EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (SCOTLAND) (AMENDMENT) (NO. 2) REGULATIONS 2015

2015 No. [XXXX]

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

2.1 The Regulations remove the mandatory requirement to provide details of any previous name by which the applicant has been known within 12 months before the date of the application when applying to register to vote under individual electoral registration. Under the draft Regulations provision of previous name information will be voluntary, but individuals will be informed, on the application form, that providing this information may assist the registration officer in verifying the applicant's identity and that where previous name details are not provided, additional personal information may be required in order to verify an application to register for the purpose of determining the application. The Regulations also make changes to the correspondence required to be sent by Electoral Registration Officers (EROs) to applicants for registration and the manner of sending that correspondence, with the aim of reducing both the potential for confusion for members of the public and the overall cost of electoral registration; and they make a minor consequential amendment to an existing regulation concerning disclosure of postal vote identifiers.

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

3.1 None.

4. Legislative Context

4.1 The new system of individual electoral registration (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 Representation of the People (Scotland) Regulations 2001 (S.I. 2001/497) ("the 2001 Regulations") made by the Representation of the People (Scotland) (Description of Electoral Registers and Amendment) Regulations 2013 (S.I. 2013/3206) ("the 2013 regulations"). The IER provisions of the 2001 Regulations have been further amended by the Representation of the People (Scotland) (Amendment) Regulations 2014 (S.I. 2014/1250), the Representation of the People (Supply of Information) Regulations 2014 (S.I. 2014/2764), the Representation of the People (Scotland) (Amendment No. 2) Regulations 2014 (S.I. 2014/3124) and the Representation of the People (Scotland) (Amendment) Regulations 2015 (S.I. 2015/450).

4.2 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 applies to Scotland only.

5.2 A separate instrument making corresponding changes for England and Wales will be laid before Parliament by the Minister for Constitutional Reform at the Cabinet Office.

6. European Convention on Human Rights

6.1 The Secretary of State for Scotland considers that the Regulations are compatible with Convention rights.

7. Policy background

Provision of previous name information when applying to register to vote (Regulations 4 and 5)

7.1 Legislation currently requires that individuals applying to register to vote under IER must provide their most recent previous name, if that change of name occurred during the 12 months preceding their application. The reason for requesting this information is that it may assist in verifying the applicant's identity, so that the ERO may make a determination as to whether or not the applicant meets the requirements for registration and consequently whether he or she may be placed on the electoral register. In order to vote it is necessary to be on the electoral register.

7.2 Data from the IER Digital Service shows that verification rates tend to increase where electors provide their most recent previous name regardless of whether the previous name was in use less than or more than 12 months prior to the date of application. Removal of the 12-month stipulation may therefore be expected to result in increased verification rates, and it was originally intended to include the necessary provision for that in the Representation of the People (Scotland) (Amendment) Regulations 2015 (S.I. 2015/450) and in the corresponding instrument in respect of England and Wales. Representations were subsequently received from organisations representing the interests of transgendered individuals, however, expressing concern that the effect of the new legislation would be to make provision of previous name information mandatory irrespective of how long ago the change of name may have taken place. The draft regulations were consequently withdrawn and re-laid with the previous name provision removed.

7.3 Following further policy development work carried out in co-operation with some of the transgender organisations it emerged that a more acceptable solution would be for electoral registration applications to require the applicant's most recent name on a voluntary basis only. Regulations 4 and 5 of the instrument now before Parliament would, if made, effect such a change.

Changes to correspondence under individual electoral registration (Regulations 6 to 9)

7.4 Following feedback from electoral administrators, the Regulations also make changes to the correspondence required to be sent between EROs and electors or applicants for registration. These changes are designed to help reduce the administrative burden on EROs, the potential for confusion for members of the public, and the overall cost of electoral registration. The Regulations will amend the way in which EROs are required to send confirmation to applicants when their applications have been successful; require the ERO to send an individual notice in writing of the outcome of a review determining registration, and provide information about the appeal process; and they will amend the categories of cases in which the ERO does not need to send a notice of alteration.

