EXPLANATORY MEMORANDUM TO

THE EUROPEAN PARLIAMENT (DISQUALIFICATION) (UNITED KINGDOM AND GIBRALTAR) ORDER 2009

2009 No. 190

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

2. Purpose of the instrument

2.1 Gibraltar has been combined with the South West electoral region for England to form a new electoral region ("the combined region") for the purposes of European Parliamentary elections. This Order disqualifies certain classes of people connected with Gibraltar from being MEPs.

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

3.1 None

4. Legislative Context

4.1 The European Parliament (Representation) Act 2003 ("the 2003 Act") enfranchised the Gibraltar electorate for the purposes of European Parliamentary elections. The European Parliamentary Elections (Combined Region and Campaign Expenditure)(United Kingdom and Gibraltar) Order 2004 (S.I. 2004/ 366) provides that Gibraltar is combined with the South West Electoral region for the purposes of European Parliamentary elections.

4.2 This Order revokes and replaces the European Parliament (Disqualification) (United Kingdom and Gibraltar) Order 2004 (S.I.2004/1246) ("the 2004 Order"), which disqualified certain classes of people connected with Gibraltar from being MEPs. This has been necessary as a result of the constitutional changes which have been made in Gibraltar since the 2004 European Parliamentary election.

4.3 This Order, along with the European Parliamentary Elections (Amendment) Regulations 2009, is one of a number of instruments which prepare for the European Parliamentary election to be held on 4th June 2009.

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom and Gibraltar.

6. European Convention on Human Rights

6.1 Michael Wills (Minister of State) MP has made the following statement regarding Human Rights:

6.2 In my view the provisions of the European Parliament (Disqualification) (United Kingdom and Gibraltar) Order 2009 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 This Order is necessary in the light of the Gibraltar Constitution Order 2006 by virtue of which Gibraltar Ordinances are now known as Acts and the Assembly is now known as the Parliament.

7.2 The Order is part of the secondary legislation which aims to ensure that the United Kingdom fulfils its obligation to enable the people of Gibraltar to vote in the European Parliamentary elections. In 1999, the European Court of Human Rights decided, as a result of a legal challenge to the UK from a Gibraltar resident, that the European Parliament formed a part of the Gibraltar's legislature and that by failing to organise European elections in Gibraltar, the United Kingdom was in breach of article 3 of the First Protocol to the European Convention on Human Rights. The 2003 Act provides for the Gibraltar electorate to be enfranchised for elections to the European Parliament.

7.3 Under section 10 of the European Parliamentary Elections Act 2002 ("the 2002 Act") there are other classes of people in the UK who are disqualified for the office of MEP – for example, people who have been declared bankrupt. This Order provides for the classes of people connected with Gibraltar who are disqualified from being an MEP so that the provisions for Gibraltarians mirror those in the UK.

7.4 Article 3, paragraph (a) specifies that persons shall be disqualified from the office of MEP if they has been adjudged or otherwise declared bankrupt under any law in force in Gibraltar and have not been discharged. The class described here are disqualified from being members of the Gibraltar Parliament, and bankrupts in the UK are not entitled to be MEPs by virtue of section 10(1)(a) of the 2002 Act.

7.5 Article 3, paragraph (b) disqualifies Gibraltar public officers such as judges or members of the police, the equivalent of whom would be disqualified under Gibraltar law from being members of the Gibraltar Parliament, whilst enabling those such as teachers or junior administrative staff who are not disqualified under United Kingdom law to be MEPs.

7.6 Article 3, paragraph (c) disqualifies the clerk of the Parliament of Gibraltar who under the terms of the 2002 and 2003 Acts is both the electoral registration officer and local returning officer for the Gibraltar part of the region. In the United Kingdom similar persons are disqualified.

7.7 Article 3, paragraph (d) disqualifies people who are disqualified for election as an elected member of the Parliament of Gibraltar by virtue of having committed offences connected with the elections to the Parliament of Gibraltar. In the United Kingdom similar persons are disqualified.

7.8 Article 3, paragraph (e) disqualifies those who have been found guilty of one or more offences – whether in Gibraltar or elsewhere – and sentenced or ordered to be imprisoned indefinitely or for more than one year and are detained in Gibraltar or are unlawfully at large. This provision is similar to one of the disqualifications for the Parliament of Gibraltar. In the United Kingdom similar persons are disqualified from the House of Commons.

8. Consultation outcome

8.1 The Government of Gibraltar and the Electoral Commission have been consulted on the Order. Both are content.

9. Guidance

9.1 The Electoral Commission and the Government of Gibraltar will ensure that electoral administrators are provided with guidance in relation to the provisions contained within the Order.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 We will keep the Order under review by liaising with the Electoral Commission, the Regional Returning Officer for the South West region (which includes Gibraltar) and the Chief Secretary for the Government of Gibraltar.

13. Contact

Paul Brunton at the Ministry of Justice Tel: 020 3334 3778 or email: paul.brunton@justice.gsi.gov.uk can answer any queries regarding the instrument.