EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (SCOTLAND) (AMENDMENT) REGULATIONS 2010

[2010] No. [Draft]

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. Purpose of the instrument

These Regulations make consequential changes which are necessary following the transfer of functions in relation to retention, public inspection and disposal of Parliamentary election documents in Scotland from sheriff clerks to parliamentary returning officers.

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

None

4. Legislative Context

These Regulations make amendments to the Representation of the People (Scotland) Regulations 2001 and to the Representation of the People (Scotland) Regulations 1986 which are necessary as a result of amendments being made to the Representation of the People Act 1983 by section 25 of the Political Parties and Elections Act 2009. Section 25 of the 2009 Act transfers responsibility for retaining certain United Kingdom Parliamentary election documents, making them available for public inspection and disposing of them, from sheriff clerks to the parliamentary returning officers. An order to commence section 25 will be made simultaneously with the Regulations.

5. Territorial Extent and Application

These Regulations shall apply to Scotland only.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State at the Scotland Office, Ann McKechin MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Representation of the People (Scotland) (Amendment) Regulations 2010 are compatible with the Convention rights".

7. Policy background

7.1 At present, after a Westminster election has been contested in Scotland, election material is sent by the constituency Returning Officer to a local sheriff clerk for safe keeping. The sheriff clerk is obliged to make some of the material available for public inspection, including the marked register, and to destroy all the material after one year (unless otherwise ordered).

7.2 However, there have been difficulties with the present arrangements including around access, and fees to be charged, as Sheriff Clerks' offices do not feel they are set up to carry out these functions effectively.

7.3 The new arrangements will bring them into line with the existing arrangements in Scotland for local government and European election records and, together with proposed changes to the rules for the Scottish Parliament elections (which are being made through a separate Scottish Parliament Elections Etc Order 2010), will standardise the arrangements for retention and public inspection of records for these elections in Scotland.

Consolidation

7.4 The intention is to consolidate the Representation of the People (Scotland) Regulations 2001 in due course. The Scotland Office will liaise with the Ministry of Justice on their intentions in respect of the equivalent England & Wales Regulations and with the Northern Ireland Office in respect of the Northern Ireland Regulations.

8. Consultation outcome

In accordance with section 7(1) and (2)(e) of the Political Parties, Elections and Referendums Act 2000 the Electoral Commission have been consulted on the Regulations. The Commission made one observation which was considered when finalising the Regulations. (Full consultation with stakeholders was undertaken on the policy change contained in the Political Parties and Elections Act 2009 although we have not consulted them on these Regulations given they provide for consequential amendments only. We have, however, been keeping stakeholders informed of the proposed timing of the Regulations.)

9. Guidance

The Scotland Office will keep stakeholders informed of the proposed timing of the commencement of the legislation and will write to them in due course to confirm the commencement date. This will include the Electoral Commission who will want to update its guidance to Returning Officers to reflect the new legislation.

10. Impact

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

10.2 The impact on the public sector is limited to changes to the rules that Returning Officers must apply when dealing with Parliamentary elections.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The Scotland Office meets regularly with electoral administrators and the Electoral Commission which provides them with opportunities to raise any issues or concerns about the implementation or delivery of the policy.

13. Contact

Rhona Carr at the Scotland Office (rhona.carr@scotlandoffice.gsi.gov.uk 0131 244 9008) can answer any queries regarding the instrument.