EXPLANATORY MEMORANDUM TO

THE ELECTORAL REGISTRATION (DISCLOSURE OF ELECTORAL REGISTERS) (AMENDMENT) REGULATIONS 2014

S.I. 2014 No. 450

1. This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

These Regulations amend the Electoral Registration (Disclosure of Electoral Registers) Regulations 2013 (S.I. 2013/76) to allow electoral registration officers (EROs) throughout England, Wales and Scotland to undertake data matching, by making their registers available for comparison against data sets kept by the Department for Work and Pensions (DWP). The Regulations will extend the period during which EROs may conduct a trial run of the process for confirming existing electors who appear on those registers, in order to facilitate thorough testing of the Individual Electoral Registration Digital Service (IER DS) prior to the introduction of individual electoral registration.

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

3.1 None.

4. Legislative Context

4.1 Paragraph 1A of Schedule 2 to the Representation of the People Act 1983 (as amended by Schedule 2 to the Electoral Registration and Administration Act 2013) provides that provision may be made by regulations for the sharing and checking of information required to be provided by a person making an application for electoral registration.

4.2 In particular, paragraph 1A(1) enables provision to be made authorising or requiring a person to disclose information to another person for the purpose of assisting a registration officer (a) to verify information relating to a person who is registered or who is named in a registration application; (b) to ascertain the names and addresses of people who are not registered but who are entitled to be registered; or (c) to identify those people who are registered but who are not entitled to be registered. Paragraph 1A(2) provides that provision made under sub-paragraph (1) may authorise or require the person to whom the information is disclosed (a) to compare it with other information; (b) to disclose the results of the comparison to a registration officer for the purpose mentioned in that sub-paragraph.

4.3 Section 53(5) of the Representation of the People Act 1983 (as amended by Schedule 2 to the 2013 Act) provides that before making regulations containing

provision under paragraph 1A the Secretary of State must consult the Electoral Commission, the Information Commissioner and any other person the Secretary of State thinks appropriate.

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

4.5 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 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.

5. Territorial Extent and Application

5.1 This instrument does not extend to Northern Ireland.

6. European Convention on Human Rights

6.1 The Minister for Cities and the Constitution has made the following statement regarding Human Rights:

> In my view the provisions of the Electoral Registration (Disclosure of Electoral Registers) (Amendment) Regulations 2014 are compatible with the Convention rights.

7. Policy background

7.1 The Electoral Registration and Administration Act 2013 enables the Government to speed up the implementation of individual electoral registration: in order to modernise the electoral registration system and tackle fraud, electors will now be asked to register individually from 2014. Electors will be asked to provide identifying information which will be checked through matching in the IER DS before they are added to the electoral register. The process will replace the existing system of household registration.

7.2 Between 2011 and 2013 a series of data matching pilot schemes took place in a number of electoral areas across Great Britain. Participating EROs were enabled to match their electoral registers against data held by a range of public authorities, including DWP, HM Revenue and Customs (HMRC) and the Department for Social Development, in order to test the usefulness of the data matching process for improving the accuracy and completeness of electoral registers. EROs were able to review entries that appeared to be fraudulent or inaccurate and remove them from the register after review, if appropriate. They were also able to identify eligible but unregistered individuals and invite them to apply to register to vote.

7.3 The pilot work identified an additional potential use for data matching, namely as a mechanism for confirming existing electors for the purposes of IER. Individuals whose details could be matched against trusted public databases might be "passported" on to the new IER register without the need to make a new application for registration, making the process more efficient for the individuals concerned and for EROs. As a result, resources would be freed up to enable EROs to concentrate their attention on the much smaller group of people whose information could not be matched. Consequently, in February 2012 the Government announced that – subject to further testing – it was minded to use data matching to simplify the transition to IER for the majority of electors.

7.4 Subsequent testing confirmed the potential of confirmation data matching to ease the transition to IER, and in the summer of 2013 a dry run of the process carried out in every electoral area in Great Britain under The Electoral Registration (Disclosure of Electoral Registers) Regulations 2013 resulted in 78 per cent of electors being matched, with local data matching having the potential to add 7 per cent to this total. This means that most electors will not need to apply under IER unless their circumstances change (for example, if they move house) and the risk of a drop in the completeness of the register on the introduction of IER is significantly reduced.

