EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (NORTHERN IRELAND) (AMENDMENT) REGULATIONS 2013

2013 No. [XXXX]

1. This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument allows the Chief Electoral Officer for Northern Ireland (the "CEO") to require the Northern Ireland Office to provide him with information for the purpose of meeting the objectives of accuracy and comprehensiveness of the electoral register. It prescribes a new form for the canvass of electors in Northern Ireland. It provides for the entries of electors who have not returned a canvass form, or who have returned an incomplete form, to be retained on the register for a period of up to two years after the canvass, if the CEO holds information indicating that it is likely that the person remains resident at a particular address and that the person's information on the CEO's records is accurate. Finally, it makes provision for the transfer of certain information to the Northern Ireland Statistics and Research Agency (NISRA) to assist the CEO to meet the objectives of accuracy and comprehensiveness of the electoral register and also for statistical purposes.

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

3.1 None, although the Committee may wish to note the contents of the privacy impact assessment at Annex A.

4. Legislative Context

4.1 The Northern Ireland (Miscellaneous Provisions) Act 2006 abolished the annual canvass in Northern Ireland and introduced instead a process of "continuous registration", under which the CEO uses information from other public bodies to identify those individuals who need to be registered on the electoral register or to amend their existing entry on the register. The provisions in the regulations to share information will assist the CEO with this.

4.2 A canvass must be conducted at least once every ten years and must be held in 2016 if no canvass is held between 2010 and 2015. A canvass must be held if the CEO makes a recommendation to the Secretary of State on or before 15th April in any year and the Secretary of State, having considered the recommendation, notifies the CEO that she is satisfied that the public interest

requires a canvass to be conducted. The CEO wrote to the Secretary of State for Northern Ireland on 18 December recommending that a canvass be held.

4.3 There is currently no canvass form prescribed in relation to Northern Ireland, so these regulations prescribe the canvass form for use in the 2013 canvass. There is currently no provision allowing the CEO to retain entries on the register in circumstances where he is unable to satisfy himself of a person's residence on 15 October. These regulations provide for conditions in which the CEO can retain such entries on the register.

5. Territorial Extent and Application

5.1 This instrument extends to Northern Ireland only.

6. European Convention on Human Rights

6.1 The Minister of State for the Northern Ireland Office, Mr Mike Penning MP has made the following statement regarding Human Rights:

"In my view the provisions of the Representation of the People (Northern Ireland) (Amendment) Regulations 2013 are compatible with the Convention rights".

7. Policy background

7.1 On 27 November 2012, the Electoral Commission published a report on the electoral register in Northern Ireland[1], which highlighted a fall in both accuracy and completeness since the last annual canvass was held in Northern Ireland in 2006. The CEO has written to the Secretary of State for Northern Ireland to recommend that a canvass be held in 2013, to ensure that the electoral register is in the best possible shape in advance of election in 2014 and 2015. These Regulations introduce changes to allow a canvass to be held in 2014 and to improve the way the canvass operates.

7.2 The Regulations establish a form for the canvass in Northern Ireland. This is essential to allow a canvass to take place, as there is currently no form established in legislation.

7.3 In its November 2012 report, the Electoral Commission recommended that changes be made to allow the retention of names on the register following a canvass, to avoid as far as possible the negative effect of a canvass on number of individuals registered to vote. The Regulations do not allow all entries to be retained, given the high number of inaccurate entries on the current register. But they do set out circumstances in which it is likely that

[1] Continuous Electoral Registration in Northern Ireland, November 2012, available at: http://www.electoralcommission.org.uk/__data/assets/pdf_file/0004/152626/Continuous-electoral-registration-in-Northern-Ireland.pdf

entries on the register will be accurate, even if a canvass form has not been returned, and permit entries to be retained in these situations.

7.4 The Regulations permit the CEO to transfer certain information relating to individuals on the register to the NISRA for the purpose of meeting registration objectives. This provision will enable the CEO to benefit from the expertise of NISRA staff as they work to improve the continuous registration process in Northern Ireland. It will also improve the effectiveness of the canvass, by enabling data on the register to be compared to data collected during the Northern Ireland census. The Regulations place a number of obligations on NISRA relating to the proper handling of this information.

7.5 The Regulations also permit NISRA to use the transferred information for statistical purposes. NISRA can already make use of the full register for statistical purposes. However, they are not able to use information held by the CEO relating to the date of birth or nationality of individuals, which are needed to link the electoral register data to other information sets held by NISRA. The Regulations will enable NISRA to compare the register with the 2011 census and provide the CEO with a detailed analysis of the accuracy of the register, including areas of low registration. They will also support research by NISRA into alternatives to a 2021 census, in particular how to count the population using solely administrative data.

