EXPLANATORY MEMORANDUM TO

THE POLITICAL PARTIES, ELECTIONS AND REFERENDUMS (CIVIL SANCTIONS) (AMENDMENT) ORDER 2013

2013 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 (EC) to impose certain sanctions on political parties and other organisations, as well as on individuals, for certain prescribed offences. It also extends to non-compliance penalties the power of the EC to recover penalties as payable under a court order.

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

3.1 None.

4. Legislative Context

4.1 This instrument makes two amendments to the Political Parties, Elections and Referendums (Civil Sanctions) Order 2010.C. It is made under powers in Schedule 19C to the Political Parties, Elections and Referendums Act 2000 and is subject to the affirmative resolution procedure. There is a statutory requirement to consult the EC.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister for Political and Constitutional Reform has made the following statement regarding Human Rights:

In my view the provisions of the Political Parties, Elections and Referendums (Civil Sanctions) (Amendment) Order 2013 are compatible with the Convention rights.

7. Policy background

7.1 The Political Parties and Elections Act 2009 amended the Political Parties, Elections and Referendums Act 2000 to provide the EC with new investigatory powers and powers to impose civil sanctions. Effect was given to these powers through the Political Parties, Elections and Referendums (Civil Sanctions) Order 2010.

7.2 The Electoral Commission have the following civil sanctions available to them:

- Fixed monetary penalty – a £200 penalty.
- Variable monetary penalty – a maximum £20,000 penalty.

- Compliance notice – this is a notice setting out action that must be taken by the person or organisation that has breached the law so that the breach does not continue or recur.
- Restoration notice – this is a notice setting out actions that must be undertaken to restore the position, as far as possible, to what it would have been had there been no breach.
- Stop notice – this is a notice which prohibits a person or organisation from carrying on or beginning a specified activity until the steps set out in the notice are taken.
- Enforcement undertaking – this is an agreement proposed by a regulated organisation or individual to undertake specified actions which will bring it into compliance or restore the position, to what it would have been had there been no breach.

7.3 The Political Parties, Elections and Referendums (Civil Sanctions) Order 2010 lists the prescribed offences, as well as the prescribed restrictions and requirements, which apply to all the sanctions listed in paragraph 7.2. Such offences include incurring campaign expenditure without authority, exceeding limits on campaign expenditure, failure to deliver donation reports to the Electoral Commission within the time limit, the requirement to keep accounts and requirements to give the nature and value of non-cash donations.

7.4 The EC, in light of their experiences of using the new powers available to them, requested that the Cabinet Office make two amendments to improve the sanctions regime in operation. The first extends the powers relating to fixed monetary penalties and discretionary requirements to cover registered political parties, recognised third parties campaigning at an election and permitted participants in a referendum. At present they only cover individuals.

7.5 The Order also adds non-compliance penalties to those payments which in England, Wales and Northern Ireland may be recovered as if payable under a court order, and in Scotland may be recovered as a civil debt. In practice, in England, Wales and Northern Ireland this means that if such a penalty is unpaid, the EC do not need to make a claim in the courts in order to enforce payment; instead, they can proceed straight to taking enforcement action as though they had already obtained a court judgement following such a claim.

8. Consultation outcome

8.1 The EC have been consulted on this instrument in accordance with paragraph 17(1) and (3) of Schedule 19C to the Political Parties, Elections and Referendums Act 2000.

8.2 The EC are content that the instrument achieves their policy objectives. There response can be found at: http://www.electoralcommission.org.uk/__data/assets/pdf_file/0009/155646/Polical-Parties-Elections-and-Referendums-Civil-Sanctions-SI-consultation-response-13-June-2013.pdf

9. Guidance

9.1 The EC provide advice to political parties, recognised third parties and permitted participants on their regulatory obligations via the EC's website.

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 These are minor amendments and there are no plans to undertake a formal review of their impact.

13. Contact

James Copeland at the Cabinet Office, Tel: 0207 271 2756, email: James.copeland@cabinet-office.gsi.gov.uk can answer any queries regarding the instrument.