Consequential amendment relating to disclosure of postal vote personal identifiers (Regulation 10)

7.5 The Government has taken the opportunity provided by this instrument to make a consequential amendment to a reference in regulation 61B(3)(a) of the 2001 regulations so that it refers to regulation 85A and not to regulation 85, which has been revoked by regulation 33 of, and Schedule 2 to, the 2013 regulations.

8. Consultation outcome

8.1 The Electoral Commission (EC) and the Information Commissioner's Office (ICO) have been consulted on this instrument, as has the Department for Work and Pensions, HM Revenue and Customs, the Department for Social Development (Northern Ireland), the Government Equalities Office, the Scottish Government, the Scotland Office, the Association of Electoral Administrators (AEA) and the AEA (Scottish and Northern Ireland), the Society of Local Authority Chief Executives (SOLACE) and SOLACE (Scotland), the Electoral Management Board for Scotland (EMB) and the Scottish Assessors Association (SAA) (in a joint response), the Cabinet Office Expert Panel of Electoral Administrators and a range of organisations representing the interests of transgendered and non-binary people who had previously given advice during policy development on the change of name issue, including UK Trans Info, Press for Change, Gendered Intelligence and the Gender Identity Research and Education Society (GIRES). Of those consultees who responded, most were

content with the proposed changes contained in the draft Regulations. UK Trans Info said that it was very pleased with the changes made by regulations 4 and 5, which it believed would significantly reduce the problems faced by transgender and non-binary people when registering to vote shortly after changing their name.

8.2 The EC, while content overall with the changes, raised three points with the Cabinet Office. The Commission said that while it supported the policy intention behind the previous name provision, said that there was some uncertainty as to its likely impact on electors and the electoral administration process, and the Cabinet Office should therefore consider how best to assess the impact of the change. The Cabinet Office has responded that it will, together with the EC, continue to monitor the completeness and accuracy of the electoral register throughout and after the transition to IER. The EC also said that it assumed that the online registration website would be further amended to ensure consistency with any amendments made to the paper application form, and it would welcome confirmation as to what the equivalent process would be for telephone or in-person applications. The Cabinet Office has responded that when this legislation comes into effect it will amend the website accordingly (and the forms will be amended by the EC). When individuals apply to register by telephone or in person, the ERO must record the required information in writing and will submit the completed form for verification in the same way as if the applicant had submitted a paper form. The EC also requested confirmation that the Government was now planning a December 2015 commencement date for this instrument. The Cabinet Office has responded that implementation in December 2015 is the present intention but that it would continue to consult with the EC to ensure that form design and other post-legislative processes were aligned as closely as possible to the legislation coming into force.

8.3 The ICO was also generally content with the Regulations. It pointed out however that data protection legislation required that organisations were transparent, clear and open with individuals as to how their information would be used. While the ICO welcomed the intended explanation to applicants that provision of previous name information was not mandatory, therefore, it suggested including the further clarification that where previous name information was not supplied, additional personal information might be required in order to verify an application to register. The ICO's suggestion has been adopted and is included in the version of the draft Regulations laid before Parliament.

8.4 The Association of Electoral Administrators however commented that to make provision of most recent previous name voluntary in place of mandatory would probably have a negative impact, since people may not provide the information if they are advised that they do not have to do so. The AEA therefore considered that the requirement should be for <u>all</u> previous names, and that the provision that the

requirement is not mandatory should not be included. The provision should also make clear that the application can be accepted with or without previous names. The Government has given careful consideration to these suggestions but has decided not to adopt the AEA's suggestion in respect of previous names. However, the Cabinet Office has explained to the AEA that the addition of the extra clarification suggested by the ICO (see previous paragraph) will give a stronger message about the consequences of non-provision of previous name information.