7.6 Finally, the Regulations clarify that the CEO can require information from the Northern Ireland Office for electoral registration purposes. The kind of information held by the Northern Ireland Office which falls into this category relates to individuals who have recently acquired British citizenship in Northern Ireland. The CEO writes to all new citizens to encourage them to register to vote.

8. Consultation outcome

8.1 The Electoral Commission, the CEO, NISRA, the Northern Ireland Department of Finance and Personnel, and the Information Commissioner's Office have been consulted on a draft of these Regulations. We have also written to all Northern Ireland parties represented in Parliament or in the Northern Ireland Assembly setting out the Government's proposed changes to registration activity, including the changes made in these Regulations.

8.2 The Electoral Commission recommended a number of changes to the prescribed canvass form, based on user-testing of registration forms in England and Wales. Where possible, these changes have been made to the form. The Electoral Commission also recommended changes to the way the canvass form is set, which would require primary legislation and the Government is considering this recommendation.

8.3 NISRA requested that legislation also allow data passed to them for registration purposes to be used for statistical purposes. This change was made in the Regulations.

8.4 The Information Commissioner's Office made no recommendations on the regulations, but did make recommendations in relation to the contents of the data sharing arrangements between the CEO and NISRA and between the CEO and the Northern Ireland Office. The Government is considering these recommendations and will continue to consult with the Information Commissioner's Office on this issue.

9. Guidance

9.1 The Northern Ireland Office works closely with CEO on registration matters and has an existing data-sharing agreement with the CEO relating to data held by the Northern Ireland Office. The CEO will provide guidance and training to all canvass staff on registration procedures and will put in place a formal agreement with the NISRA regarding the storage and handling of information relating to electors.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is a positive impact on public sector organisations. This instrument will support the work of the CEO and his staff (the Electoral Office for Northern Ireland) and facilitate data-sharing between organisations. It places data handling obligations on NISRA which are consistent with the procedures already followed by NISRA for other data it holds.

10.2 An impact assessment has not been prepared for this instrument.

10.3 A privacy impact assessment is included at Annex A to this memorandum.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This instrument is intended to support the CEO and his staff in their efforts to improve the accuracy and completeness of the electoral register in Northern Ireland. The Electoral Commission has committed to a further study of the Northern Ireland register in 2014, which will assess whether those improvements have been made.

13. Contact

13.1 Philippa Saunders, Head of the Constitutional Policy Unit at the Northern Ireland Office Tel: 0207 210 6431 or email: philippa.saunders@niox.gsi.gov.uk can answer any queries regarding the instrument.

Annex A

Privacy Impact Assessment – Data Sharing for Registration Purposes

A. Background

1. Since the introduction of continuous registration in Northern Ireland in 2008, the Chief Electoral Officer for Northern Ireland (the "CEO") has been able to request information from a number of public bodies. This information is used by the CEO for the purposes of verifying information relating to a person who is registered; ascertaining the names and addresses of people who are not registered but who are entitled to be registered; or identifying those people who are registered but who are not entitled to be registered.

2. The authorities from which information can be requested are set out in Regulations 41 and 42 of the Representation of the People (Northern Ireland) Regulations 2008. They are:

> "(a) district councils;
> (b) the Registrar General of Births and Deaths in Northern Ireland;
> (c) the Regional Business Services Organisation;
> (d) the Department for Work and Pensions;
> (e) secondary schools within the meaning of article 2 of the Education and Libraries (Northern Ireland) Order 1986 ;
> (ea) institutions of further education within the meaning of article 2 of the Further Education (Northern Ireland) Order 1997; and
> (f) the Northern Ireland Housing Executive."

3. In November 2012, the Electoral Commission published a report on the electoral register in Northern Ireland. One of its recommendations in that report was that the process of continuous registration be reviewed to ensure that it was as effective as possible. The Commission recommended that this should include consideration of whether there would be benefit in negotiating additional agreements with other data-holding organisations and whether other data sources existed which should be used for registration purposes.

4. The data transfer provisions in these Regulations are intended to support both the review of continuous registration and canvass activity in Northern Ireland. They will allow the CEO to benefit from the expertise of the Northern Ireland Statistics and Research Agency (NISRA) and the work that they have done in processing information from the Northern Ireland census; including by allowing comparison of census and electoral register data. The Regulations also allow NISRA to make use of that information in order to improve the Northern Ireland census.

5. The Regulations also clarify that the CEO can request information from the Northern Ireland Office. This information is already transferred to the CEO from the Northern Ireland Office under common law powers. However, the Electoral Commission had recommended in its 2012 report that an express statutory basis for the transfer of information be established to ensure clarity about the data available to the CEO.