7.5 The IER DS will be essential to the successful delivery of confirmation of existing electors and the verification of individual applications. The system is being developed and tested so as to be ready for use on the introduction of IER in England and Wales in June 2014, and the testing will need to include further confirmation work using real data. The 2013 regulations will allow the matching of data only up to and including 17th February 2014 (10th March 2014 for Scotland and Wales), which will not allow sufficient time for all of the necessary testing to take place. The purpose of the 2014 regulations will be to enable confirmation testing to continue until IER goes live, allowing thorough end-to-end testing of the system in order to ensure its readiness.

7.6 The 2014 regulations amend the 2013 regulations by extending the period in which data can be exchanged. The minister will continue to specify to EROs in writing, outside the regulations, requirements as to the timing, format, method of data transfer, storage and so on. The processing and disclosure requirements must be imposed before disclosure is required to be take place. The requirements will be in the form of a letter with an attachment which will set out the data matching and processing requirements.

8. Consultation outcome

8.1 The Electoral Commission and the Information Commissioner have been consulted on this instrument 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. The Electoral Commission responded with two comments: first, that it would be useful for the Commission to see any results from the tests and so it would welcome having statutory access to the results of the data comparison, and second, that the Commission would appreciate an explanation as to why, in the version of the draft Regulations upon which it was consulted, the period for disclosure of registers in Scotland was to end on 6th July 2014 (when IER will not go live in Scotland until 19th September 2014). On the first point, provision is now made in section 53 of the Representation of the People Act 1983 (inserted by paragraph 5 of Schedule 2 to the Electoral Registration and Administration Act 2013) for the Secretary of State to require the Electoral Commission to prepare a report on specified matters relating to the operation of any provision made under paragraph 1A of Schedule 2, and registration officers are required to comply with any request made by the Commission for information that is reasonably required in connection with the preparation of such a report. The Commission will be requested to prepare a report on the operation of this instrument appropriate to the nature of the testing that is to be carried out. On the Commission's second point, it is likely that some registration officers in Scotland will be carrying out their end-to-end testing rather later than their counterparts elsewhere, so an additional four weeks was being allowed for that. On further consideration, however – and having regard to the test schedules as they now stand – it was decided to extend the disclosure period until immediately before IER goes live in Scotland. This will bring the position for Scotland into line with that for England and Wales. Cabinet Office has responded to the Commission accordingly.

8.2 The Deputy Information Commissioner and Director of Data Protection has responded that with regard to the latest proposed Regulations the Information Commissioner's Office (ICO) recognises the considerable importance of the confirmation and verification process in facilitating the transition to IER in 2014. The ICO has previously welcomed the fact that through a confirmation and verification process it will be possible to prepopulate many electoral registers. This will result in large numbers of electors not being required to register under IER, thereby removing the need for them to provide further personal data for identification purposes. Having considered the purpose of this specific regulation, the ICO does not consider that it raises any new or significant data protection or privacy issues.

8.3 This instrument has also been developed in partnership with DWP, which has agreed to its inclusion in the confirmation testing by way of these Regulations, as have HMRC and the Department for Social Development. None of the three Departments wished to raise any legal or other concerns about the regulations.

9. Guidance

9.1 Guidance will continue to be issued to registration officers as and when required on all aspects of the transition to individual registration, including the preparations for confirmation data matching.

10. Impact

10.1 An overall Privacy Impact Assessment for individual electoral registration, including the use of data matching to confirm existing electors on the register, is at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61333/Privacy-Impact-Assessment-090512.pdf.

10.2 A privacy impact assessment for the confirmation matching to be undertaken under these Regulations can be found at Annex A.

10.3 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 Under section 53(6) of the Representation of the People Act 1983 (inserted by the Electoral Registration and Administration Act 2013), the Secretary of State has the power to require the Electoral Commission to produce a report relating to disclosure of information to another person for the purpose of assisting a registration officer.

13. Contact

Rose Ashley at the Cabinet Office, tel 020 7271 6634: email Rose.Ashley@cabinet-office.gsi.gov.uk can answer any queries regarding the instrument.

