EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (SCOTLAND) (AMENDMENT NO. 2) REGULATIONS 2014

S.I. 2014 No.

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

2. Purpose of the instrument

These Regulations amend the Representation of the People (Scotland) Regulations 2001 (S.I. 2001/497) ("the 2001 Regulations") to facilitate the administration of Individual Electoral Registration (IER) in Scotland. 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 employees 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 and provide for the disclosure of certain local authorities' records to EROs for electoral registration purposes.

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 (Scotland) (Description of Electoral Registers and Amendment) Regulations 2013, as amended by the Representation of the People (Scotland) (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 Regulation 35 of the 2001 Regulations authorises an ERO to inspect, for the purposes of his registration duties, records kept by the council by which he was appointed, and to make copies of information contained in such records.

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

5. Territorial Extent and Application

5.1 This instrument extends to Scotland only. IER will apply in Great Britain, and another instrument (the Representation of the People (England and Wales) (Amendment No. 2) Regulations 2014 contains provisions for England and Wales equivalent to those in regulations 2 to 6. Provision equivalent to regulation 7 is made in the Representation of the People (England and Wales) (Amendment) Regulations 2014.

6. European Convention on Human Rights

6.1 The Secretary of State has made the following statement regarding Human Rights:

> In my view the provisions of the Representation of the People (Scotland) (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 that will form an integral part of the new IER arrangements which will be introduced in Scotland on 19th September 2014. Applicants in this category would otherwise be left with an imperfect procedure, under which they would be able to submit part of their application digitally, but would then have to print and pass their declaration in hard copy to their employer who would forward 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.

7.5 While regulation 35 of the 2001 Regulations authorises an ERO to *inspect* records kept by the council which appointed him or her and to make copies of the information, it makes no provision for the council to *disclose* the data to the ERO (for example, to supply it to the ERO in a format to be agreed between them so that it can be matched, possibly electronically, against electoral register information). Regulation 7 of the draft regulations inserts a new regulation 35A into the 2001 Regulations which will authorise the authority by which the ERO was appointed to disclose to the ERO information contained in records held by that authority, provided a written agreement is in place between the authority and the ERO as to the processing of the information. An authority refusing to make the data available to the ERO in this way will be required to give the ERO written reasons for its refusal.

[1] by the 2014 regulations.

7.6 The nature of the local government structure in Scotland makes it unnecessary to provide for access by the ERO to data kept by another tier of council, as has already been done for two-tier local government areas in England and Wales by regulation 35A of the Representation of the People (England and Wales) Regulations 2001[2].

8. Consultation outcome

8.1 The Electoral Commission (EC), the Information Commissioner and such other persons as were considered appropriate have been consulted on this instrument as required by section 53(5) of the 1983 Act and section 7 of the Political Parties, Elections and Referendums Act 2000. The others consulted were the Scotland Office, the Scottish Government, the Association of Electoral Administrators, the Scottish Assessors' Association, the Society of Local Authority Chief Executives (SOLACE) (Scotland), the Society of Local Authority Lawyers and Administrators in Scotland, the Convention of Scottish Local Authorities, the Electoral Management Board for Scotland, 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 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, and also welcomed regulation 7 which it said mirrored the legislation already in place in England and Wales to clarify that there is a legal gateway for disclosure of information to Scottish EROs by the council which appointed them.

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 would no longer need to be sent via an employer. The ICO also recognised that an ERO would continue to

[2] Inserted by regulation 3 of the Representation of the People (England and Wales) (Amendment) Regulations 2014.

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.

8.4 The ICO did not consider that Regulation 5 (additional reminder to be sent to special category electors) raised any data protection or privacy issues. In relation to regulation 7 the ICO referred to the response provided earlier in 2014 on the analogous provisions for England and Wales (in which it had welcomed both the position whereby effective data sharing would simplify the transition to IER by enabling many electors to be transferred to the individual electoral roll without being required to register, and also the assurance given by Cabinet Office that reference to the ICO's Data Sharing Code of Practice would be included in any guidance relating to the regulations concerned). The ICO did not consider that the regulation raised any additional issues to those upon which it had already commented.

8.5 The proposed change to be made by regulation 7 was welcomed by those other consultees who commented upon it. SOLACE (Scotland) considered that data sharing should be made mandatory so as to ensure the completeness and accuracy of the register. The Cabinet Office has responded that at present the Government does not wish to mandate the disclosure of data in situations where the data holder considers that it would be inappropriate, but drawing attention to the provision that an authority which refuses a request for disclosure must provide the ERO with written reasons for its refusal. The AEA asked what assessment had been made as to any additional cost to EROs arising from the introduction of the second reminder for special category electors. 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. The other substantive matter raised during consultation concerned 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, including the requirements for local data matching. This will, as mentioned above, include reference to the ICO's Data Sharing Code of Practice.

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 privacy impact assessment for the local data matching to be undertaken under these regulations will be published on legislation.gov.uk alongside the SI and EM.

10.3 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 Under section 53(6) of the 1983 Act the Secretary of State has the power to require the EC to produce a report relating to disclosure of information to another person for the purpose of assisting a registration officer.

12.2 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.