EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (ENGLAND AND WALES) (AMENDMENT NO. 2) REGULATIONS 2014

2014 No.

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

These Regulations amend the Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341) ("the 2001 Regulations") to facilitate the administration of Individual Electoral Registration (IER) in England and Wales. The amendments provide that the declaration made by an overseas Crown servant or British Council employee, when that person applies to be registered in an electoral register, no longer has to be sent via their employer; that Crown servant and British Council employee declarations may now be made online; and that Electoral Registration Officers (EROs) must, where necessary, send a second reminder to people (such as overseas electors or service voters) who are registered by virtue of a declaration, that their declaration is about to expire. The amendments also update statutory references in the regulation relating to registration appeals.

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

3.1 None.

4. Legislative Context

4.1 The new system of IER is contained in amendments to the Representation of the People Act 1983 ("the 1983 Act") made by the Electoral Registration and Administration Act 2013, and in amendments to the 2001 Regulations made by the Representation of the People (England and Wales) (Description of Electoral Registers and Amendment) Regulations 2013, as amended by the Representation of the People (England and Wales) (Amendment) Regulations 2014 ("the 2014 regulations").

4.2 Registration criteria for special category electors are covered in the Representation of the People Acts. Part 1 of the Representation of the People Act 1985 extends the franchise to certain British citizens overseas. The requirements for service qualifications and declarations for registration are set out in sections 14 to 16 of the 1983 Act. Sections 7 to 7B of that Act set out registration requirements for people remanded in custody, patients in mental hospitals and homeless people. Section 9B of that Act makes provision for anonymous registration and the steps that the ERO must take with regard to an anonymous entry.

4.3 Regulation 15 of the 2001 Regulations makes provision in respect of the contents of a service declaration. Regulation 16 provides for the process by which a service declaration is to be transmitted to the ERO.

4.4 Regulation 32ZD(6) of the 2001 Regulations (as inserted by regulation 4 of the 2014 regulations) provides that the steps to be taken by an ERO following an invitation to apply for registration do not apply in relation to a person whom the ERO has reason to believe would, if registered, be registered as a special category elector.

4.5 Regulation 32 of the 2001 Regulations makes provisions in connection with the right under section 56 of the 1983 Act (as amended by paragraph 18 of Schedule 4 to the Electoral Registration and Administration Act 2013) to appeal from a decision of an ERO regarding an application for electoral registration.

4.6 Under section 201(2) of the 1983 Act the making of this instrument is subject to the affirmative resolution procedure.

4.7 Article 3 of the Lord President of the Council Order 2010 (S.I. 2010/1837) provides that the powers conferred on the Secretary of State under the 1983 Act (with exceptions which are not relevant to these Regulations) are exercisable concurrently by the Secretary of State and the Lord President of the Council.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales only. IER will apply in Great Britain, and another instrument (the Representation of the People (Scotland) (Amendment No. 2) Regulations 2014) includes equivalent provisions in respect of Scotland.

6. European Convention on Human Rights

6.1 The Minister for the Constitution has made the following statement regarding Human Rights:

> In my view the provisions of the Representation of the People (England and Wales) (Amendment No. 2) Regulations 2014 are compatible with the Convention rights.

7. Policy background

7.1 Crown servants and British Council employees based overseas can currently register to vote under a declaration created for them. The declaration is valid for 12 months. Existing regulations require that the declaration must be transmitted by their employee to the appropriate ERO, so that the ERO can have a level of confidence that the applicant is eligible to be registered under the Crown servant / British Council employee category of elector.

7.2 The existing application process for Crown servants and British Council employees presents difficulties for the online application process which forms an integral part of the new IER arrangements introduced in England and Wales on 10th June 2014. Applicants in this category are now left with an imperfect procedure under which they are able to submit part of their application digitally, but then must print and pass their declaration in hard copy to their employer who forwards it to the ERO. Regulation 3 amends existing regulations so as to remove the requirement to transmit the declaration via the employer but instead to require the employee to supply in their application identifying employment information such as a staff number, payroll number or similar, to enable the ERO to check their employment status with the employer, where necessary. Regulation 4 provides that the declaration must be transmitted to the ERO, and the transmission may take place through the IER Digital Service.