Annex A

Privacy Impact Assessment – Confirmation Data Matching

1. Approach

This Privacy Impact Assessment (PIA) builds on the PIA conducted at the Bill stage of the Electoral Registration and Administration Act 2013 (the 2013 Act)[1], with a specific focus on exploring the data protection issues surrounding the power enabling the Secretary of State to make Regulations requiring Electoral Registration Officers (EROs) to disclose their registers for comparison with other data for the purposes of verifying information relating to a person who is registered or who is named in an application for registration, ascertaining the names and addresses of people who are not registered but who are entitled to be registered, or identifying those people who are registered but who are not entitled to be registered.

The Electoral Registration (Disclosure of Electoral Registers) Regulations 2013 ("the 2013 regulations"), made on 26th March 2013, have enabled a "confirmation dry run" to take place throughout Great Britain. This has involved the matching of electoral registers against other data sets in order to test the process for confirming existing electors on the register in the transition to individual electoral registration (IER). The legal gateway provided for the matching of data under the 2013 regulations remains open until 17th February 2014 (in England) and 10th March 2014 (in Scotland and Wales). The confirmation dry run carried out under the 2013 regulations demonstrates that on the transition to IER it should be possible to confirm 78 per cent of the electorate on the register (local data matching has the potential to increase this figure by a further seven per cent).

The IER Digital Service (IER DS) is the system that will perform both confirmation and verification data matching functions under IER. In order to conduct essential end-to-end testing of the IER DS it will be necessary to continue confirmation data matching after the powers in the existing regulations expire, up until the system goes live in June 2014. The Electoral Registration (Disclosure of Electoral Registers) (Amendment) Regulations 2014 (the Regulations) will amend the 2013 Regulations to allow the matching of electoral registers against data held by the Department for Work and Pensions (DWP) (including data held on behalf of HM Revenue and Customs and the Department for Social Development) to continue up to and including 9th June 2014 in relation to England and Wales and 18th September 2014 in relation to Scotland.

Those taking part in confirmation data matching will be EROs and DWP, all of whom are well used to the handling, processing and security of personal data and all of whom have already produced their own PIAs for confirmation data matching. In addition, however, the Regulations make provision for the Lord President of the Council to impose requirements as to the processing of information (including its transfer, storage, destruction and security) before the registration officer discloses the register. They also provide that where such requirements are imposed, information must be processed in accordance with them. In

[1] The PIA completed for the Bill stage of the 2013 Act – *Individual Electoral Registration: Privacy Impact Assessment Report* (May 2012) – is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61333/Privacy-Impact-Assessment-090512.pdf .

addition, Cabinet Office will expect those carrying out data matching operations to comply with the relevant legislation and the data protection principles that personal data must be:

- Fairly and lawfully processed;
- Processed for specific and lawful purposes and not further processed in a way that is incompatible with the original purpose;
- Adequate, relevant and not excessive;
- Accurate and up to date;
- Not kept for longer than is necessary;
- Processed in accordance with the data subject's rights;
- Kept secure;
- Not transferred to countries outside the European Economic Area unless an adequate level of protection is ensured or an exemption applies.

This PIA explains in greater detail how the privacy issues which may arise from data matching are to be addressed and the risks mitigated.

The PIA is a living document and will continue to be updated as data matching policy and processes develop.

2. Background

The Coalition Agreement contains a promise to "reduce electoral fraud by speeding up the implementation of individual voter registration". This is a fundamental change to our system of electoral registration; it will improve accuracy, requiring electors to register to vote individually rather than by household. Before an individual can be added to the register, they will need to be verified through the cross checking of their information against trusted public data sources. This change will make the system less vulnerable to fraud and will provide an opportunity to support the completeness of the register by tackling under-registration.

EROs are already legally entitled under Regulation 35 of the Representation of the People (England and Wales) Regulations 2001 to access any dataset held by the local authority that appointed them. They already make use of the following datasets:

- the register of births and deaths;
- council tax records;
- registers of households in multiple occupation;
- local land and property gazetteers;
- housing benefit applications;
- lists of persons in residential and care homes; and - where allowed –
- details of "attainers" (those aged 16 or 17) held by education departments[2].

