EXPLANATORY MEMORANDUM TO

THE POLITICAL PARTIES, ELECTIONS AND REFERENDUMS (CIVIL SANCTIONS) (AMENDMENT) (No. 2) ORDER 2014

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

2.1 The instrument empowers the Electoral Commission to impose civil sanctions on non-party campaigners for certain new prescribed offences. Schedule 2 of the Political Parties, Elections and Referendums (Civil Sanctions) Order 2010 ("the 2010 Order") lists existing prescribed offences; this instrument adds to that list (at Part 1 of Schedule 2) a number of new offences created by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 ("the 2014 Act").

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

3.1 None.

4. Legislative context

4.1 This instrument makes an amendment to Part 1 of Schedule 2 to the 2010 Order. Part 1 of Schedule 2 lists the offences which are prescribed, and therefore subject to civil sanctions.

4.2 The Order makes provision to add to the list of prescribed offences certain new offences created by the 2014 Act.

4.3 The Order is made under powers in Schedule 19C to the Political Parties, Elections and Referendums Act 2000 ("PPERA") and is subject to the affirmative resolution procedure.

4.4 There is a statutory requirement to consult the Electoral Commission in accordance with paragraph 17(1) of Schedule 19C to PPERA.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Greg Clark, Minister of State at the Cabinet Office has made the following statement regarding Human Rights:

In my view the provisions of the Political Parties, Elections and Referendums (Civil Sanctions) (Amendment) (No 2) Order are compatible with the Convention rights.

7. Policy background

7.1. The Political Parties and Elections Act 2009 amended PPERA to provide the Electoral Commission with new investigatory and civil sanctioning powers for dealing with breaches of PPERA rules. These powers were given effect through the 2010 Order, which prescribed the criminal offences and regulatory requirements for which civil sanctions would be available to the Electoral Commission.

7.2. Civil sanctioning powers were introduced in order to supplement the limited sanctioning powers that PPERA otherwise accorded the Electoral Commission.

7.3. The complete prescribed offences as well as the prescribed restrictions and requirements, against which the civil sanctions apply, are listed under Schedule 2 of the 2010 Order. These offences include failure to comply with requirements for recording donations, incurring expenses without authority, exceeding limits on campaign, controlled or referendum expenditure and failure to deliver returns to the Electoral Commission.

7.4. The civil sanctions made available to the Electoral Commission under the 2010 Order include a fixed monetary penalty of £200, a variable monetary penalty of up to £20,000, and the ability to impose various notices such as: i) a Compliance Notice (setting out actions that must be taken so a breach does not reoccur); ii) a Restoration Notice (setting out actions that must be taken to restore the position to what it would have been had there been no breach); iii) a Stop Notice (prohibiting a specified activity from taking place). The regulated person or body may also propose an Enforcement Undertaking, which if the Commission agrees, sets out specified actions necessary to restore the position to what it would have been had there been no breach.

7.5. The 2010 Order permitted the Electoral Commission to sanction an organisation for a transgression committed by one of its officers if a PPERA requirement had been contravened; however, the Commission had no power to impose a civil sanction on the organisation if an officer had committed a criminal offence. The Electoral Commission recommended that this distinction be removed.

7.6. The Political Parties, Elections and Referendums (Civil Sanctions) (Amendment) Order 2014 resolved this issue, so that where an office holder in a political party (or the 'responsible person' in a recognised third party/referendum campaign) has committed any prescribed offence, the Commission can, where it considers appropriate to do so, impose a civil sanction on the party or campaign, rather than on the individual concerned. (That amendment will also extend to the new offences being prescribed by this Order).

7.7. Part 2 of the 2014 Act, which amends the non-party campaigning provisions in PPERA, has now created a number of new offences. Breaches of these new

regulatory rules are criminal offences and extend, or are additional to, those criminal offences already established by PPERA.

7.8. The 2014 Act does not make any provision for civil sanctions in respect of the various new offences; in order for civil sanctions to also be available to the Electoral Commission for these new offences, an amendment to the 2010 Order is required.

7.9. In line with the existing policy position for offences under PPERA, only certain offences under the 2014 Act are to be prescribed. The 2010 Order does not make civil sanctions available for 'false declaration' offences – those where there is evidence of deliberate intent to evade the rules or of a person knowingly or recklessly acting in a manner that contravenes the legislation. Such offences are liable to criminal prosecution only in PPERA, and the same approach is proposed for the new offences created by the 2014 Act.

7.10. Therefore, the offences to be prescribed are as follows:

- Section 94E(2) or (3) - exceeding limits on targeted controlled expenditure when not authorised
- Section 95C(1)(a) - failure of responsible person to deliver quarterly or weekly report to Commission
- Section 95C(1)(b) - failure to deliver signed declaration with quarterly or weekly report to the Commission
- Section 95C(1)(c) - failure to comply with requirements for quarterly or weekly reports
- Section 98(4)(aa) - failure of responsible person to deliver statement of accounts and auditor's report to Commission
- Section 98(4)(ba) - failure to comply with requirements for statements of accounts
- Section 99A(3)(b) - failure to deliver signed declaration with statement of accounts to Commission

7.11. Those offences in Part 2 of the Transparency of Lobbying Act which are connected with a 'false declaration' and are not to be prescribed are as follows:

- Section 94F(6) - making false declaration about amount of expenditure incurred by or on behalf of third party and targeted at the registered party
- Section 95C(2) - making a false declaration to Commission when delivering quarterly or weekly report
- Section 99A(3)(a) - making a false declaration to Commission when delivering statement of accounts.

8. Consultation Outcome

8.1. The Electoral Commission has been consulted on this instrument in accordance with paragraph 17(1) of Schedule 19C to PPERA.

8.2. The Commission is content that the instrument achieves its policy objectives and has noted in its formal response that it *"support[s] the policy intention to make civil sanctions available to us for these new offences created by Part 2 of the*

Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014. The list of the new prescribed offences ..... includes all the offences that we expected would be prescribed."

8.3. The Commission's formal response to the consultation can be found at: http://www.electoralcommission.org.uk/__data/assets/pdf_file/0006/167424/2014-4-22-Sanctions-SI-third-party-offences-consultation-response.pdf

9. Guidance

9.1. The Electoral Commission provides advice and guidance to political parties, non-parties and permitted participants on their regulatory obligations. Paragraph 25 of Schedule 19C to PPERA requires the Electoral Commission to provide guidance on its use of civil sanctions. This guidance is made available through the Electoral Commission's website: http://www.electoralcommission.org.uk/i-am-a/party-or-campaigner

9.2. The Electoral Commission has already committed to update its guidance for non-parties in advance of the regulated period for non-parties (which commences on 19 September 2014) and will alert them to both the new offences created by the 2014 Act and the impact of the civil sanctions regime.

10. Impact

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

11. Regulating small business

11.1. The legislation does not apply to small business.

12. Monitoring & review

12.1. The 2014 Act provides for a review of all existing provisions that affect non-party campaigners, at the next UK Parliamentary general election (expected to be held in May 2015). The effectiveness of the new offences and the associated civil sanctions created by this Order will be subject to consideration as part of that review.

12.2. A report of the review is to be laid before Parliament within 18 months of the general election.

13. Contact

Nayela Munir Fjeld at the Cabinet Office, Tel: 0207 271 1411, email: nayela.munirfjeld@cabinet-office.gsi.gov.uk can answer any queries regarding the instrument.