EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (ENGLAND AND WALES) (DESCRIPTION OF ELECTORAL REGISTERS AND AMENDMENT) REGULATIONS 2013

2013 No. [XXXX]

AND

THE REPRESENTATION OF THE PEOPLE (SCOTLAND) (DESCRIPTION OF ELECTORAL REGISTERS AND AMENDMENT) REGULATIONS 2013

2013 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

2.1 Both these sets of Regulations make changes enabled by the Electoral Registration and Administration Act 2013 (c. 6) relating to the introduction of Individual Electoral Registration in place of household registration, and changes relating to the conduct of elections. They also provide revised text describing the two versions of the electoral register.

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

3.1 None

4. Legislative Context

4.1 The powers under which these Regulations are made are set out in Schedule 1 to the Regulations. The regulations relating to Individual Electoral Registration are closely linked to the Electoral Registration and Administration Act 2013 (Transitional Provisions) Order 2013; this explanatory memorandum should be read alongside the memorandum for that Order.

4.2 Under section 201(2) of the Representation of the People Act 1983 (the 1983 Act), the making of these instruments is subject to the affirmative resolution procedure.

4.3 Article 3 of the Lord President of the Council Order 2010 (S.I. 2010/1837) provides that the powers conferred on the Secretary of State under the 1983 Act (with exceptions which are not relevant to these Regulations) are exercisable concurrently by the Secretary of State and the Lord President of the Council.

4.4 The Secretary of State for Scotland exercises the powers under the 1983 Act in Scotland. However since the Individual Electoral Registration Digital Service and the verification procedures for new applications under IER are being run on

a UK basis, the Lord President of the Council will carry out functions related to those concurrently with the Secretary of State for Scotland.

4.5 This explanatory memorandum covers both regulations for England and Wales and for Scotland, amending their respective versions of the Representation of the People Regulations 2001. Both the existing regulations and the two instruments covered by this explanatory memorandum are almost identical, varying only in accordance the differences between Scottish law and that in England and Wales to achieve the same policy objectives.

5. Territorial Extent and Application

5.1 These instruments apply to England and Wales or to Scotland, as set out in their titles.

6. European Convention on Human Rights

6.1 The Minister for Political and Constitutional Reform has made the following statement regarding Human Rights:

> In my view the provisions of the Draft Representation of the People (England and Wales)(Description of Electoral Registers and Amendment) Regulations 2013 are compatible with the Convention rights.

6.2 The Secretary of State for Scotland has made the following statement regarding Human Rights:

> In my view the provisions of the Draft Representation of the People (Scotland)(Description of Electoral Registers and Amendment) Regulations 2013 are compatible with the Convention rights.

7. Policy background

7.1 The Electoral Registration and Administration Act (the "ERA Act") 2013 amends the Representation of the People Act 1983 to replace the existing household registration system with Individual Electoral Registration (IER). Under IER electors will be asked to provide identifying information which will be used to verify their identity before they are added to the electoral register, helping to tackle fraud and improve the integrity of our electoral system. Many of the regulations in these instruments set out the activities and documents that will make up the individual registration system.

7.2 Applications to register under IER will have to include the applicant's 'personal identifiers': their name, date of birth and national insurance number (NINO). The Electoral Commission will design application forms, including the requirements for the information set out in regulation 10. This form, once approved by the Lord President of the Council, will be sent to all potential electors identified by the electoral registration officer (ERO) through the annual canvass or other information; applicants may then apply using the form or online using the new digital portal.

7.3 The personal identifiers will be matched against records held by the Department for Work and Pensions. The results of this match will be communicated to the ERO and must be taken into account in establishing that the applicant is who they say they are – a key factor in processing an application to register, alongside establishing their eligibility in age and nationality and their residence. These instruments also set out the restrictions around retention of these identifiers and a new criminal offence for unlawful disclosure of this information.

7.4 If the required personal identifiers cannot be provided, or if data-matching on them is unsuccessful, applicants will be asked to provide documentary evidence from an extensive list, specified in regulations and supporting guidance (see paragraph 9.1 below), in order to verify their identity. If these documents cannot be provided the ERO will ask the applicant to have their application attested by another elector who is registered in the same local authority area and is of 'good standing' there. Different evidence is permitted from special category applicants.

