EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (SCOTLAND) (AMENDMENT) REGULATIONS 2015

S.I. 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

As part of the introduction of Individual Electoral Registration (IER) these Regulations amend certain regulations in the Representation of the People (Scotland) Regulations 2001 (S.I. 2001/497) ("the 2001 Regulations") to address the issue of applicants to register to vote who have previously changed their name in a time period outside the 12 months specified in the IER application. The Regulations also include amendments to the process for registered electors to change their name on the published register, and amendments to how information in the Household Enquiry Form (HEF) may be returned to Electoral Registration Officers (EROs). There is an equivalent instrument for England and Wales (the Representation of the People (England and Wales) (Amendment) Regulations 2015).

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.

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 extends to Scotland only.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State at the Scotland Office, the Rt Hon David Mundell MP, has made the following statement regarding Human Rights:

> In my view the provisions of the Representation of the People (Scotland) (Amendment) Regulations 2015 are compatible with the Convention rights.

7. Policy background

7.1 Since the introduction of IER, an issue has arisen relating to the verification matching of applicants who have previously changed their surname in a time period outside the 12 months specified in the IER application process as required by regulation 26 (1) (a) of the 2001 Regulations.

7.2 Regulation 26 (1) (a) requires that an application for registration state the applicant's full name and any previous name by which the applicant has been known within the 12 months before the date of the application. The exclusion of changes of name prior to the 12 month period has led to some legitimate applications to register to vote being returned as match failures by the IER Digital Service where the DWP database contains those individuals recorded under a previous name, the applicant has not informed DWP of the change of name, and there is no match against the surname of the applicant where the change of name happened more than 12 months prior to the application. As a result of these match failures there has been an increase in the number of applications which require documentary evidence as proof of identity. Regulation 3 of the amending Regulations requires applicants for registration to provide their most recent previous name (if any) instead of any previous name by which they have been known in the 12 months before their application.

7.3 Regulation 26A of the 2001 Regulations requires an elector who wishes to change their name on the electoral register to complete a change of name form and submit it to their ERO along with a marriage or civil partnership certificate, an overseas marriage or civil partnership certificate that has been deposited with the relevant General Register Office (GRO), or a deed poll or amended birth certificate. On 1 January 2014, the Foreign & Commonwealth Office discontinued its service of depositing overseas marriage or civil partnership documents with the GRO. Regulation 4 removes the references in regulation 26A(4) of the 2001 Regulations to all the specific documents and replaces them with a reference to "documentary evidence". The other two amendments are consequential changes to the paragraphs on inability to provide documents and providing original documents.

7.4 Under the new Regulations, when a person wishes to change their name on the electoral register, evidence will continue to be required in support of this change. It will be up to EROs to decide what evidence they deem to be acceptable in supporting a change; however, Ministerial guidance will set out examples of acceptable documents.

7.5 Regulation 5 ensures that all applications will go for verification. It states "On receipt of an application … made otherwise than through the digital service" rather than setting out all the possible alternatives to the paper application form. At present regulation 29ZA(1) only refers to paper application forms.

7.6 Regulation 6 removes an unnecessary reference to applications and to the electoral register and provides for the HEF to include a statement that the information given in response to the form will be processed in accordance with the Data Protection Act 1998.

7.7 Regulation 32ZA(3)(i) of the 2001 Regulations requires returned HEFs (annual canvass forms) to include a "signed declaration of truth" to confirm the validity of the information provided. The requirement for a signature effectively limits HEF returns to being a paper only transaction. In practice EROs have for a number of years allowed the return of canvass information online or by phone. Under regulation 7 the person completing a HEF is required to make a declaration of truth and give their name; however, there is no requirement for that declaration to be signed. This will allow the information in HEFs to be provided online or by phone and will align this process with that which is already permissible for making a registration application.

7.8 Regulation 8 deletes the regulation which allows for register entries to be carried forward from one year to another, which will no longer apply under IER.

7.9 Regulation 9 makes a consequential amendment relating to the removals following death in the regulation about notices of alteration to the register.

7.10 Regulation 10 does not relate to IER but to absent voting. It amends regulation 78A(1) on cancelling postal ballot papers to omit a reference to local government elections in Scotland. This is not needed as the Scottish Government have regulations which cover absent voting matters and can be used to make the necessary change for local elections in Scotland.

8. Consultation outcome

8.1 The Electoral Commission (EC) has been consulted on this instrument, as have the Information Commissioner, the Department for Work and Pensions (DWP), HM Revenue and Customs (HMRC), the Association of Electoral Administrators Scotland, the Scottish Assessors Association (SAA), the Electoral Management Board for Scotland (EMB), the Society of Local Authority Chief Executives (SOLACE) Scotland, the Scotland Office, the Scottish Government, the Department for Social Development Northern Ireland and the Cabinet Office Expert Panel of electoral administrators.

8.2 Overall the EC was satisfied with the draft instrument, but commented on the following regulations:

- Regulation 4 – removal of the list of documentary evidence of change of name. Although the EC supported this amendment in principle, the EC was concerned that the use of such broad wording ("any documentary evidence") might introduce uncertainty for electors and EROs.

- The Government responded that Ministerial guidance on what evidence would be satisfactory will be produced in consultation with the EC, AEA and the Cabinet Office Expert Panel of electoral administrators, and will be available when this provision comes in to force.

- Regulation 7 - the EC supported this amendment as it removes any doubt over the policy intention caused by the reference to a signature.

- The EC also raised certain minor points on the drafting of the instrument, to which the Government has responded.

8.3 The SAA and EMB provided a joint response to the consultation, and made the following comments:

- Regulation 3 – The SAA and EMB welcomed this amendment and agreed that it should reduce the number of applications needing to be routed through the exceptions process where additional documentary evidence is sought by the ERO.

- Regulation 4 – the SAA/EMB said that the proposed term "any documentary evidence" must be qualified to ensure that the documentary evidence is satisfactory to the ERO.

- The Government responded that Ministerial guidance on what evidence would be satisfactory will be produced in consultation with the EC, AEA and the Cabinet Office Expert Panel of electoral administrators, and will be available when this provision comes into force. It is implicit in the powers and duties of EROs that if they are not satisfied with the evidence they can reject it.

- Regulation 9 removed the requirement to issue a formal notice of alteration to the register to the elector concerned when they have already received a prescribed letter advising that their application made in response to an invitation to register (ITR) has been successful. The SAA/EMB felt that the notice of alteration to the register should be issued for all rolling register additions as it contains useful detail in terms of constituency names, local government ward details, polling district information, opt out status and the elector number. This level of detail is not provided in the prescribed ITR successful application letter.

- The Government has carefully considered this, and recognises that removal of the requirement to issue a formal notice of alteration to the register would be best considered within a wider review of notification provisions which is taking place. We have therefore removed this provision from the instrument.

- The SAA / EMB also raised certain minor points on the drafting of the instrument, to which the Government has responded.

8.4 The Information Commissioner's Office did not consider that the instrument raised any new or significant data protection or privacy issues. The AEA (Scotland) supported the SAA/EMB comments that care needed to be taken with paragraph 9 of the Regulations, and also had some drafting points which have been reflected in the instrument. SOLACE Scotland also endorsed these comments. DWP, HMRC, the Scotland Office, the Scottish Government, the Department for Social Development Northern Ireland and the Cabinet Office Expert Panel of electoral administrators had no adverse comments on the instrument.

9. Guidance

9.1 Ministerial guidance on the satisfactory evidence for the determination of applications in regard to making a change of name will be 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 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 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@cabinetoffice.gov.uk can answer any queries regarding the instrument.