B. Requirement for a privacy impact assessment

6. Continuous registration processes have been in place in Northern Ireland for some time. A full privacy impact assessment has also been conducted to consider the implications of data matching and confirmation processes linked to the Individual Electoral Registration (IER) programme in Great Britain. These Regulations do not introduce significantly different handling processes for personal information held for electoral registration purposes from those which are already in place or which have already been considered for other parts of the United Kingdom. A full-scale privacy impact assessment has therefore not been considered to be necessary.

7. However, these Regulations do involve some different arrangements for data access and disclosure to those currently used, so the Government has carried out a small-scale assessment of the privacy impact.

C. Data transfer from the Northern Ireland Office to the CEO

8. Nationality requirements form part of the eligibility requirements for inclusion on the electoral register in the UK. In order to be registered in the register of parliamentary electors, a person must be a British citizen, an Irish citizen or a qualifying Commonwealth citizen.[2] In addition to these categories, other citizens of the European Union are entitled to be registered in the register of local government (and Assembly) electors[3]. Consequently, many individuals who acquire British citizenship become entitled to register to vote for the first time.

9. The practice of passing the names and addresses of new British citizens from the Northern Ireland Office (which is responsible for arranging citizenship ceremonies in Northern Ireland) to the CEO began shortly after the introduction of continuous registration in 2008. The names and addresses of individuals who have attended a citizenship ceremony in Northern Ireland are transferred from the Northern Ireland Office to the CEO, whose office then contacts all new citizens to encourage them to register. In 2011-12, the Electoral Office wrote to 348 new citizens, of whom 83% registered by 31 March 2012.

10. This information was transferred using the Secretary of State's common law powers. It was necessary for the exercise of the CEO's statutory functions and new citizens were informed that their addresses would be sent to the CEO's office, which would write to them with details of how to register to vote. However, we acknowledge that the lack of an express statutory basis for the transfer may be confusing, particularly as other organisations transferring information to the Chief Electoral Officer are clearly listed in the 2008 Regulations.

Purpose of data-sharing

[2] Section 4, Representation of the People Act 1983.
[3] Section 1, Elected Authorities (Northern Ireland) Act 1989 and Article 4, Northern Ireland Assembly (Elections) Order 2001.

11. The purpose of sharing data relating to new citizens between the Northern Ireland Office and the CEO is to support the CEO in the exercise of his statutory responsibilities to secure, so far as reasonably practicable, that every person who is entitled to be registered is registered, that no person who is not entitled is registered, and that none of the required information about the person is false.[4] No other data source available to the CEO identifies individuals whose citizenship has changed, and who are therefore newly entitled to be registered.

Data protection

12. The provisions made in these Regulations in relation to the Northern Ireland Office make no change to the information available to the CEO. However, by establishing a clearer statutory basis for the transfer of such information, they improve the transparency of the data-sharing arrangements in place between the Northern Ireland Office and the CEO.

13. A data-sharing agreement will be put in place between the Northern Ireland Office and the CEO's office to ensure that the data transferred is protected appropriately. This will reflect Chapter 14 of the 'Data Sharing Code of Practice' published by the Information Commissioner's Office and cover the secure transfer of the information, the frequency of the transfer and the handling and retention of information held by the CEO. It is envisaged that the information will be transferred in small quantities, immediately following each citizenship ceremony. The information transferred will include only names and addresses, which is the minimum information required for the CEO's office to contact a person to encourage them to register.

14. Individuals who have recently acquired British citizenship will be informed in writing, at the time of the ceremony being arranged, that their address will be sent to the CEO, who will contact them with details of how to register to vote.

Duration of data processing

15. Where information about an individual's name and address is confirmed by that individual as part of the registration process, this information is included in the full electoral register, as well the edited electoral register, if they expressed a preference to be included in the edited register on their form. It is retained on the register either until the CEO removes it because he is unable to satisfy himself of residence or entitlement to be registered[5] or until the individual concerned requests that the information is changed.

16. Where information about an individual's name and address does not lead to registration, information passed to the CEO will be retained for six months while repeated efforts are made to contact the individual to encourage them to register to vote. It will then be destroyed.

D. Data transfer from the CEO to NISRA

[4] Section 10ZB of the Representation of the People Act 1983.
[5] See section 10A(6), Representation of the People Act 1983

16. Regulation 98 of the Representation of the People (Northern Ireland) Regulations 2008 requires the CEO to supply NISRA with a copy of the full register, which includes the name, qualifying address and electoral number of each elector. Information contained in the full register (and not contained in the edited register) cannot be disclosed outside NISRA unless it is in anonymous form and can be processed and used only for statistical purposes.

