EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) REGULATIONS

2008 No. DRAFT

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

2. Description

2.1 These Regulations make amendments to:

- Parts 7 and 8 of the Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341) ("the E&W 2001 Regulations"), as amended.
- Part 7 of the Representation of the People (Scotland) Regulations 2001 (S.I. 2001/497) ("the Scotland 2001 Regulations"), as amended.

2.2 The purpose of these regulations is to introduce a new fee structure payable by persons who may be supplied with copies of the marked registers of electors, lists of postal voters, proxy voters and proxy postal voters (defined as "marked registers or lists" in regulation 116 of the E&W 2001 Regulations and the Scotland 2001 Regulations). At present, the fee for supply of the marked register or lists produced at Parliamentary or local government elections in England and Wales, and Parliamentary elections in Scotland, is the same as the fee charged for sale of information in the full electoral register.

2.3 Regulation 1 of these Regulations provides for their citation, commencement and extent. Regulation 2 makes transitional provision to ensure that they do not have any effect on a request for a copy of the marked register or lists that was made before the regulations come into force.

2.4 Regulation 4 provides that any marked notices which amended the electoral register used at a Parliamentary or local election are part of the "marked register or lists" (as defined by regulation 116(1) of the E&W 2001 Regulations) which may be supplied in accordance with Parts 7 and 8 of the E&W 2001 Regulations.

2.5 Regulation 5 substitutes a new formula for the calculation of the fee for the supply of a copy of the whole or any part of the marked register or lists produced at a Parliamentary or local government election in England and Wales. The new formula produces a fee that equates, on average, to the reasonable costs to local authorities of producing copies of the documents. . By virtue of the existing provisions in Part 8 of the E&W 2001 Regulations, the new fee will also apply to the supply of marked registers or lists produced at an election to the National Assembly for Wales.

2.6 Regulations 6 to 8 make equivalent amendments to the Scotland 2001 Regulations. Those amended regulations only apply to UK Parliamentary elections in Scotland.

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

3.1 The Ministry of Justice recognises that both the E&W 2001 Regulations and the Scotland 2001 Regulations have been amended on a number of occasions and that there is a case for consolidation of these regulations. Since there is support for an immediate change to the fee structure for supply of the marked register or lists, demonstrated by the early day motion on this issue (see below), and the amendment to the regulations is small, we have decided to bring forward this change as a further amendment both to the E&W 2001 Regulations and the Scotland 2001 Regulations. However, we will look for an opportunity to consolidate these regulations when resources allow.

3.2 We have conducted a public consultation on the need for change to the level of the fee for supply of the marked register of electors. We have consulted the Treasury and the Department for

Communities and Local Government on the proposals reflected in these regulations. We have also consulted the Electoral Commission on a draft of these regulations.

4. Legislative Background

4.1 The framework governing the supply of marked registers came into force in England and Wales on 3 May 2007. Regulation 59 of the Representation of the People (England and Wales) (Amendment) (no. 2) Regulations 2006 (S.I. 2006/2910), amended the E&W 2001 Regulations inserting a new Part 7 of those regulations. New Part 7 included regulation 120,which states that the fee for supply of the marked register would be the same as that charged for supply of the unmarked full electoral register (set out at regulation 111(5) of the E&W 2001 Regulations). Therefore the fee for supply of the marked electoral register was, as follows:

- In data form, £20 plus £1.50 for each 1,000 entries (or remaining part of 1,000 entries); and

- In printed form, £10, plus £5 for each 1,000 entries (or remaining part of 1,000 entries).

4.2 Part 8 of the regulations, which applies the provision in Part 7 to documents created at Welsh Assembly elections, was inserted by The Representation of the People (National Assembly for Wales) (Access to Election Documents) Regulations 2007 (S.I.2007/1368).

4.3 In respect of Scottish Parliamentary elections, an equivalent structure was created by regulation 117 of the Representation of the People (Scotland) (Amendment) Regulations 2007 (S.I. 2007/925), which inserted regulation 120 into the Scotland 2001 Regulations.

