes disclosure is restricted to any civil or criminal proceedings.

8.3 This instrument has also been developed through close engagement with the Electoral Commission, Association of Electoral Administrators, the Scotland Office, and the Scottish Assessors Association. The Department of Work and Pensions, Ministry of Justice, the Society of Local Authority Chief Executives, the Tribunals Procedure Committee and stakeholder groups representing the interest of under-registered groups have also been consulted.

9. Guidance

9.1 The Electoral Commission will continue to issue guidance to EROs about electoral registration, including covering all aspects of the transition to and operation of IER. Under article 7 of this Order, enabled by paragraph 4 of Schedule 5 to the ERA Act, the Minister will also issue guidance on the determination of applications. This guidance will be distributed in a joint document with the guidance issued by the Electoral Commission to make it as useful as possible for EROs.

10. Impact

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

10.2 The attached impact assessments were produced relating to the conduct elements of the ERA Act which remain applicable to these instruments. A separate full regulatory impact assessment has not been prepared for these instruments because no impacts on the private, public or voluntary sectors is foreseen, other than those set out in the attached impact assessments prepared for the ERA Act.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Electoral Commission and the Cabinet Office will continue to monitor the completeness and accuracy of the electoral register throughout and after the transition to IER.

12.2 The Commission will make an assessment of the completeness and accuracy of the registers in use in April 2014 and December 2015 (i.e. before and after the transition on current Government plans). This will be assessed against a Cabinet Office baseline measurement of 86% completeness and 85% accuracy, calculated in earlier studies by the Commission on the registers in December

2010 and April 2011 respectively. The Commission's annual 'Winter Tracker' public opinion survey will also continue to record the perceived accessibility of registration

13. Contact

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