7.3 Following the disapplication in the case of special category electors[1] of the requirement for EROs to take certain follow-up steps after an invitation to register had been sent after the expiry of the voter's declaration, regulation 5 amends existing regulations to provide for the ERO to send a second reminder to the individual *prior* to their declaration expiring. Taken with the 2014 Regulations, for special category electors this will replace the previous series of mandatory steps involving reminder letters and a visit by a canvasser (which in the case of many special category electors could be expected to be expensive, impractical or both) with one extra reminder, which in many instances would be produced and sent electronically. The second reminder process will not apply to individuals who have an anonymous entry on the register.

8. Consultation outcome

8.1 The Electoral Commission (EC) have been consulted on this instrument as required by section 7 of the Political Parties, Elections and Referendums Act 2000. Other persons consulted were the Information Commissioner, the Association of Electoral Administrators (AEA), the Wales Office, the Civil Service Human Resources Network, the British Council, the Foreign and Commonwealth Office and the Cabinet Office Expert Panel of electoral administrators.

8.2 The EC was content that the changes to the requirement for submitting a declaration for a Crown servant or British Council employee were a reasonable response to the practical issues that the Commission itself had identified during form design, and the Commission also welcomed the provision for Crown servants and British Council employees to apply using the online service in the

[1] by the 2014 regulations.

same way as overseas electors and HM Forces service voters. To assist the planning of form design work the EC enquired as to the expected timing for the making of the Instrument, and the Cabinet Office has responded accordingly. The EC also noted that Regulation 5 introduced a requirement for EROs to send a second reminder to an elector whose declaration was about to expire, where no reply was received to the initial reminder, and that the provision extended the existing provision in regulation 25(4) which applies to the existing reminder. The EC was content with the provisions.

8.3 The Information Commissioner's Office (ICO) understood that in order for Crown servants and British Council employees to fully access the online registration service provided by IER, registration declarations should no longer need to be sent via an employer. The ICO also recognised that an ERO would continue to require a significant degree of certainty regarding an application for registration received from overseas and understood the public interest in measures being in place to ensure the effective implementation and integrity of IER. The ICO noted that the Data Protection Act required that personal data shall be adequate, relevant and not excessive in relation to the purpose for which they were processed. Whilst the ICO had noted that applicants to register will now be required to provide additional personal data in the form of a staff number, it considered this proposed measure to be proportionate in relation to the arrangements it was intended to address. The ICO did not consider that regulation 5 (additional reminder to be sent to special category electors) raised any data protection or privacy issues.

8.4 The AEA asked what assessment had been made as to any additional cost to EROs arising from the introduction of the second reminder. Government has committed to fully funding the transition to IER and will ensure that this cost is adequately reflected in the funding. It is expected that any additional cost will be small, given the number of electors involved and the likelihood that in many cases reminders will be generated automatically and despatched by email, and Cabinet Office has responded to the AEA accordingly. Cabinet Office has however undertaken to test this assumption. The other substantive matter raised during consultation related to the arrangements and process by which EROs will be able to contact the employer of an applicant seeking to register under a Crown servant or British Council employee declaration, in order to check their eligibility to do so. The Cabinet Office is currently developing the required arrangements and will disseminate them to EROs before the Regulations come into force.

9. Guidance

9.1 Guidance will continue to be issued to registration officers as and when required on all aspects of individual registration.

10. Impact

10.1 An overall Privacy Impact Assessment for individual electoral registration is at https://www.gov.uk/government/publications/individual-electoral-registration-impact-assessment.

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

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 The EC and the Cabinet Office will continue to monitor the completeness and accuracy of the electoral register throughout and after the transition to IER.

13. Contact

Carol Gokce at the Cabinet Office, tel 020 7271 2679: email Carol.Gokce@cabinet-office.gsi.gov.uk can answer any queries regarding the instrument.