EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (SCOTLAND) (AMENDMENT) REGULATIONS 2014

2014 No. [DRAFT]

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 These Regulations amend the Representation of the People (Scotland) (Description of Electoral Registers and Amendment) Regulations 2013 (S.I. 2013/3206) as part of the introduction of Individual Electoral Registration (IER) in Scotland. The amendments confirm that the date for the introduction of IER in Scotland will be 19th September 2014, and they disapply the usual provisions for follow-up where an Electoral Registration Officer (ERO) has invited a person to register to vote whom he or she has reason to believe would, if registered, be registered as a special category elector (such as an overseas voter or a person with a service declaration) or an elector with an anonymous entry.

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

3.1 The instrument relies on the anticipatory exercise of powers which were inserted in the Representation of the People Act 1983 by the Electoral Registration and Administration Act 2013.

4. Legislative Context

4.1 The new system of IER is contained in amendments to the Representation of the People Act 1983 made by the Electoral Registration and Administration Act 2013, and in amendments to the Representation of the People (Scotland) Regulations 2001 made by the Representation of the People (Scotland) (Description of Electoral Registers and Amendment) Regulations 2013 (S.I. 2013/3206). The system is to begin in Scotland on 19th September 2014 (see article 5 of the Electoral Registration and Administration Act 2013 (Commencement No. 5 and Transitory Provisions) Order 2014 (S.I. 2014/414).

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 Representation of the People Act 1983. Sections 7 to 7B of that Act set out the 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 Under section 201(2) of the Representation of the People Act 1983 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 there is another instrument containing some of the same provisions as this instrument which will extend to England and Wales (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) Regulations 2014 are compatible with the Convention rights.

7. Policy background

7.1 Regulation 3 amends the Representation of the People (Scotland) (Description of Electoral Registers and Amendment) Regulations 2013 to provide for the new regulations on IER to come into force on 19th September 2014 in Scotland, consistent with the Commencement Order referred to in paragraph 4.1, instead of 10th June 2014, the date for England and Wales.

7.2 With regard to Regulation 4, the effect of current regulations is that after the transitional period EROs will be required to take specified steps to encourage applications to register in certain cases. They must send an invitation to register and, where necessary, up to two reminder letters and a canvasser to the elector's residence. These steps are expensive where, for example, electors are based overseas, and impractical in the case of sending a canvasser to an overseas residence. While EROs should make every effort to encourage applications, it is the policy view that these steps should not be mandatory in these cases.

7.3 The amendment disapplies these required steps in the case of those individuals whom the ERO has reason to believe would, if registered, have anonymous entries in the register, given the need for greater sensitivity in the case of such voters. As with special category electors, EROs can issue reminders if they wish, which would be

consistent with their duty under section 9A of the 1983 Act to take all necessary steps for the purpose of securing that, as far as reasonably practicable, people entitled to be on the register are on it.

7.4 Unlike the otherwise similar Representation of the People (England and Wales) (Amendment) Regulations 2014, these Regulations do not include any provision for the inspection of data for electoral registration purposes in the case of two-tier local government areas. The reason for this is that the different local government structure in Scotland renders a provision as drafted for England and Wales unnecessary. Cabinet Office is however consulting EROs and local government bodies in Scotland to establish whether there is any need to make provision for disclosure of data to an ERO within the local authority that appointed him or her. Should such provision be required, it will be included in future secondary legislation.

8. Consultation outcome

8.1 The Electoral Commission (EC) has been consulted on this instrument as required by section 7 of the Political Parties, Elections and Referendums Act 2000. The Information Commissioner has also been consulted.

8.2 During the consultation on the instrument, the EC sought clarification on two points. First, while the Commission saw the reason for disapplying the requirement to visit the address of an overseas or service voter, it asked why reminder invitations to register should not be sent. We have responded that we will set out in guidance that EROs have discretion to take such steps as are reasonably practicable to encourage registration applications, such as issuing reminders; but that in view of the cost burden there is no intention to mandate steps to chase an invitation to register in the case of these people. Second, while the Commission understood the reasons for not needing a Scottish equivalent to the provision in the English and Welsh Regulations allowing inspection of records, because of different local authority structures, it noted that the Regulations did not contain the equivalent provisions for disclosure of records in a form that could be matched electronically and asked for clarification on this point. We have given the Commission the explanation set out in paragraph 7.4 above.

8.3 The Information Commissioner's Office (ICO) has responded that the proposed regulations concerning anonymous and special category electors both seemed entirely appropriate in relation to the arrangements they are intended to address, particularly with regard to the arrangements for anonymous entry where the ICO expects that EROs will wish to take account of the sensitivity of the registration and ensure that appropriate measures, including those for the security of the data, are in place. Having considered the purpose of the Regulations, the ICO did not consider that they raise any new or significant data protection or privacy issues.

9. Guidance

9.1 Guidance will continue to be issued to registration officers as and when required on all aspects of individual registration.

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 sector is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 The EC continues to monitor the progress of preparations for 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.