[2] In England, only EROs appointed by Unitary Authorities have access to all of the council records for the area. In two-tier areas education records are not held by District Councils but by County Councils; EROs appointed by a District Council are therefore not able to access those records. There is an intention to take forward legislation to address this restriction.

However, there are limitations on what can be achieved under the existing statutory duties. Currently, the Secretary of State may make regulations allowing EROs to "inspect" records held by *any* public authority; such regulations may only permit a registration officer to inspect records in the form in which they are held. This is only permitted for the purposes of `registration duties`, the relevant condition is provided for by paragraph 5 of schedule 2 of the Data Protection Act 1998.They do not place an obligation on another public authority to supply the registration officer with information at a time and in a format which is useful to them, or to put in place a tailored regime for the matching of information.

Data matching pilot schemes were carried out in 2011, using powers in the Political Parties and Elections Act 2009. One of the findings from the pilot schemes was that when the pilot areas cross matched their electoral register against trusted public databases, an average of 66 per cent of entries could be confirmed to a sufficient degree of certainty to verify an individual's information as accurate. A second set of pilot schemes, focused specifically on confirmation matching, took place in 2012 and produced similar results. On the basis of that evidence the new confirmation approach was developed to simplify the transition to IER for the majority of individuals, and the confirmation dry run in the summer of 2013 indicated a match rate significantly higher than that suggested by the pilots.

3. Confirmation data matching

Under the new approach, all electoral registers will be cross matched against trusted public data sources. Those electors whose entries on the register can be individually matched will be confirmed as entries on the new IER register and will need to take no further action (there will continue to be individual registers held for each Local Authority rather than a central register being created). Those individuals whose details cannot be matched will receive a personally addressed invitation. In returning this, they will be asked to provide information which will be used to verify that they are a genuine person and entitled to be registered. Only once a person has been verified can they be added to the register. This will also apply for new applications made during and after the transition period has finished around 1 December 2015. It must be noted that a person's ability to present certain personal information for the purposes of verification is not a determining factor of their right to register, e.g. if a person does not have a National Insurance number it will not prevent them from being able to register as alternative methods of verification will be available.

4. Personal data to be used

In the confirmation data matching to be undertaken under these Regulations, individuals' information held on the electoral register will be compared against the name, address and postcode of individuals appearing in databases kept by the Secretary of State for Work and Pensions, namely -

(a) data relating to social security (including information kept on behalf of the Department for Social Development); and

(b) data relating to working tax credit, child tax credit and child benefit kept on behalf of HM Revenue and Customs.

5. Data protection issues and risks of data sharing

The Government takes the handling of personal data and prevention of identity fraud very seriously. The changes that are being made to electoral registration (and which received cross party support) are intended to prevent fraud and maintain the integrity of the electoral system. This section provides details of data protection issues and risks for data sharing.

The following table sets out data protection issues of data sharing:-

Issue	**Description**
Retention and deletion of data received.	Data management policy will clearly set out retention and disposal schedules and will conform to the data protection principle of not keeping data for longer than is necessary. The Regulations provide for the imposition of requirements as to the processing of information, including its storage and destruction.
Incorrect data from Public Authority	The action to be taken in the event of incorrect data being received from DWP will be determined according to the data management policy.
Data received results in identification of fraudulent activity.	EROs will already have procedures in place for dealing with instances of suspected electoral fraud; data sharing merely provides an alternative way in which such instances may be identified and existing procedures will be followed.

The table below sets out data protection risks of data sharing:-

Risk Description	**Controls/Mitigation**
Data security breach – data is mishandled by either the ERO or other authorised users.	Data management policy in place and monitored. 2013 Act and subsequent regulations provide for the imposition of requirements as to the processing of information, including its security. Engagement with IT suppliers to ensure systems appropriate to protect data. Continued engagement with key stakeholders to ensure security of personal data is built into policy and processes.
Data is used for unauthorised purposes or shared inappropriately.	Data management policy in place and monitored. Will conform to data protection principle of data being processed for specific and lawful purposes. Engagement with IT suppliers to ensure systems appropriate to protect data. Continued engagement with key stakeholders to ensure security of personal data is built into policy and processes. Regulations make provision for an offence of onward disclosure of information.

