EXPLANATORY MEMORANDUM TO

THE ELECTORAL REGISTRATION PILOT SCHEME (SCOTLAND) ORDER 2017

[2017] No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 Following the introduction of Individual Electoral Registration (IER) this Order establishes a pilot scheme under the Electoral Registration and Administration Act 2013("the 2013 Act") (c. 6) for changes to the annual canvass. The pilot scheme gives electoral registration officers (EROs) in specified areas of Scotland wider discretion over the manner in which they conduct the annual canvass under section 9D of the Representation of the People Act 1983 ("the 1983 Act") (c. 2) for a specified period.

2.2 The Order modifies certain provisions in the 1983 Act and the Representation of the People (Scotland) Regulations 2001 ("the "2001 Regulations") in relation to the areas specified in the Order for the duration of the pilot scheme.

2.3 The UK Government is making these regulations with the agreement of Scottish Ministers in relation to the registration of 16 and 17 year old electors on the local government register in Scotland, and in advance of the commencement of the relevant elections provisions in the Scotland Act 2016 which will include the devolution of legislative competence in respect of the registration of all local government electors to the Scottish Parliament, and the transfer to the Scottish Ministers of functions currently exercisable by a Minister of the Crown which will be exercisable within that newly devolved competence.

2.4 This Order allows for a pilot scheme to take place during the annual electoral registration canvass in two Local Authorities in Scotland. Local Authorities applied to participate in one of four pilot scheme models, which allow participating EROs to conduct their 2017 annual canvass in a less prescriptive manner. The purposes of these pilots are to gather evidence to establish whether alternative methods can be used to conduct the canvass that are just as efficient and more cost effective. This evidence will be evaluated and used to assess whether the pilots support a case for permanent change for EROs to be given wider discretion over the conduct of the annual canvass.

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 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

4.1 This Order, along with the Electoral Registration Pilot Scheme (England and Wales) Order 2017 and the Electoral Registration Pilot Scheme (England) (Amendment) Order 2017 (which will both be laid before Parliament alongside this instrument), is being made to enable EROs to test alternative approaches to canvassing. The new system of individual electoral registration (IER) is contained in amendments to the 1983 Act made by the Electoral Registration and Administration Act 2013 and in amendments to the 2001 Regulations made by the Representation of the People (Scotland) (Description of Electoral Registers and Amendment) Regulations 2013 (S.I. 2013/3206) ("the 2013 regulations"). The IER provisions of the 2001 Regulations have been further amended by the Representation of the People (Scotland) (Amendment) Regulations 2014 (S.I. 2014/1250), the Representation of the People (Supply of Information) Regulations 2014 (S.I. 2014/2764), the Representation of the People (Scotland) (Amendment No. 2) Regulations 2014 (S.I. 2014/3124) and the Representation of the People (Scotland) (Amendment) Regulations 2015 (S.I. 2015/450). The Scottish Elections (Reduction of Voting Age) Act 2015 has also amended these provisions so far as they relate to registration on the local government register in Scotland as a result reduction of the minimum voting age at elections to the Scottish Parliament and local government elections in Scotland. Further amendments will also be made to the IER provisions by the Representation of the People (Scotland) (Amendment) Regulations 2017, which will be laid before Parliament alongside this instrument, should these be approved by Parliament.

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

4.3 Section 9A of the 1983 Act requires EROs to take necessary steps to maintain their register and secure that, so far as reasonably practicable, persons who are entitled to be registered in a register (and no others) are registered in it. In order to comply with that duty, section 9D of the 1983 Act (inserted by the 2013 Act) imposes a duty on EROs to conduct an annual canvass in Great Britain.

4.4 Section 25(1) of the 2013 Act, as amended by The Chancellor of the Duchy of Lancaster Order 2015 (S.I. 2015/1376) and subsequently by The Transfer of Functions (Elections, Referendums, Third Sector and Information) Order 2016 (S.I. 2016/997), provides for "the Minister" to mean the Secretary of State or the Minister for the Cabinet Office.

