EXPLANATORY MEMORANDUM TO

THE DRAFT ELECTORAL REGISTRATION (DISCLOSURE OF ELECTORAL REGISTERS) REGULATIONS 2013

2013 No. 760

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 will allow electoral registration officers 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 purpose of the matching will be to enable registration officers to conduct a trial run of the process for confirming existing electors who appear on those registers, prior to that process being used to ease the transition to individual electoral registration in 2014.

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 Act (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 Political and Constitutional Reform has made the following statement regarding Human Rights:

In my view the provisions of the Electoral Registration (Disclosure of Electoral Registers) Regulations 2013 are compatible with the Convention rights.

7. Policy background

7.1 The Government has made a commitment to introduce legislation to speed up the implementation of individual electoral registration. The Electoral Registration and Administration Act 2013 enables the Government to amend the existing position, so that electors will be asked to register individually from 2014 in order to modernise the electoral registration system and tackle fraud. Electors will be asked to provide identifying information which will be checked before they are added to the electoral register. The process will replace the existing system of household registration.

7.2 As part of the preparations for the transition to individual registration, from June to November 2011 electoral registration officers ran 22 data matching schemes, enabled by the Electoral Registration Data Schemes Order 2011 (S.I. 2011/1466) made under the powers in the Political Parties and Elections Act 2009. Their aim was to see whether existing public authority databases could be used to improve the accuracy and completeness of the electoral register. The schemes were designed to identify individuals not on the electoral register who were entitled to be registered, as well as to show up false, duplicate and inaccurate registrations. Electoral registration officers were able to review entries that appeared to be fraudulent or inaccurate and remove them from the register following the review if appropriate. They were also able to identify eligible but unregistered individuals and invite them to apply to register.

7.3 Separate evaluations of the 2011 schemes were subsequently carried out by the Electoral Commission and the Cabinet Office. Both concluded that data matching might have the potential to supplement activity by electoral registration officers and assist in the transition to individual electoral registration, but that further, well-constructed trials were needed in order to

better evaluate that potential. The outcome of those further schemes will be known in mid-2013.

7.4 In the course of the 2011 pilots however an additional potential use was identified for data matching, namely as a mechanism for confirming existing electors for the purposes of individual electoral registration. This would allow individuals whose details could be matched against trusted public databases to be "passported" on to the new individual electoral registration register without the need to make a new application for registration, making the process more efficient for the individuals concerned and for electoral registration officers. As a result, resources would be freed up to concentrate on the much smaller group of people whose information could not be matched. In the *Government Response to pre-legislative scrutiny and public consultation on Individual Electoral Registration and amendment to Electoral Registration law* (February 2012, Cm 8245) the Government announced that, subject to further testing, it was minded to use data matching to simplify the transition to individual electoral registration for the majority of electors.

7.5 Consequently, further, more specific testing of confirmation matching was carried out in the autumn of 2012 under the Electoral Registration Data Schemes Order 2012 (S.I. 2012/1944) and subsequently under the Electoral Registration Data Schemes (No 2) Order 2012 (S.I. 2012/3232). It has indicated that, on average, it should be possible for registration officers to pre-populate around 70 per cent of their register without writing out to the electorate, meaning that the majority of those on the register would not have to make new registration applications or provide personal identifiers as soon as individual registration is introduced.

7.6 The Government therefore now intends that this confirmation data matching process will be used by registration officers to ease the transition to Individual Electoral Registration in 2014. Whereas the pilot schemes were carried out only in a few local areas in order to test the potential usefulness of data matching for improving the accuracy and completeness of electoral registers, the present Regulations will allow all registration officers in Great Britain to make practical preparations for the introduction of confirmation matching by enabling a full-scale "dry run" of the process. While the activity undertaken during the dry run would have no effect on the registration of any individual, it will provide registration officers with intelligence about the state of their registers and their preparedness for the digital transfer of information, so that they can take any necessary action ahead of the final household canvass planned for early 2014. It is therefore important that this "dry run" commences by the summer of 2013.

7.7 In general the Regulations adopt a similar approach to the statutory instruments made in 2011 and 2012 to enable the data matching pilot schemes under the 2009 Act, although they are made under the powers contained in the 2013 Act. An important difference is that the Regulations make no requirement as to the processing of the data, whereas in all of the three orders made under the 2009 Act, Article 4(c) required that in relation to each data scheme, the data holding authority and the registration officer must have agreed in writing requirements as to the processing of information, including its transfer, storage, destruction and security. The 2013 Act provides the Lord President of the Council with broad powers in relation to how processing and disclosure requirements may be imposed. The Regulations therefore provide that, rather than requiring an

agreement in writing as to processing and disclosure of the information, the Secretary of State may simply specify to registration officers in writing, outside the Regulations, requirements as to the timing, format, method of data transfer, storage and so on. The Regulations require that the processing and disclosure requirements must be imposed before disclosure is required to take place. These will be in the form of a letter with an attachment which will set out the data matching and processing requirements: they will be similar to the agreed requirements in the pilot scheme agreements but will not require the agreement of the local authority. This will allow important flexibility if circumstances change (for example, if one proposed IT solution for data transfer is replaced by another).