Risk Description	Controls/Mitigation
Access to the data – data matching leads to the identity of an anonymously registered elector being disclosed.	EROs are to ensure that anonymous electors are omitted from the data sent to Cabinet Office and DWP.
Storage of the data received – inadequate storage of the data could lead to loss.	Data management policy in place and monitored. Will conform to data protection principle of data being kept secure. 2013 Act and Regulations provide for the imposition of requirements as to the processing of information, including its storage and security.

6. How confirmation matching will work

The process expected to be used for confirmation is as follows:

Stage One – ERO to disclose Electoral Register to the Cabinet Office IER Service

It is envisaged that in most instances the ERO will securely transfer the Electoral Register into the IER Digital Service operated by Cabinet Office.

Stage Two – Cabinet Office sends Electoral Register data to DWP

DWP will compare its data with the electoral register, using the data sets and the fields specified in the Regulations, to establish successful matches, uncertain matches and unsuccessful matches. The outcome of the data matching process will form an Exception Report which will be securely transferred back to the ERO.

DWP will:-

- transfer the data to the ERO - via an appropriate, secure method
- only be allowed to transfer data of relevance to the request
- be required to extract and transfer the data securely. (Details of how this will be undertaken will be provided for in each individual PIA).

Stage Three – DWP discloses the results of the comparison (matching reports) to the Cabinet Office

Stage Four - ERO receives and processes the matching reports

The ERO will receive their matching report from DWP via the Cabinet Office IER Service.

The ERO will establish:

(a) which individuals on the register can be confirmed on the IER register on the basis of the results of the matching report; and

(b) which individuals' records do not match: they will need to be sent personally addressed invitations to provide their personal details.

7. Data Matching impact on an individual

We recognise that individuals are likely to have concerns about the implications of their personal data being shared between organisations. However, the data matching process provided for by the Regulations will not involve the transfer of any personal data other than Name, Address (including postcode) and Date of Birth.

There is unlikely to be any significant additional data protection impact because individuals are already required by law to provide EROs with the above information in order to populate the electoral register. Under the existing system this process takes place on an annual basis (during the 'annual canvass', which has usually taken place in the autumn).

Individuals who do not wish to be on the electoral register are still required by law to fill in the annual canvass form accurately. There is no option to opt out from registration for those eligible to vote. Consequently, these provisions do not have any significant further impact on an individual's privacy than the current legislative requirement – they simply support EROs in carrying out their legal duty to maintain the accuracy and completeness of the electoral register.

Some individuals may be registered to vote on the basis of their actual address while choosing to use a different address for correspondence purposes, with the result that the address held by other public authorities will not match that held by the ERO. It is possible that people in this position could find that they are not matched and confirmed on the IER register and are required to provide their personal details despite having already correctly completed all necessary forms, but any impact is expected to be low.

It is nevertheless acknowledged that the very processes of data matching and data sharing carry some degree of inherent risk. Any additional risk is however mitigated by the specific measures that will be contained in the data management policy and in the requirements as

to processing of information which may be imposed by the Lord President of the Council under the Regulations.

8. Consultation and general communications activity

The following organisations and key stakeholders have been involved in the assessment of data protection risks for the IER policy as contained in the 2013 Act:

- Information Commissioner's Office
- Metropolitan Police
- Association of Chief Police Officers
- Serious Organised Crime Agency
- HM Revenue and Customs
- Department for Work and Pensions
- Electoral Commission
- Association of Electoral Administrators
- Society of Local Authority Chief Executives
- EROs

9. Conclusion

The continuation of confirmation data matching under the Regulations is likely to benefit EROs by allowing thorough end-to-end testing of the IER DS, assuring an effective and successful roll-out of the digital and IT arrangements which will be needed to support IER from mid-2014. It will also benefit the large majority of electors for whom the transition to IER will be simplified because they will be transferred to the IER register at the transition to IER without having to make a new application and/or provide personal identifiers. That in turn will enable EROs to concentrate their resources on reaching those individuals whose details do not match, or who are potentially eligible to register to vote but are currently missing from the register. It is appreciated that individuals may be concerned about the possible implications for their privacy and the security of their personal data, but any small additional risk that may arise as a result of confirmation matching will be mitigated by the wide range of safeguards explained in this Privacy Impact Assessment.