8.5 So far as the correspondence provisions of the Regulations were concerned the AEA commented that it would be helpful if confirmations could be sent with the option of email or posting (subject to proper provision to prevent fraud), rather than posting all written confirmations: this could be expected to reduce costs and considerably streamline the process. Cabinet Office has assured the AEA that the effect of the regulations is that where confirmation is given in relation to an application for registration made in response to an invitation to register that the registration officer may give that confirmation by electronic means. However where confirmation is given in relation to an application for registration made other than in response to an invitation to register, a physical link needs to be established between the applicant and the address in respect of which the person is applying to be registered. For that reason, in those circumstances the registration officer must give confirmation by hard copy in writing to the address in respect of which the applicant has applied to be registered.

8.6 On the previous name provisions of the Regulations the SAA, the Electoral Management Board for Scotland and SOLACE's Elections and Democracy Board commented similarly to the AEA: the more information EROs had, the easier it was to match people, If provision of previous name information became optional it would lead to a decline in verification rates and more time spent on resolving queries. The SAA, the Electoral Management Board for Scotland and SOLACE have been advised that the Government has reconsidered this provision but has decided to make no change to the previously agreed policy.

8.7 On the correspondence provisions of the Regulations, SOLACE commented that anything that reduced the volume of correspondence would be beneficial and also asked whether "notice in writing" included email. Cabinet Office has assured SOLACE that the effect of the regulations is that where confirmation is given in relation to an application for registration made in response to an invitation to register that the registration officer may give that confirmation by electronic means. However where confirmation is given in relation to an application for registration made other than in response to an invitation to register then the registration officer must give confirmation in writing by hard copy to the address in respect of which the applicant has applied to be registered. The SAA and EMB generally welcomed the provisions in

Regulations 6 to 9. With regard to Regulation 7 however they referred to section 56(1) of the Representation of the People Act 1983 (which provides that "an appeal does not lie where a person desiring to appeal has not availed himself of a prescribed right to be heard by or make representations to the registration officer on the matter which is the subject of an appeal") and suggested that consideration should be given to amending the provisions concerning notification of a right of appeal so as to reflect the fact that in many cases an appeal would no longer be available to the subject. The Cabinet Office explained to the SAA and EMB that it envisaged notification of a right of appeal being sent only where such a right exists, and no amendment was therefore required to the draft instrument in this respect.

8.8 With regard to Regulation 9 the SAA and EMB expressed a degree of caution about the provision which would mean that copies of notice of alteration need not be issued where the ERO had made a determination that a person had ceased to satisfy conditions for registration on the basis of at least two sources of information that supported such a determination. While noting the SAA and EMB's caution, the Cabinet Office has explained that in such a situation the ERO would have sourced two forms of evidence giving certainty that the elector was no longer resident, and it would therefore not be worthwhile to send a letter to the individual concerned at an address at which the ERO was certain he or she was no longer resident. Under the pre-IER arrangements, an elector whose name was crossed off a canvass form would be summarily deleted from the register on the basis of a single form of evidence without any need to send a notice of alteration. IER has strengthened the evidence requirements for deletion throughout the year, and removing the requirement to send a copy notice of alteration during the rolling registration period simply brings the position during that part of the year into line with that which exists during the annual canvass.

8.9 Both the Scottish Government and the Scotland Office made a number of comments and suggestions on the legal drafting, which are reflected in the draft instrument as laid. In respect of Regulation 9 the Scottish Government raised the same point about removal on the basis of two forms of evidence as that made by the SAA and EMB and the Cabinet Office has responded similarly but they also remarked that it seemed odd that under the proposed changes objectors to a registration application would not be informed of the outcome of their objection, even if they appeared at the hearing. The Cabinet Office has explained that the effect of the legislation will be to require the ERO to inform the elector, as the person most affected, of the outcome of a review, but that it would be for the EC to consider suggesting in guidance to EROs whether or not they should inform any other interested parties.

9. Guidance

9.1 Ministerial guidance on the satisfactory evidence for the determination of applications for electoral registration has been issued to EROs.

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 sectors is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Electoral Commission and the Cabinet Office will continue to monitor the completeness and accuracy of the electoral register throughout and after the transition to individual electoral registration.

13. Contact

Carol Gokce at the Cabinet Office, tel 020 7271 2679, email Carol.Gokce@cabinetoffice.gov.uk can answer any queries regarding the instrument.