EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (SCOTLAND) (AMENDMENT) REGULATIONS 2017

2017 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Cabinet Office on behalf of 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) Regulations 2001 (S.I. 2001/497) ("2001 Regulations"), making changes to the system of Individual Electoral Registration (IER).

2.2 Broadly they make the equivalent amendments in Scotland as were made in respect of England and Wales by the Representation of the People (England and Wales) (Amendment) Regulations 2016 (S.I. 2016/694).

2.3 The UK Government is making these regulations with the agreement of Scottish Ministers in relation to the registration of 16 and 17 year old electors on the local government register in Scotland, and in advance of the commencement of the relevant elections provisions in the Scotland Act 2016 which will include the devolution of legislative competence in respect of the registration of all local government electors to the Scottish Parliament, and the transfer to the Scottish Ministers of functions currently exercisable by a Minister of the Crown which will be exercisable within that newly devolved competence.

2.4 The effect of the Regulations will be to amend the IER application forms to allow applicants to identify that they are the only person resident at the address aged 14 or over and to provide more discretion to Electoral Registration Officers (EROs) as to when canvass forms must be given where such information has been given; and they will also enable EROs to send Invitations to Register (ITRs) and ITR reminders by electronic means.

2.5 The instrument will allow an attestor to an applicant's identity to be registered in any local authority area in Scotland to allow more eligible applicants to become registered to vote.

2.6 The Regulations also correct an error in an existing regulation concerning the requirement to provide fresh signatures following rejection of a postal voting statement

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

4.1 These Regulations are being made to improve the operation of IER in Scotland. The 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 (S.I. 2013/3206). 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). The Scottish Elections (Reduction of Voting Age) Act 2015 has also amended these provisions so far as they relate to registration on the local government register in Scotland as a result reduction of the minimum voting age at elections to the Scottish Parliament and local government elections in Scotland.

4.2 Under section 201(2) of the 1983 Act the making of this instrument is subject to the affirmative resolution procedure.

5. Extent and Territorial Application

5.1 The extent of this instrument is Scotland.

5.2 The territorial application of this instrument is Scotland.

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 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Regulations enable the person applying to register to vote, on a voluntary basis, to provide information as to whether they are the only person age 14 or over resident at the address in respect of which the application is made. This provision does not apply to applications for a service declaration, overseas elector's declaration or declaration of local connection. Where an Electoral Registration Officer (ERO) has received this information during the period between 1st July and the date in that year when they publish a revised register, and determined within that period that the application is entitled to be registered at that address, then the ERO is not required to send a canvass form to the address as part of that annual canvass or to conduct prescribed follow up steps. If the information is received outside this period and the ERO has subsequently determined that the applicant is entitled to be registered at that address, then the ERO

is not required to send a canvass form or to conduct prescribed follow up steps as part of the next annual canvass.

7.2 The Regulations also make two other measures; firstly they enable registration officers to send Invitations to Register and reminders in the body of an email, accompanied by a link to the digital service; secondly they amend the attestation requirement so that the attestor no longer needs to be registered in the same local authority area as the applicant. This amendment would allow more eligible applications to become registered while not compromising the integrity of the attestation process.

7.3 Following agreement between Scottish Government and UK Government Ministers, these Regulations are being made with agreement of the Scottish Ministers in relation to the registration of 16 and 17 year old electors on the Local Government register in Scotland. The UK Government and Scottish Government Ministers have agreed that this Order should be made in advance of the commencement of the relevant provisions in the Scotland Act 2016 (sections 3 to 10). These provisions include the devolution of legislative competence in respect of the registration of all local government electors to the Scottish Parliament, and the transfer to the Scottish Ministers of functions currently exercisable by a Minister of the Crown which will be exercisable within that newly devolved competence.

Consolidation

7.4 There are no plans to consolidate the 2001 Regulations

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 Electoral Commission were content with this draft Order and noted that it reflects the same provisions offered to England and Wales in The Representation of the People (England and Wales) (Amendment) Regulations 2016, which offered cost optimisation provisions for England and Wales.

8.2 The Scottish Assessors' Association (SAA) and the Electoral Management Board for Scotland have also been consulted on this instrument and submitted a joint response. The Government noted that they were content with the move to replicate provisions already in place in England and Wales by The Representation of the People (England and Wales) (Amendment) Regulations 2016.

8.3 The SAA and Electoral Management Board for Scotland suggested the geographic attestation criteria could be widened to the whole of Great Britain and Northern Ireland, in the interests of the voter. The Government has explained that these Regulations only extend to Scotland and will not therefore impose any requirements on other geographical areas of the UK. The same limitation applied to the Representation of the People (England and Wales) (Amendment) Regulations 2016.

8.4 The Information Commissioner's Office (ICO) has been consulted and has previously provided advice in relation to the provisions of the Data Protection Act 1998 in terms of ensuring that the arrangements for delivering IER take account of data protection and privacy issues. The ICO noted that they were previously consulted on the Representation of the People (England and Wales) (Amendment) Regulations 2016

and were content that The Representation of the People (Scotland) (Amendment) Regulations 2017 do not raise any new or significant data protection or privacy issues.

8.5 The Scottish Government has been consulted with regards to the drafting of this instrument and are content.

9. Guidance

9.1 The Electoral Commission will update electoral registration guidance for EROs to reflect the new provisions.

10. Impact

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

10.2 The impact on the public sector is that the provisions enable the overall cost of electoral registration and the administrative burden on EROs to be reduced.

10.3 An Impact Assessment has not been prepared for this instrument. An overall Impact Assessment for individual electoral registration is at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61284/individual-electoral-reform-impact-assessment.pdf

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The Electoral Commission and the Cabinet Office will continue to monitor the completeness and accuracy of the electoral register.

13. Contact

13.1 Annes Llwyd at the Cabinet Office Telephone: 07736 485 431 or email: Annes.Llwyd@cabinetoffice.gov.uk can answer any queries regarding the instrument.