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 supports the opportunity offered by confirmation of existing electors to make the new registration process easier for voters while not losing the key benefits of improving the accuracy and completeness of registers. The Commission also supports the proposal that EROs should conduct "dry run" trials of the confirmation process later in 2013. The Commission has recommended that it should be under an express duty to evaluate the confirmation trials, with a power to require those concerned to provide relevant information. The Cabinet Office and the Commission have discussed this point and have subsequently agreed that the general power to require a report, set out in primary legislation, is sufficient. The Commission has also commented on the breadth of the information that may be used in confirmation matching under the Regulations, and has asked that the Government should clarify how it intends to ensure the data-match results from the trials will be communicated to EROs in a way which will allow for consistent interpretation. The Cabinet Office produced guidance for matching as part of the data-matching pilot, which was published alongside the preliminary findings. This guidance will be revised to reflect the enhancements that have been made to the process as a result of the pilots, and will be issued to all local authorities as part of the general guidance on the confirmation dry-run.

8.2 The Information Commissioner's Office (ICO) has welcomed the way in which previous pilot schemes and the confirmation "dry run" enable the amount of personal data to be collected from electors to be minimised, in accordance with the requirement of the Data Protection Act that personal data should be relevant and not excessive with regard to the purpose for which it is processed. The ICO also recognises the benefits of arrangements relating to security standards, storage and other matters being dealt with in agreements and other documentation, rather than in legislation: this will facilitate future review and consultation and will be particularly important in future as technology develops and threats to information change. The ICO considers it essential that EROs and government departments are fully aware of their roles and obligations in relation to the protection of personal data, and that these safeguards and procedures are in place before data sharing begins. The ICO welcomes the limitations placed on disclosure of information set out in Regulation 5, noting

that in addition to electoral purposes disclosure will be restricted to any civil or criminal proceedings.

8.3 This instrument has also been developed in partnership with DWP, which has agreed to its inclusion in the confirmation data matching by way of this Order. The Association of Electoral Administrators and the Scottish Assessors Association have also been consulted.

9. Guidance

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

10. Impact

10.1 An overall Impact Assessment for individual electoral registration, including the confirmation matching option, is available on the Cabinet Office website at http://www.cabinetoffice.gov.uk/sites/default/files/resources/IER-Impact-Assessment-090512.pdf A full regulatory impact assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen.

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

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & 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 the 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

Jon Hoare at the Cabinet Office, tel 07824 475441: email: Jon.Hoare@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 Regulations), to be made under that power, will enable confirmation data matching (i.e. matching electoral registers against other data sets in order to confirm existing electors on the register in the transition to individual electoral registration (IER)) across Great Britain between the date on which they come into force and 17th February 2014 (in England and Wales) or 10th March 2014 (in Scotland). This is to help EROs to make practical preparations in advance of "live" confirmation later that year, and to allow the roll-out of the digital and IT arrangements which will be required to support IER from 2014.

Those taking part in confirmation data matching will be EROs and the Department for Work and Pensions (DWP), all of whom are well used to the handling, processing and security of personal data and all of whom will be producing their own PIAs for this project. 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 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.

[1] The PIA completed for the Bill stage of the 2013 Act – *Individual Electoral Registration: Privacy Impact Assessment Report* (May 2012) – is available on the Cabinet Office website at http://www.cabinetoffice.gov.uk/sites/default/files/resources/Privacy-Impact-Assessment-090512.pdf

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].

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.

Provisions in sections 35 and 36 of the Political Parties and Elections Act 2009 (the 2009 Act) enable the Secretary of State to pilot schemes in which specified public authorities are required to provide specified EROs with specified data for the purpose of fulfilling their registration duty. The aim of the pilot schemes is to test the usefulness of various public authority data sets for improving the accuracy and completeness of electoral registers.

Data matching pilot schemes were carried out in 2011, using the powers in the 2009 Act. One of the findings from those 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 this evidence, a new approach has been developed to simplify the transition to IER for the majority of individuals.

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

[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.

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 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

Issue	Description
	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 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 build into policy and processes. Regulations make provision for an offence of onward disclosure of information.
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 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 these 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

Conducting confirmation data matching under the 2013 Regulations is likely to benefit EROs by providing them with intelligence about the state of their electoral registers which will enable them to take any necessary action ahead of the final, "old-style" household canvass, so helping to maximise the number of electors whose details can be matched when confirmation matching goes live. It will allow the roll-out of the digital and IT arrangements which will be needed to support IER from 2014. It will also, in the longer run, benefit the 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.