7.5 The annual canvass of households will continue to take place under these regulations, but it will no longer be the way onto the register. Instead it will be used to confirm for the ERO that those registered are still resident and alert the ERO to any departures from the residence or any new potential electors. EROs must send a canvass form to every residential property; the ERO must have made at least one visit to the property and send two follow-up canvass forms if the residents do not reply at any time with the information requested. The regulations set out that it is the information requested on the form that an ERO requires, not necessarily the paper form itself, allowing electronic returns to be made (for example in large homes of multiple occupancy) and the continuation of no-change notifications by residence through text messages and phone calls already used in some areas.

7.6 EROs must invite a person to register within 28 days of finding out that they are resident and potentially eligible. If the person does not apply, the ERO must have made at least one visit to the property and sent two follow-up invitations to encourage an application before their duties are complete and before a requirement to register may be issued (at the ERO's discretion). If no application is made following the issuing of a requirement to register, the ERO has the choice to impose a civil penalty of £80. Once this penalty is imposed, the person may annul it entirely by applying to register or successfully applying for a review of the ERO's decision or successfully appealing the imposition. If the penalty is paid but no application is made, the person remains liable to be invited and (later) required to register.

7.7 Although the transitional activities are primarily set out in the Electoral Registration and Administration Act 2013 (Transitional Provisions) Order 2013 a transitional measure is included in these regulations (regulation 14(2)) to allow EROs to carry out 'confirmation data-matching' on the records of people whose details were received in the postponed 2013/14 annual canvass but who were too young to be registered as electors or attainers (i.e. those who were 16 but will not turn 18 during the life of the register published after that canvass) to ensure that more young people will be data-matched and fewer will need to make IER applications.

7.8 An elector's choice on whether their name and address are omitted from the open-access register (also known as the edited register) will persist unless or until they complete a new application to register, or wish to change their existing choice. Electors will be able to change their choice on the open-access register/edited register at any time by contacting their ERO and providing their full name and address; a return of canvass form will not constitute a valid request. Publication of updates to the open-access register will be brought in line with the full electoral register to give effect to new requests on a monthly basis.

7.9 There will be two versions of the 'form of words' to describe the difference between the two electoral registers: a short version and a long version. EROs must use the short version on registration forms, pre-printed canvass forms, and where they have authorised applications to be submitted by telephone or in person. The long version will be used in all other instances where an ERO provides electors with information on the two electoral registers.

7.10 The right to be registered anonymously (subject to meeting the criteria) is retained under IER. Regulation 21 inserts additional relevant court orders and injunctions accepted as evidence in support of an application for anonymous registration across Great Britain

7.11 The ERA Act also made a number of changes to the conduct of elections, and these Regulations make related provisions which support many of them. The key conduct-related measures provided for in these regulations are as follows

7.12 The ERA Act makes provision for the extension of the electoral timetable for UK Parliamentary elections from 17 to 25 working days and also adjusts a number of the deadlines within the timetable to allow more time for the postal vote process and to facilitate the administration of elections more generally, which should result in efficiency savings. This is principally by enabling postal votes to be issued as soon as practicable, after the close of nominations at an election, rather than after the 11th day before the poll which is the present earliest time postal votes may be issued. These Regulations also make consequential provisions, including enabling postal voters to change their voting arrangements by cancelling their postal vote and changing to another voting method up to the current deadline, should they so wish.

7.13 Postal vote identifier rejection notifications. EROs will inform electors after a poll if the signature or date of birth, which they supply on the postal voting statement, failed to match those held on record or had simply been left blank. This is to ensure those people can participate effectively in future elections and not have their ballot papers rejected at successive polls because of a signature degradation or because they are making inadvertent errors. EROs will not be obliged to inform individuals where fraud is suspected.

7.14 The identifiers supplied in all postal votes in each poll will be checked. This builds upon current practice by Returning Officers at recent national elections, and ensures all postal votes are subject to the same high level of scrutiny.

7.15 Extension of emergency proxy provisions to those absent on the grounds of business or service. This is to ensure that those who are absent at short notice

for business or service reasons are eligible to apply for an emergency proxy vote in the days before the election and do not lose the opportunity to vote.

7.16 Updates to voting forms for accessibility. The Cabinet Office has user-tested revised forms with representative samples of the voting public (including poll cards and postal voting statements) for use at UK Parliamentary elections. The intention is to ensure that the forms which voters use at elections are as clear and easy to use as possible, to improve effective engagement in the voting process. These Regulations complement the draft Representation of the People (Ballot Paper) Regulations 2013, which make improvements to the layout of the parliamentary ballot paper.

