EXPLANATORY MEMORANDUM TO

THE ELECTORAL REGISTRATION PILOT SCHEME ORDER 2014

S.I. 2014 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

As part of the introduction of Individual Electoral Registration (IER) under changes made by the Electoral Registration and Administration Act 2013, this Order establishes a pilot scheme enabling information about entries in electoral registers in specified areas of Great Britain to be compared with (a) information held by the Secretary of State for Transport about individuals' driving records and vehicle registration documents and (b) information held by the Secretary of State for Work and Pensions for purposes related to social security, tax credit, and child benefit. The comparison must be made for the purposes of verifying existing entries in the electoral register and finding the details of people who are not registered but are entitled to be registered. The Order will cease to have effect on 31st October 2015.

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

3.1 The Order includes a criminal offence. The Cabinet Office has noted the JCSI's comments about commencement of affirmative instruments in its 1st report of the 2014/15 session. It does not believe that it is inappropriate for the Order to come into force on the day after the day of making, given the limited number of people who might commit the offence and the fact that the Order does not significantly diminish anyone's rights or impose any significantly more onerous duties on people than before. In addition, in practice Electoral Registration Officers (EROs) will be able to determine when the obligations on them (and other people) will take effect, since they may not disclose information until they have entered into an agreement as to how the information will be processed.

4. Legislative Context

4.1 The new system of IER is contained in amendments to the Representation of the People Act 1983 ("the 1983 Act") made by the Electoral Registration and Administration Act 2013 and, in England and Wales, in amendments to the Representation of the People (England and Wales) Regulations 2001 made by the Representation of the People (England and Wales) (Description of Electoral Registers and Amendment) Regulations 2013 (as amended by the Representation of the People (England and Wales) (Amendment) Regulations 2014). The equivalent provisions in Scotland are amendments to the Representation of the People (Scotland) Regulations made by the Representation of the People (Scotland) (Description of Electoral Registers and Amendment) Regulations 2013

(as amended by the Representation of the People (Scotland) (Amendment) Regulations 2014).

4.2 Section 10 of the 2013 Act provides that the Minister may by order make provision for the purpose of testing, for a specified period and in relation to a specified area, how the changes made by any registration provision work in practice. This replaces similar provisions in the Political Parties and Elections Act 2009, under which other pilot schemes were made. "Registration provision" means any provision of section 1 and Schedule 1 (registrations, alterations of the register and removals from the register); section 2 and Schedule 2 (applications for registration, verification of entitlement and sharing and checking information) and Schedule 4 (amendments to primary legislation relating to IER).

4.3 Under section 11(2) of the 2013 Act the making of this instrument is subject to the affirmative resolution procedure.

4.4 Section 25(1) of the 2013 Act provides that "the Minister" means the Secretary of State or the Lord President of the Council.

5. Territorial Extent and Application

5.1 This instrument extends to Great Britain.

6. European Convention on Human Rights

6.1 The Parliamentary Secretary at the Cabinet Office has made the following statement regarding Human Rights:

> In my view the provisions of the Electoral Registration Pilot Scheme Order 2014 are compatible with the Convention rights.

7. Policy background

7.1 An initial set of data matching pilot schemes took place in 2011, enabled by the Electoral Registration Data Schemes Order 2011, to test the usefulness of a range of public authority data sets for helping EROs to improve the accuracy and completeness of their registers. Participating EROs were enabled to match their registers against specified data sets in order to find potential electors who were missing from the register. Driving licence records held by the Driver and Vehicle Licensing Agency (DVLA) were among the data against which those EROs who chose to do so were able to match their registers. DWP data was also used.

7.2 While the findings of the 2011 pilots were not conclusive, they indicated that matching electoral registers against data held by DWP might enable around 66 per cent of the electorate to be confirmed on the register at the transition to IER, so producing substantial savings in time and money. Following refinement of the matching process and further testing in 2012 and 2013, which resulted in

significantly higher match rates than in 2011, the confirmation process for existing electors using data held by DWP is now being used in the transition to the new system.

7.3 A small-scale study carried out in one ERO area in 2011 indicated that using DVLA data for confirmation matching in addition to the match with DWP might increase the confirmation rate by a further 10 per cent. The pilot scheme established by this Order will test whether DVLA data will add significantly to the confirmation match rate that may be achieved by matching electoral registers against DWP data in the transition to IER. The scheme will also allow for piloting of data matching using DVLA data to identify potentially eligible individuals who are not currently registered. These pilots are essential for ensuring a strong evidence base in order to make decisions about the costs and benefits of the wider-scale use of this data.