5. Extent and Territorial Application

5.1 The extent of this instrument is Scotland.

5.2 The territorial application of this instrument is Scotland.

6. European Convention on Human Rights

6.1 The Secretary of State has made the following statement regarding Human Rights:

"In my view the provisions of the Electoral Registration Pilot Scheme (Scotland) Order 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The annual canvass serves as an information gathering exercise for EROs on population churn. It is designed to provide them with information on potential additions and deletions to the electoral register which they can investigate further and then update the register accordingly. In its current form under IER, it is proving to be an unsustainable cost burden for local authorities to administer. Anecdotal evidence is also suggesting that the two stage process of registering to vote (where those identified as missing from the register in a returned canvass form need to successfully complete an individual application before they can be registered) during the canvass is causing confusion to electors and is not an efficient or effective method in securing registrations that the process sets out to achieve. The instrument enables the testing of alternative methods for conducting an annual canvass in Scotland which have the potential to be more cost effective while still securing the same or higher levels of information on population churn (potential additions, changes to registration details, and deletions to the register) compared with the current annual canvass process.

7.2 Section 9D(3) of the 2013 Act requires the annual canvass to be conducted in the manner set out in the 2001 Regulations. The draft Order disapplies that requirement for EROs in the specified areas for the pilot period and disapplies the specific steps set out in the 2001 Regulations governing the actions an ERO in those areas must take to conduct a canvass during the pilot period. It disapplies the regulations under 32ZA and 32ZB which prescribe certain steps such as the requirement that each ERO must send a canvass form designed by the EC to each residential address in the area for which the officer acts; that the canvass form must be accompanied by a pre-addressed reply envelope, the postage of which has been prepaid; that the ERO must send two written reminders and carry out door step visits to non-respondents.

7.3 EROs in the specified areas will still be under a duty to conduct an annual canvass under section 9D(1) of the 2013 Act but, for the specified period, EROs will have the freedom to determine how they wish to do so, although there will be a minimum requirement that they attempt to make contact with a person at each residential address in the area for which they act at least once during the pilot period.

7.4 Three Orders are necessary to allow the 2017 annual canvass pilots to be conducted across England, Wales and Scotland. This particular order allows piloting to take place on the 2017 annual canvass in two newly participating areas in Scotland. Three Local Authorities in England participated in a pilot scheme on the annual canvass in 2016; a separate Order will amend that scheme to extend the pilots in those three authorities for one year to allow that scheme to cover the annual canvass in 2017 - the Electoral Registration Pilot Scheme (England) (Amendment) Order 2017. The Electoral Registration Pilot Scheme (England & Wales) Order 2017 allows for 19 other Local Authorities in England and Wales to participate in the 2017 pilots.

7.5 The annual canvass pilots are being extended to 2017 to cover more areas, including Scotland, in order to gather further evidence of whether alternative methods for conducting an annual canvass are more cost effective whilst still securing the same or higher levels of information as the current annual canvass process. Scotland was not included in the 2016 pilots due to timing constraints. The total number of Local Authorities participating in the 2017 annual canvass pilots is 24.

7.6 Following agreement between Scottish Government and UK Government Ministers, these Orders are being made with agreement of the Scottish Ministers in relation to the registration of 16 and 17 year old electors on the Local Government register in Scotland. The UK Government and Scottish Government Ministers have agreed that this Order should be made in advance of the commencement of the relevant provisions in the Scotland Act 2016 (sections 3 to 10). These provisions include the devolution of legislative competence in respect of the registration of all local government electors to the Scottish Parliament, and the transfer to the Scottish Ministers of functions currently exercisable by a Minister of the Crown which will be exercisable within that newly devolved competence. This agreement was made in order to allow Scottish areas to participate in the 2017 annual canvass pilots and allow their evidence to contribute towards the assessment as to whether the pilots support a case for permanent change to be made to the annual canvass process.

7.7 The Electoral Commission is required to give a copy of their evaluation report on the pilot scheme under section 9(7)(b) of the 2013 Act to the Minister for the Cabinet Office and the EROs by 29th June 2018. The Order ceases to have effect on 6th July 2018.

Consolidation

7.8 Consolidation does not apply to this Order.

8. Consultation outcome

8.1 The Electoral Commission (EC) has been consulted on this instrument.

8.2 The EC raised a number of concerns in relation to the pilot period dates as specified in the draft Order. In particular, the EC was concerned that the Order was drafted in a way that would allow for a longer canvass period than would normally be conducted; which would impact on the comparability of data from the pilot scheme and, in turn, affect evaluation.