7.17 Regulation 30 of the Scottish regulations changes the last date that a postal voter can apply for a replacement for a lost postal ballot paper from 3 to 4 days before the day of the poll. This change brings the Scottish regulations into line with the existing England and Wales regulations, which already have the 4 day deadline. This change has been made so that the same deadline applies throughout Great Britain

7.18 Consolidation: The Law Commission is currently undertaking a review into electoral law.

8. Consultation outcome

8.1 The Electoral Commission and the Information Commissioner have been consulted on these instruments as required by section 53(5) of the Representation of the People Act 1983 and section 7(1) of the Political Parties, Elections and Referendums Act 2000. In addition, the Cabinet Office have conducted weekly meetings with the Electoral Commission and the Association of Electoral Administrators from March to June 2013 to draw out issues ahead of formal consultation. The Government also undertook targeted engagement with these and other stakeholders following the publication of proposed draft secondary legislation in September 2012.

8.2 The Electoral Commission's response to the formal consultation welcomed the Government's approach to the implementation of IER; they also made a number of recommendations. The Commission has recommended that EROs should be able to accept applications that contain all the required information but are not submitted on an EC designed form or through the IER Digital Service; the Government has agreed that such applications should be accepted, although EROs will only be able to issue the authorised forms. The Commission also recommended that overseas electors should be allowed to make online applications via the IER Digital Service; these Regulations enable a secure online channel for these applications, but do not mandate that they are accepted until this channel is in place. They welcomed the minimum standards for following up annual canvass forms and invitations to register, including the introduction of the civil penalty. The Commission recommended that the Regulations should be interpreted to allow third-party completion to enable people with severe disabilities to have their applications completed by another person; the ERA Act does not allow third-party applications, but these regulations allow the personal details to be completed by a carer or similarly-placed person, as long as the declaration is made by the applicant.

8.3 The Information Commissioner's Office welcomed the provisions relating to the two versions of the electoral register, and that electors would be presented with more detailed information about the common uses of the register. They questioned the inclusion of reference to it being harder for electors to access some goods or services if they are omitted from the edited register; the Government has decided to remove this sentence. They also welcomed the offence in these instruments and the transitional provisions order around unlawful disclosure of information. The Government is willing to share the guidance that EROs will receive from the Secretary of State on IER (see Paragraph 9.1 below), as they have requested.

8.4 The Electoral Commission's response welcomed the Government's approach to the updating of the conduct provisions in these Regulations; they also made certain recommendations. The Government has changed the regulations in response to the Commission's recommendation that all types of postal voter can cancel their postal vote and change their voting arrangements up to the present deadline of the 11th day before an election, provided they have not already attempted to vote and sent it to the Local Returning Officer.

8.5 The Commission also suggested minor changes to the drafting of the regulations, which have been considered and some have been incorporated into this instrument. We have also made some amendments to the drafting of the voting forms, in response to comments received during consultation.

8.6 These instruments have also been developed through close engagement with the Electoral Commission, Association of Electoral Administrators and the Scottish Assessors Association. The Department of Work and Pensions, Ministry of Justice, the Tribunals Procedure Committee, the Society of Local Authority Chief Executives, other Government departments, and other stakeholder groups representing the interest of under-registered groups have also been consulted.

9. Guidance

9.1 The Electoral Commission will continue to issue guidance to EROs about electoral registration and the conduct of elections, including covering all aspects of the transition to and operation of IER. Under section 1 of the ERA Act, the Minister will also issue guidance (in force for the first five years of the operation of IER) on the determination of applications. This guidance will be distributed in a joint document with the guidance issued by the Electoral Commission to make it as useful as possible for EROs.

10. Impact

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

10.2 The attached impact assessments were produced relating to the conduct elements of the ERA Act which remain applicable to these instruments. A separate full regulatory impact assessment has not been prepared for these instruments because no impacts on the private, public or voluntary sectors is foreseen, other than those set out in the attached impact assessments prepared for the ERA Act.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

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

12.2 The Commission will make an assessment of the completeness and accuracy of the registers in use in April 2014 and December 2015 (i.e. before and after the transition on current Government plans). This will be assessed against a Cabinet Office baseline measurement of 86% completeness and 85% accuracy, calculated in earlier studies by the Commission on the registers in December 2010 and April 2011 respectively. The Commission's annual 'Winter Tracker' public opinion survey will also continue to record the perceived accessibility of registration

13. Contact

Carol Gokce at the Cabinet Office, tel 0207 271 2679: email: carol.gokce@cabinet-office.gsi.gov.uk can answer any queries regarding the instrument.