7.4 The Order will require the 21 EROs in England, Wales and Scotland who have asked to take part in the scheme to disclose their registers to the Lord President for electronic matching against data disclosed by DWP and DfT using the IER Digital Service. All disclosures of data must take place before 31st March 2015.

7.5 Article 5 provides that the comparison must be made for the purpose of verifying existing entries in the electoral register and finding the details of people who are not registered but are entitled to be. The Lord President must disclose the results of the comparison to the registration officers involved in the pilot and provide them and the other ministers involved with an assessment of the usefulness of the information in fulfilling the purposes set out in Article 5. Article 8 provides that information may be disclosed or otherwise processed only in accordance with a written agreement to be made between the Lord President, the Secretary of State for Transport, the Secretary of State for Work and Pensions and the participating EROs as to the processing of the information. Article 7 provides for an offence of disclosure of information other than for prescribed purposes, mirroring existing offences around onward disclosure of information by EROs.

8. Consultation outcome

8.1 The instrument has been developed in partnership with DWP, DfT and DVLA to ensure that the provisions as set out in the instrument will effectively support the processes required to carry out the pilots and meet the policy objectives set out in section 7.

8.2 The Electoral Commission (EC) has been consulted on this instrument, as have the Information Commissioner, DWP, HM Revenue and Customs (HMRC), DfT, DVLA, the Scotland Office, the Wales Office, the Scottish Government, the Association of Electoral Administrators (AEA), the participating EROs and the Cabinet Office Expert Panel of electoral administrators.

8.3 The EC sought confirmation that the pilot scheme would take into account its recommendations from the last data mining evaluation in respect of the need for:

- A clear understanding of the databases being accessed and a clear data specification provided to data holding organisations.
- Assessment (in advance of the pilot) of the approach taken to addressing (there would be limited value at this point in testing a database which lacks Unique Property Reference Numbers and has poor addressing information).
- Exploration of the potential for returning records to EROs with the original register address attached.
- Mandatory checking of the national data provided against data held locally. This would allow for an assessment of the added value to EROs of access to national data, as compared to local data which they already have access to.
- Cabinet Office to ensure that they maintain good communication between themselves, data holding organisations and EROs throughout the process, including after data from the national databases has been returned to EROs.

The Government will keep the EC updated as the methodology for the pilots develops and will work with the EC when developing plans for evaluation.

8.4 The EC was satisfied that the sample of local authorities listed in the Schedule represented a reasonable cross-section of local authorities in Great Britain, provided that all of the areas participate fully in the pilot. It sought confirmation of the support to be given to local authorities to mitigate the risk of them not undertaking a proposed pilot. The Government will include this issue in planning the pilot schemes.

8.5 The EC intended to produce its own independent evaluation of the pilot scheme and asked for confirmation that all relevant data produced during the pilot would be shared with the Commission for evaluation purposes. The Government will do everything possible to provide the Commission with the required data.

8.6 The EC also raised certain points on the drafting of the instrument, to which the Government has responded.

8.7 The ICO had no adverse comments to offer on the proposals and asked to be kept informed of the outcome of the pilots in due course. HMRC, Scotland Office, Wales Office and the Scottish Government were also consulted and had no adverse comments on the instrument.

8.8 The AEA asked for confirmation that the areas listed in the schedule had all been consulted about, and agreed to participate in the pilot. The Government

confirmed that the areas listed in the schedule had asked to participate in the pilots.

8.9 During the consultation with the Cabinet Office Expert Panel of Electoral Administrators assurance was given that the ERO taking part in the pilots in Scotland would not have to undertake identical activities to those EROs in England and Wales taking part in the pilots, given the different timing of the introduction of IER in Scotland.

9. Guidance

9.1 There is no general application of this instrument as it is specifically intended to enable the data matching pilot scheme. Cabinet Office will be working closely with the Electoral Commission, DfT, DVLA, DWP and EROs affected by the Order about the practical details of the working of the scheme.

10. Impact

10.1 An overall Privacy Impact Assessment for individual electoral registration is at https://www.gov.uk/government/publications/individual-electoral-registration-impact-assessment.

10.2 A privacy impact assessment for the data matching to be undertaken under this order will be published on legislation.gov.uk alongside the SI and EM.

10.3 A full regulatory impact assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 The Electoral Commission intends to produce an independent evaluation of the pilot scheme, as set out in section 8.5.

13. Contact

Carol Gokce at the Cabinet Office, tel 020 7271 2679: email Carol.Gokce@cabinet-office.gsi.gov.uk can answer any queries regarding the instrument.