EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (SCOTLAND) (AMENDMENT) REGULATIONS 2007

2007 No.

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The Regulations make changes following the Electoral Administration Act 2006 to provisions concerning registration, alteration of registers, replacement of counterfoils on ballot papers, proxy applications, cancellation and retrieval of ballot papers, official poll cards, postal voters list, sorting of postal votes, and access to election documents.

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

3.1 None.

4. Legislative Background

4.1 These Regulations amend the Representation of the People (Scotland) Regulations 2001. The purpose of the Regulations is to implement changes introduced by the Electoral Administration Act 2006. The Regulations are made under section 201 (2) of the Representation of the People Act 1983 and section 42 (10) of the Electoral Administration Act 2006.

5. Territorial Extent and Application

5.1 This instrument applies to Scotland.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State for Scotland, David Cairns MP, has made the following statement regarding Human Rights:

"In my view the provisions of the draft Representation of the People (Scotland) (Amendment) Regulations 2007 are compatible with the Convention rights."

7. Policy background

7.1 The Electoral Administration Act 2006 received Royal Assent on 11 July 2006 and aims to make progress on the Government's four principles found at the core of a healthy democracy:

(i) improving access and engagement
(ii) improving confidence in electoral security
(iii) extending openness and transparency in party financing
(iv) maintaining professional delivery of elections.

7.2 The Government announced that alongside the Act, it would introduce secondary legislation, in line with the above principles, to improve public confidence in the electoral system.

7.3 The Regulations contain a number of measures in relation to anonymous registration. The Electoral Administration Act 2006 ("the Act") allows a Registration Officer to create an anonymous entry on the register for those persons whose safety, or that of people they live with, would be at risk if the register contained their name or address. The Regulations set out the evidence a person will need to provide, plus an attestation, in order to be eligible for anonymous registration. The process for applying to register anonymously is detailed in the Regulations.

7.4 At present, objections to a person's registration can only be raised before the registration takes effect and a Registration Officer's powers to remove an erroneous or obsolete entry are limited. The Regulations make changes to accommodate objections made after a person has been registered. They also set out the procedure which governs the powers of a Registration Officer to conduct a review of someone's registration. The Regulations also set out circumstances in which a Registration Officer may remove an entry without going through a review or objection procedure.

7.5 The Act allows for clerical errors in the register to be corrected up to and including on the day of the poll. Under previous legislation, the closing date for registering to vote had been around six weeks prior to polling day, with clerical errors only correctable up until five days before the day of poll. The Regulations now prescribe the manner in which a person may make a representation that the register contains a clerical error, the time on polling day after which corrections may not be made, and where representations are made on polling day, the manner in which notices of correction are to be made and communicated to the relevant polling station.

7.6 The Act removes the requirement for ballot papers to be attached to a counterfoil. Instead, electoral officers will need to record ballot paper numbers to be used at a parliamentary election on the corresponding number list. The Regulations prescribe the form of corresponding number lists to be used for both polling station and postal ballot papers and replace references to counterfoils being attached to ballot papers.

7.7 The Act removes any legal incapacity to vote for persons with a mental impairment and allows such persons to apply for a long term proxy vote. The Regulations expand the list of health professionals who can attest a proxy vote application for a definite or indefinite period to include health professionals that work directly with persons with disabilities, so that they do not become disenfranchised through any inability to attend a polling station.

7.8 The Act provides for the cancellation and removal of ballot papers under prescribed circumstances. The Regulations set out the process for removal of postal ballot papers from the postal ballot box, in the event that they are cancelled. The ability to cancel and retrieve a postal ballot paper that has been lost will help to prevent possible abuses of the postal vote system. For example, where a voter does not receive their postal vote, they can report this as lost. If that original vote is then received by the RO, and has possibly been completed by someone other than the elector, the Returning Officer can issue a duplicate, cancel the lost ballot paper and retrieve it from the postal ballot box.

7.9 The Regulations substitute a revised form of poll card to be sent to the elector or their proxy. They also prescribe a new form of poll card to be sent to electors and their proxies where they have registered for a postal vote. The Act introduced a requirement to issue a poll card to postal voters.

7.10 The Regulations amend the procedure on the receipt of postal ballot papers. When a postal voter returns a postal vote or a postal proxy vote, the Returning Officer will be required to mark the postal or postal proxy voters list to record that a postal vote has been returned. The Regulations require the Returning Officer to record that a postal vote has been received at the time that he opens postal vote covering envelopes. He is required to record that a vote has been returned whenever an envelope that contains a postal voting statement is opened. The Regulations also provide that if an elector asks for confirmation of receipt of his postal vote, the Returning Officer must give that confirmation, after referring to the postal or postal proxy voters list and the list of votes that have been rejected, provided he is satisfied as to the identity of the elector.

7.11 The Regulations amend the procedure for the sorting of returned postal ballot papers after they have been removed from their covering envelopes. Ballot papers should now be sorted face down to ensure that election staff and observers cannot see how an elector has voted.

7.12 The Regulations make new provisions regulating access to unmarked postal voter and proxy postal voter lists and associated records generated before an election and the documents for use after an election. The Regulations restrict access to election documents and gives details of the purposes for which they may be used.

7.13 The Regulations provide for the requirement for a reason to be given for a postal vote to be sent to an address other than the address at which the postal voter is registered. This will apply to new postal vote applicants in addition to existing postal and postal proxy voters. This will help to enhance the security of the postal voting system and is intended to deter potential fraudulent use of postal votes.

7.14 In accordance with section 7(1) and (2)(e) of the Political Parties, Elections and Referendums Act 2000, the Electoral Commission was formally consulted on the draft Regulations.

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 impact on the public sector will be in relation to the new duties and responsibilities which these Regulations places on Electoral Registration Officers and Returning Officers.

9. Contact

Karen McNeill at the Scotland Office Tel: 0131 244 9005 or email: karen.mcneill2@scotland.gsi.gov.uk can answer any queries regarding the instrument.