EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 1998 (MODIFICATION OF SCHEDULES 4 AND 5 AND TRANSFER OF FUNCTIONS TO THE SCOTTISH MINISTERS ETC.) ORDER 2015

2015 No. [XXXX]

1. This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this Order is two-fold. The first purpose is to amend Schedules 4 and 5 to the Scotland Act 1998 ("the 1998 Act") to devolve power to the Scottish Parliament to legislate to reduce the minimum voting age to 16 at elections to the Scottish Parliament and Scottish local government elections (or both). The amendments will also allow the Scottish Parliament to legislate in respect of the registration of electors in order to give effect to provision reducing the minimum voting age to 16 at those elections.

2.2 The second purpose is to enable the Scottish Ministers to exercise certain functions of a Minister of the Crown, which relate to the Individual Electoral Registration Digital Service (IERDS) so far as they are exercisable by a Minister of the Crown in or as regards Scotland. Those functions will be exercisable by the Scottish Ministers concurrently with a Minister of the Crown, and subject to the agreement of a Minister of the Crown. The Order provides for the procedure in the Scottish Parliament which will be applicable to any regulations made by the Scottish Ministers under these functions, and also allows for supplementary provision etc. to be made by the Scottish Ministers under these functions.

2.3 The Order will also modify section 53 of the Representation of the People Act 1983 ("the 1983 Act") so that where the functions outlined in paragraph 2.2 above are exercised by the Scottish Ministers, the requirements contained in section 53(5) to (7) of the 1983 Act will apply to the Scottish Ministers.

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

None.

4. Legislative Context

4.1 Schedule 5 to the 1998 Act lists the matters that are reserved to the UK Parliament. Amongst other things, Section B3 of Part 2 of Schedule 5 reserves elections for membership of the Scottish Parliament and the franchise at local government elections. This Order will amend Schedule 5 by providing an exception to Section B3 so that (a) the reduction of the minimum voting age to 16 at elections to the Scottish

Parliament and Scottish local government elections and (b) the registration of electors in order to give effect to provision reducing the minimum voting age at those elections will no longer be reserved matters. However, the use of the IERDS to make an application for registration, or to verify information contained in an application for registration, is not included in the exception and will continue to be reserved to the UK Parliament.

4.2 Schedule 4 to the 1998 Act lists enactments which are protected from modification by the Scottish Parliament. Much of the 1998 Act itself is included in this list. Although the amendment to Schedule 5 to the 1998 Act will enable the Scottish Parliament to legislate to reduce the minimum voting age to 16 at elections to the Scottish Parliament or local government elections and make related provision about the registration of electors, any such legislation may need to amend certain sections of the 1998 Act which make provision about the franchise for the Scottish Parliament and the registration of electors. Therefore, this Order will amend Schedule 4 to the 1998 Act to allow an Act of the Scottish Parliament to modify sections 11, 12 and 12A of the 1998 Act (and to make modifications to section 113 and Schedule 7 to the 1998 Act, as these might be needed in consequence) for the purpose of reducing the minimum voting age, for making related provision about the registration of electors to give effect to provision reducing the minimum voting age to 16 or for making provision in consequence of either such provision.

4.3 Section 63(1)(b) of the 1998 Act enables an Order to provide for any functions, so far as they are exercisable by a Minister of the Crown in or as regards Scotland, to be exercisable by the Scottish Ministers concurrently with the Minister of the Crown. This Order will enable the Scottish Ministers to exercise regulation-making powers under section 53(1) and (3) of the 1983 Act and certain paragraphs in Schedule 2 to that Act to enable them to make provision for use of the IERDS when giving effect to provision reducing the minimum voting age. The Scottish Ministers will only be able to exercise these functions with the agreement of a Minister of the Crown. The Scottish Ministers will be able to exercise these functions concurrently with a Minister of the Crown (insofar as these are exercisable in or as regards Scotland).