17. The new regulation 112A, inserted by these regulations, permits the CEO to transfer additional information relating to the date of birth or nationality of electors to NISRA. Such information cannot be disclosed outside NISRA unless it is in anonymous form and can be processed and used only for statistical purposes or to assist the registration officer to meet the statutory registration objectives.

Purpose of data-sharing

18. There are two purposes in sharing data between the CEO and NISRA. First, it will improve the effectiveness of the electoral canvass and continuous electoral registration processes in order to increase the overall number of individuals on the register. Secondly, it will support research by NISRA on alternatives to the 2021 census.

19. In relation to the first purpose, the transfer of data will allow the data relating to the register to be compared to the information held by NISRA on the 2011 census. The disclosure of personal data from the census is not permitted by law. However, NISRA will be able to provide the CEO with a detailed statistical analysis on the quality of the electoral register, including by quantifying its accuracy. This will assist the CEO in identifying areas of particularly low registration, where resources need to be targeted.

20. The CEO will also benefit from NISRA's expertise in data-matching processes. After reviewing the data available, NISRA will be able to make recommendations on data processes that could be used to streamline the collection of processing of data by the CEO and the use of software to achieve this.

21. In relation to the second purpose, the UK Statistics Authority noted in May 2010 that the 2011 census would be "the last of its kind". While the remit of the Authority extends only to England and Wales, NISRA has been working with the Authority on research into alternatives to a 2021 census. An important element of this is how to count the population using administrative data. Greater access to the information about the electoral register, which contains information about a large proportion of the population, would support this research. NISRA will hold a public consultation on alternatives to a 2021 census in which initial information on the usefulness of the electoral register might be considered.

Data protection

22. NISRA will store and process data on behalf of the CEO. A service level agreement will be put in place between the CEO's office and NISRA which will cover the handling of this information, as well as the wider aspects of the project.

Information will be transferred to NISRA by hand via an encrypted device and will be stored on the Data Integration and Linkage system. This is a closed accredited network, for which only those individuals who need to see and use identifiable data have access. No personal identifiable data may be removed from the system; only statistical and aggregated data outputs may be removed. The system has been independently assessed and accredited to hold data securely.

23. The data-matching work related to the electoral register would be completed by members of the Data Integration and Linkage Team within the Demography and Methodology Branch of NISRA. The team consists of statisticians, ICT staff and administrative grades. Most of the team will have SC security clearance (the Security Check (SC) is the most widely held security clearance for posts involving long-term, frequent and uncontrolled access to secret assets and occasional and controlled access to top-secret material). The team works daily with personal identifiable data within an IL4 environment and all staff are fully trained and aware of issues relating to Data Protection and the importance of keeping data secure.

24. All staff in NISRA work to the Census (Confidentiality) (Northern Ireland) Oder 1991, which states that "If any person uses any personal census information which he knows has been disclosed in contravention of this Act or discloses such information to another person, he shall be guilty of an offence".

Duration of data processing

25. Data passed to NISRA would be used to create statistical information. Under section 33(3) of the Data Protection Act 1998, personal data processed only for research purposes may be held indefinitely. For example, historical material related to the census is currently held indefinitely. NISRA will therefore hold information passed to it by the CEO for an indefinite period of time.

E. Impact on individuals

26. We recognise that individuals are likely to have concerns about the implications of their personal data being shared between organisations. However, the system of continuous registration, including data-matching, has operated in Northern Ireland for a number of years. These Regulations are intended to improve the transparency and effectiveness of that system, with which people in Northern Ireland are familiar, rather than to make fundamental changes to the way in which electoral registration is carried out, or the kind of information held by the CEO for registration purposes.

26. Individuals who do not wish to be on the electoral register are still required by law to fill in the annual canvass form accurately and it is an offence to refuse to provide relevant information when specifically requested by the CEO to do so[6]. There is no opt-out from registration for those eligible to vote. Consequently, these provisions do not have any significant further impact on an individual's privacy than the current legislative requirement – they simply support the CEO in carrying out his legal duty to maintain the accuracy and completeness of the electoral register.

[6] Regulation 24, The Representation of the People (Northern Ireland) Regulations 2008

27. It is nevertheless acknowledged that the very processes of data matching and data sharing carry some degree of inherent risk. This additional risk will be mitigated by the specific measures contained in agreements between the Northern Ireland Office and the CEO, and between the CEO and NISRA.

F. Consultation

28. The Northern Ireland Office, the CEO, NISRA and the Information Commissioner's Office (Belfast) have been involved in the consideration of the data protection risks arising from measures in these Regulations.