5. Extent

5.1 The Regulations introduce a new fee for the supply of the marked registers or lists produced at a Parliamentary election in England, Scotland and Wales, and a local government election in England and Wales. The new fee will also apply to the supply of marked registers or lists produced at an election to the National Assembly for Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State, Bridget Prentice MP, has made the following statement regarding Human Rights:

"In my view the provisions of the draft Representation of the People (Amendment) Regulations 2008 are compatible with the Convention Rights."

7. Policy background

7.1 Following the May 2007 elections, a number of electoral administrators contacted the Ministry of Justice to pass on concerns expressed by local political parties and candidates about the new fee structure for supply of the marked register. In addition, a number of MPs approached Bridget Prentice to express concern that there had been a significant increase in the fees. An Early Day Motion (1628) was put down by Joan Walley MP on the Fees for Marked electoral register which stated that:

> "That this House notes that the effect of Regulation 120 in respect of Fees Re Marked Registers and Lists has effectively been to increase the cost of purchase of a marked register from £10 to in the region of £50 to £60 per ward; and asks the Government to discuss with the Association of Electoral Administrators what effect this charge has had on local democracy and what scope there might be for its reconsideration."

7.2 In light of these concerns, on 26 July 2007 the Ministry of Justice issued a consultation paper setting out proposals concerning the fees for the supply of the marked electoral register. The consultation paper set out a number of possible options for change upon which views were invited.

The options ranged from: no fee at all for supply of the marked electoral register; setting fees at a lower level; to making no changes to fee levels. The consultation was aimed at political parties, local authorities and local electoral officers in the UK. Responses were requested by 18 October 2007.

7.3. 97 responses were received to the consultation. We will shortly publish a Response paper to the consultation which will set out a detailed summary of the responses received by the Ministry of Justice. The responses showed that of all the respondents who expressed a view on the issue, almost 70% thought that the new level of fees was too high given the work involved. Candidates, elected representatives and political parties considered the impact of the new fee had been significant. A significant number (72%) have not been able to purchase a copy of the marked electoral register due to the high level of the fees. About a quarter said the new fees have had a detrimental impact on local democracy as the marked register is a key tool for local parties and candidates to judge the effectiveness of their campaigns. There was no clear consensus from respondents on what would be a reasonable level of fee, though the consultation invited views from local authorities on the costs to them of producing copies of the marked electoral register and the responses received have been taken into account in setting the new fee structure.

7.4 The new fees we are proposing will represent a significant change in the level of the fee.

7.5 The new fee structure will work as follows:

- A single administration fee per request of £10 (rather than two separate fees);
- £2 (rather than £5) for each complete, or part of, 1,000 entries in printed format, and
- £1 (rather than £1.50) for each complete, or part of, 1,000 entries in electronic format.

Depending on the mixture of paper and electronic data provided in any request, this would produce fees for a ward of 10,000 electors and a constituency of 70,000 electors of between £20-£30 and £80-£150 respectively, with the lower figure representing the costs for an entirely electronic dataset and the higher for an entirely paper dataset.

7.6. In setting the new fees, we are seeking to strike a balance between ensuring local authorities are covered for reasonable costs of providing photocopies and data from the marked register or lists but at the same time ensuring the cost of purchasing these do not prove prohibitive to candidates, elected representatives and political parties. The changes will seek to create a more level playing field between candidates, elected representatives and political parties and the funds they can make available to carry out what is widely recognized as the very important democratic function of encouraging participation and turnout.

7.7. The effect of the changes will be to restore fees to the level that will be affordable to candidates and political parties whilst still providing for recovery of costs incurred by the local authorities, in line with our findings following the outcome of the consultation. We do not believe that the new fees will result in a new burden for local authorities.

8. Impact

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

8.2 The cost of the provisions of this draft Order is expected to be minimal.

9. Contact

9.1 Any queries about the content of this memorandum should be addressed to: Peter Richardson, Electoral Policy Division, Ministry of Justice, e-mail: peter.richardson@justice.gsi.gov.uk
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