4.4 Section 53(1) and (3) of the 1983 Act provides for power to make regulations as to registration. Subsection (5) provides that the Secretary of State must consult the Electoral Commission, the Information Commissioner, and any other person the Secretary of State thinks appropriate before making regulations containing provision under paragraph 1A of Schedule 2 to that Act, or paragraph 13(1ZB) of that Schedule so far as relating to that paragraph. Section 53(6) of the 1983 Act provides that the Secretary of State may require the Electoral Commission to (a) prepare a report on specified matters relating to the operation of any provision made under paragraph 1A of Schedule 2 to the 1983 Act, and (b) give the Secretary of State a copy of the report by no later than a specified date. Section 53(7) of the 1983 Act then provides that the Secretary of State must publish a copy of the report. This Order modifies sections 53(5) to (7) of the 1983 Act so that these references to the Secretary of State will be read as references to the Scottish Ministers in relation to the functions that will be exercised by the Scottish Ministers under article 5.

5. Territorial Extent and Application

This instrument extends throughout the United Kingdom.

6. European Convention on Human Rights

6.1 No Human Rights issues arise.

6.2 The Secretary of State for Scotland, the Rt Hon Alistair Carmichael MP, has made the following statement regarding Human Rights:

> *"In my view the provisions of the Scotland Act 1998 (Modification of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers etc.) Order 2015 are compatible with the Convention rights."*

7. Policy background

7.1 On 18th September 2014, the Scottish Independence Referendum took place and Scotland voted to stay part of the United Kingdom. The three pro-Union parties, the Conservatives, Liberal Democrats and Labour, all made a vow, in advance of the referendum, to devolve further powers to the Scottish Parliament. On 19th September 2014, the Prime Minister announced that Lord Smith of Kelvin had agreed to lead a Commission, working with the five parties represented in the Scottish Parliament, to agree what those new powers should be.

7.2 On 27th November 2014, the Smith Commission published its report detailing Heads of Agreement on further devolution of powers to the Scottish Parliament. The report records that the parties specifically called on the UK Parliament: "*to devolve the relevant powers in sufficient time to allow the Scottish Parliament to extend the franchise to 16 and 17 year old for the 2016 Scottish Parliamentary elections, should the Scottish Parliament wish to do so"*. In practical terms, this is a call for legislation devolving these powers before the end of this UK Parliament.

7.3 Although the parties called only for this early legislation to allow the Scottish Parliament to lower the minimum voting age in time for the 2016 Scottish Parliamentary elections, the UK and Scottish governments agreed that this Order would also devolve the power to reduce the minimum voting age to 16 for local government elections in Scotland at the same time (so that the Scottish Parliament, if it wishes to do so, can make this change too).

8. Consultation outcome

8.1 Although, because of time constraints, there has been no general consultation specific to this Order, the Order has been agreed by all the relevant departments within the UK government and the Scottish Government.

8.2 This Order is being brought forward as a consequence of agreement reached by the five parties represented in the Scottish Parliament. As mentioned in paragraph 7.1 above, the Smith Commission was convened on 19th September 2014 to take forward the further devolution commitment made by the three main UK parties. The Commission invited submissions from political parties, a wide range of business and civic organisations and the wider public to help guide its consideration of what further powers should be devolved to the Scottish Parliament. On 27th November 2014 the Commission published its report detailing Heads of Agreement on further devolution of powers to the Scottish Parliament. The Smith Commission Report can be viewed here: http://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf

9. Guidance

No additional guidance is required for this Order.

10. Impact

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

10.2 There is no impact on the public sector.

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

11. Regulating small business

The legislation does not apply to small businesses.

12. Monitoring & review

As the purpose of this Order is to amend the legislative competence of the Scottish Parliament and transfer executive competence for certain functions to the Scottish Ministers, no monitoring or review of the effects of this Order are required by the UK Government. Any primary or secondary legislation introduced in the Scottish Parliament will be scrutinised in the normal way.

13. Contact

Emma Lopinska at the Scotland Office Tel: 0131 244 9016 or email: emma.lopinska@scotlandoffice.gsi.gov.uk can answer any queries regarding the instrument.