8.3 The Cabinet Office explained that the piloting period as specified in the draft does not align with the normally expected canvass period, but is drafted in such as way to allow for the exceptional circumstances of an election in an ERO area, as allowed by Section 13 of the Representation of the People Act 1983.

8.4 The EC sought clarity on when the revised register is required to be published under the draft Order in such a circumstance, and asked for the Cabinet Office to confirm whether Section 13 of the Representation of the People Act 1983 still applies to participating local authorities during the pilot.

8.5 The Cabinet Office confirmed the intention that Section 13 of the Representation of the People Act 1983 does indeed remain applicable to all local authorities participating in the pilot. The Cabinet Office's view is that the draft Order does not allow for ambiguity in this regard and that participating authorities will be expected to publish their registers on the 1 December 2017, unless in the exceptional circumstances, such as the event of an election in their area, where they would be required to publish their revised register on 1 February 2018. The Order allows EROs until 2 February 2018 to publish the revised register in case of technical difficulties.

8.6 The EC sought clarity on whether the pilots are to end with the publication of the revised register, or on 29 June 2018. The EC suggested linking the end of the pilots to the publication of the revised register.

8.7 The Cabinet Office responded to explain that there is a purposeful 5 month gap between the publication of the revised register, if required, and the conclusion of the pilot Order, in order to allow the EC adequate time to write the required evaluation report to be given to the Minister by 29 June 2018. The Cabinet Office clarified that the pilot period ends with this submission by the EC of an evaluation report to the Minister, and not with the conclusion of the canvass.

8.8 Similarly, the EC sought clarity regarding Paragraph 7 of the draft Order, which states that the EC must provide a report of the pilots on 29 June 2018 which is the end date of the pilots. They suggested that this should also be reconsidered as the EC wouldn't be in a position to consider the results until the pilots have concluded.

8.9 The Cabinet Office clarified that as mentioned, the pilot period ends with the submission by the EC of a report to the Minister, and does not end with the conclusion of the canvass. As such, the EC can begin to evaluate pilot authorities on the publication of their registers, in order to publish a report by 29 June 2018. If any of the piloting authorities need to publish a revised register, the EC would have adequate time to evaluate the other authorities in the interim.

8.10 The Scottish Assessors' Association and the Electoral Management Board for Scotland have also been consulted on this instrument, and submitted a joint response. The Cabinet Office noted that they were content with the Order as drafted to allow for the participation of Glasgow and Dumfries & Galloway in the 2017 Canvass Pilots.

8.11 The Information Commissioner's Office (ICO) has been consulted and has previously provided advice to the Cabinet Office in relation to the provisions of the Data Protection Act 1998, in terms of ensuring that the arrangements for delivering Individual Electoral Registration (IER) take account of data protection and privacy issues. The ICO noted that they were previously consulted on the Electoral Registration Pilot Scheme (England) Order 2016 and were content that the Electoral Registration Pilot Scheme (Scotland) Order 2017 does not raise any new or significant data protection or privacy issues. The Cabinet Office note the ICO's advice that compliance with the Principles of the Data Protection Act 1998 should continue throughout the pilot period in 2017, and that a consistent approach to data protection should be taken by participating EROs to ensure personal data is handled appropriately. The Cabinet Office confirmed that the pilots in Scotland will use the same method of electronic canvass with the same security requirements as in England and Wales.

9. Guidance

9.1 Guidance will continue to be issued to electoral registration officers as and when required on all aspects of individual registration.

10. Impact

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

10.2 The impact on the public sector is that the provisions enable the testing of alternative methods for conducting an annual canvass which have the potential to reduce the costs of electoral registration and the administrative burden on EROs while still securing the same or higher levels of information on population churn compared with the current annual canvass process.

10.3 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

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 and the Cabinet Office will continue to monitor the completeness and accuracy of the electoral register. The Electoral Commission will evaluate the pilot scheme and publish their report by 29th June 2018.

13. Contact

13.1 Annes Llwyd at the Cabinet Office Telephone: 07736 485 431 or email: Annes.Llwyd@cabinetoffice.gov.uk can answer any queries regarding the instrument.