EXPLANATORY MEMORANDUM TO

THE EUROPEAN PARLIAMENTARY ELECTIONS (AMENDMENT) (No.2) REGULATIONS 2009

2009 No.

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations correct errors in the European Parliamentary Elections Regulations 2004 ("the 2004 Regulations") which were introduced in amendments made by the European Parliamentary Elections (Amendment) Regulations 2009 ("the 2009 Regulations"). Details of the 2009 Regulations can be found in the attached explanatory memorandum (**Annex A**).

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

3.1 None

4. Legislative Context

4.1 The 2004 Regulations apply the legal framework in place for UK Parliamentary elections to the conduct of European Parliamentary elections with such modifications as are necessary. The 2009 Regulations amended the 2004 Regulations to apply to European Parliamentary elections changes which have been made to electoral law since the last European Parliamentary election in 2004.

4.2 As a result of a judgment of the European Court of Human Rights (*Matthews v United Kingdom* (1999) 28 EHRR 361), the UK makes provision for the running of European Parliamentary elections in Gibraltar. Accordingly, the 2004 and 2009 Regulations extend to England, Wales, Scotland and Gibraltar.

4.3 The 2009 Regulations are one of a number of instruments which prepare for the European Parliamentary election to be held on 4th June 2009.

5. Territorial Extent and Application

5.1 This instrument applies to England, Wales, Scotland and Gibraltar.

6. European Convention on Human Rights

6.1 Michael Wills (Minister of State) MP has made the following statement regarding Human Rights:

"In my view the provisions of the European Parliamentary Elections (Amendment) (No.2) Regulations 2009 are compatible with the Convention rights."

7. Policy background

- ***What is being done and why***

7.1 Rule 53(3) of the European Parliamentary elections rules (contained in Schedule 1 to the 2004 Regulations, as substituted by the 2009 Regulations) currently provides that, while counting the votes, a local returning officer must keep the ballot papers with their faces upwards and take all proper precautions for preventing any person from seeing them. The effect of the correction made in regulation 2(2) is that a local returning officer must take all proper precautions for preventing any person from seeing only the "numbers or other unique identifying marks printed on the back of the ballot papers".

7.2 The amendments in regulation 2(3) correct minor errors introduced into Schedule 2 to the 2004 Regulations by the 2009 Regulations.

- ***Consolidation***

7.3 In order to assist electoral administrators in the practical application of the legislation, the 2009 Regulations substituted in their entirety Schedule 1 (European Parliamentary elections rules), Schedule 2 (absent voting) and Schedule 3 (modification of European Parliamentary elections rules for combined polls) to the 2004 Regulations. We will look to consolidate the changes made in the 2009 Regulations and these Regulations prior to the 2014 European Parliamentary elections.

8. Consultation outcome

8.1 As required by statute, the Electoral Commission has been consulted on these Regulations and is content.

9. Guidance

9.1 The Electoral Commission will prepare and issue guidance to electoral administrators on the 2004 Regulations, as amended.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 We will keep the 2004 Regulations, as amended, under review by liaising with the Electoral Commission, who have a statutory duty to report on the running of the European Parliamentary elections. We will also work with the Electoral Commission, electoral administrators and other stakeholders to ensure that any legislative lessons which are learnt in 2009 can be applied for future elections.

13. Contact

Paul Brunton at the Ministry of Justice Tel: 020 3334 3778 or email: paul.brunton@justice.gsi.gov.uk can answer any queries regarding the instrument.

ANNEX A

EXPLANATORY MEMORANDUM TO

THE EUROPEAN PARLIAMENTARY ELECTIONS (AMENDMENT) REGULATIONS 2009

2009 No. 186

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The European Parliamentary Elections (Amendment) Regulations 2009 ("the Regulations") amend the European Parliamentary Elections Regulations 2004 (S.I. 2004/293) ("the 2004 Regulations") to take into account the changes which have been made to electoral law since 2004.

2.2 The Regulations apply the legal framework in place for UK Parliamentary elections to the conduct of European Parliamentary elections with necessary modifications to reflect the particular nature of those elections.

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

3.1 None

4. Legislative Context

4.1 These Regulations amend the 2004 Regulations to apply the changes which have been made to electoral procedures by the Electoral Administration Act 2006 (c.22) ("the 2006 Act") to European Parliamentary elections in 2009.

4.2 The Regulations also amend the 2004 Regulations to reflect the changes to the legislative framework in Gibraltar and in particular the changes made by the Gibraltar Constitution Order 2006.

