EXPLANATORY MEMORANDUM TO

THE EUROPEAN PARLIAMENTARY ELECTIONS (FRANCHISE OF RELEVANT CITIZENS OF THE UNION) (AMENDMENT) REGULATIONS 2009 SI 2009 DRAFT

2009 No.

1. 1.1 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 (Franchise of Relevant Citizens of the Union) (Amendment) Regulations 2009 ("the 2009 Regulations") amend the European Parliamentary (Franchise of Relevant Citizens of the Union) Regulations 2001 ("the 2001 Regulations") which provide for the registration of citizens of the European Union who are resident in the United Kingdom (and are not Commonwealth citizens or citizens of the Republic of Ireland) as European Parliamentary electors.

2.2 The 2009 Regulations apply recent changes to the system of registration for parliamentary and local government electors to the registration of relevant citizens of the Union as European Parliamentary electors 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 Section 8 of the European Parliamentary Elections Act 2002 lists who is entitled to vote at European Parliamentary elections. The list includes those who would be entitled to vote by virtue of the 2001 Regulations.

4.2 The 2001 Regulations give effect to Article 19.2 of the Treaty establishing the European Community and the requirements the Directive of the Council of the European Communities No/93/109/EC concerning arrangements for the exercise of the right to vote in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals ("relevant citizens of the Union").

4.3 The Schedule to the 2001 Regulations applies, with modifications, provisions on the registration of parliamentary and local government electors in the Representation of the People Act 1983 ("the 1983 Act") and regulations made under that Act. The 1983 Act and the regulations made under it have been amended, principally by the Electoral Administration Act 2006 ("the 2006 Act") and subordinate legislation made under that Act, since the last European Parliamentary elections which were held in June 2004. The 2009 Regulations amend the 2001 Regulations to reflect these changes.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

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 (Franchise of Relevant Citizens of the Union) (Amendment) Regulations 2009 are compatible with the Convention rights.

7. Policy background

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

7.1 Our policy is to update the 2001 Regulations to take account of the recent changes to the system of registration for parliamentary and local government elections so that where appropriate they also apply to the system of registration for relevant citizens of the Union to vote at the European Parliamentary elections. Our general approach is to ensure consistency, so far as possible, between the two systems. The key changes we are making in the 2009 Regulations are discussed below.

Anonymous registration

7.2 The 2009 Regulations apply the new provisions on anonymous registration in England, Wales and Scotland. Anonymous registration has not yet been introduced in Northern Ireland. The 2009 Regulations ensure that relevant citizens of the Union who register to vote at the European Parliamentary elections are afforded the same protections as those who register to vote at other elections.

7.3 Where a relevant citizen of the Union applies to register in the European Parliamentary elections but fears that his or her safety or that of another person resident in the same household would be at risk if they were identifiable from the electoral register, they will be able to apply for anonymous registration. We have made a modification to the provisions on anonymous registration so that where a relevant citizen of the Union already has an anonymous entry on a register of local government electors they will automatically be given an anonymous entry in the register of European Parliamentary electors. They will not need to make a separate anonymous registration application for the European Parliamentary elections.

Late registration

7.4 The 2009 Regulations also apply the new provisions on late registration which move the deadline for applying for registration closer to the day of the poll. This means that a relevant citizen of the Union will be entitled to vote in a European Parliamentary election if his or her registration has taken effect by the fifth day before polling. These provisions have effect throughout the United Kingdom; however in relation to Northern Ireland due to concerns about voter fraud additional material is required for late registration applicants.

Determinations on registration and objections to registration by registration officers

7.5 The 2009 Regulations apply the new procedures for determining applications for and objections to registration by registration officers to registration by citizens of the Union to vote at European Parliamentary elections. For example, section 10A of the 1983 Act has been amended by the 2006 Act so that objections to a person's registration can now be made both before and after that person's registration. The 2009 Regulations ensure that, so far as possible, the same procedures apply as for parliamentary and local government elections.

Electoral identity cards in Northern Ireland

7.6 The electoral identity card is one of six forms of photographic identification which a person must produce to prove their identity in order to be able to vote at elections in Northern Ireland. The 2009 Regulations apply the provisions on applications for electoral identity cards in Northern Ireland to enable a relevant citizen of the Union to apply to the Chief Electoral Officer for Northern Ireland to be issued with an electoral identity card either where that person is already registered in the European Parliamentary elections register or where he or she applies to be so registered at the same time he or she applies for an electoral identity card.

7.7 Separate to the changes to the registration system, a minor amendment has been made to regulation 8 of the 2001 Regulations. Regulation 8 requires registration officers to supply the Secretary of State with a copy of every application for registration as a European Parliamentary voter and accompanying declaration. The amendment means that instead of officers being required to supply a copy they are now required to supply information contained in the application and declaration. In practice sending a copy of the application form and declaration places an unnecessary administrative task on registration officers.

- ***Consolidation***

7.8 The Schedule to the 2009 Regulations which replaces the Schedule to the 2001 Regulations incorporates the content of the Schedule to the 2001 Regulations and recent changes that have been made to the 1983 Act and regulations made under that Act. The intention behind this approach is to make the 2001 Regulations more accessible and easier to understand.

8. Consultation outcome

8.1 Although there is no formal statutory requirement to consult we have sought the views and comments of the Electoral Commission, the Association of Electoral Administrators and Regional Returning Officers about the 2009 Regulations. Consultation has also taken place with the Northern Ireland office and the Scotland office. All are content with the changes made to the 2001 Regulations.

9. Guidance

9.1 The Electoral Commission is producing guidance on the running of the European Parliamentary elections for electoral administrators which will include the changes made by the 2009 Regulations. In addition, a copy of the 2009 Regulations will be placed on the Ministry of Justice website.

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 2009 Regulations under review by liaising with the Electoral Commission who have a statutory duty to evaluate the European Parliamentary elections. We will consider any recommendations that may be made in the Commission's evaluation and also work with the Electoral Commission, electoral administrators and other stakeholders to consider whether any legislative lessons which are learnt in 2009 can be applied to future elections.

13. Contact

13.1 Clyde Murray at the Ministry of Justice, Tel 020 3334 3864: email: clyde.murray@justice.gsi.gov.uk can answer any queries regarding the instrument.