4.3 These Regulations, together with the European Parliament (Disqualification)(United Kingdom and Gibraltar) Order 2009, are one of a number of instruments which prepare for the European Parliamentary election to be held on 4th June 2009.

5. Territorial Extent and Application

5.1 This instrument applies to England, Wales, Scotland and Gibraltar.

6. European Convention on Human Rights

6.1 Michael Wills (Minister of State) MP has made the following statement regarding Human Rights:

6.2 In my view the provisions of the European Parliamentary Elections (Amendment) Regulations 2009 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 Our policy has been to update the 2004 Regulations to take account of the provisions which were introduced for Parliamentary elections by the 2006 Act.

7.2 Schedule 2 to the Regulations replaces the European Parliamentary elections rules in Schedule 1 to the 2004 Regulations and reflect the new security measures introduced under the 2006 Act. These measures include security markings on ballot papers, the introduction of unique identifying marks and the replacement of counterfoils with corresponding number lists. The rules also reflect the changes made under the 2006 Act in relation to the retention and inspection of election documents after the poll.

7.3 The key policy changes which we have made in relation to absent voting at European Elections are set out in Schedule 3 to the Regulations which substitutes Schedule 2 to the 2004 Regulations. The changes include (a) new provisions for t he collection of personal identifiers from persons applying to vote by post or proxy at a European Parliamentary election; (b) a requirement for postal voters at European Parliamentary elections to provide their signature and date of birth on postal voting statements (which they must complete and return with their ballot papers); and (c) a requirement for local returning officers to take steps to verify the signatures and date of birth on postal voting statements (which involve checking that the identifiers provided on the postal voting statement correspond with those previously provided with the postal vote application).

7.4 In 1999, the European Court of Human Rights decided, as a result of a legal challenge to the UK from a Gibraltar resident, that the European Parliament formed a part of the Gibraltar's legislature and that by failing to organise European elections in Gibraltar, the United Kingdom was in breach of article 3 of the First Protocol to the European Convention on Human Rights. The European Parliament (Representation) Act 2003 ("the 2003 Act") provides for the Gibraltar electorate to be enfranchised for elections to the European Parliament. Our policy in relation to Gibraltar continues to be to ensure that its electorate can vote in European Parliamentary Elections and on the same terms as the UK electorate.

These Regulations therefore extend to Gibraltar with the necessary modifications to ensure that the Regulations work effectively in that jurisdiction.

7.5 The Regulations also include cross references in regulations 3, 5, and 44 to primary legislation which the Gibraltar Government will be putting before the Gibraltar Parliament in respect of anonymous and late registration which mirror that which is in place for the United Kingdom. The bill in Gibraltar will be published on 20 November 2008 and debated by the Gibraltar Parliament in early January 2009.

7.6 Regulation 6(2A) of the 2004 Regulations and Schedule A1 to those Regulations, as inserted by regulations 6 and 7 of the Regulations, assign local counting areas to local returning officers in Scotland. This change will enable administrators to run their elections using one single software system for the checking of postal voting identifiers

- ***Consolidation***

7.7 In order to assist electoral administrators in the practical application of the legislation we have re-enacted Schedule 1 (European Parliamentary Elections Rules), Schedule 2 (absent voting and Schedule 3 (modification of European Parliamentary elections rules for combined polls) to the 2004 Regulations in their entirety even though the scale of the changes to be made are not great. No further consolidation has taken place.

8. Consultation outcome

8.1 The Electoral Commission have been consulted on these draft Regulations as required by statute. We have incorporated a number of the points which the Electoral Commission raised in their response into the Regulations. This includes a change to the European Parliamentary elections rules which provide that parties must use the name of the party registered with the Electoral Commission under section 28 of the Political Parties, Elections and Referendums Act 2000 and may use a description registered with the Electoral Commission under section 28A of the Political Parties, Elections and Referendums Act 2000 in nomination papers. Provision is also made to the effect that a ballot paper must first list the name of the party followed by any description used.

8.2 Consultation has also taken place with the electoral administrators, the association of electoral administrators, the Scotland Office and the Wales Office. All are content with the changes which have been made to the 2004 regulations.

9. Guidance

9.1 The Electoral Commission will prepare and issue guidance to electoral administrators on the Regulations.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 We will keep the Regulations under review by liaising with the Electoral Commission, who have a statutory duty to report on the running of the European Parliamentary elections. We will also work with the Electoral Commission, electoral administrators and other stakeholders to ensure that any legislative lessons which are learnt in 2009 can be applied for future elections.

13. Contact

Paul Brunton at the Ministry of Justice Tel: 020 3334 3778 or email: paul.brunton@justice.gsi.gov.uk can answer any queries regarding the instrument.