EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (SUPPLY OF INFORMATION) REGULATIONS 2014

2014 No. 2764

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

2.1 These Regulations relate to Individual Electoral Registration (IER), the new system for registering electors for parliamentary and local government elections. They permit certain registered political parties to obtain information as to whether a person with an entry on the register is individually registered during the transition to IER. This information will allow political parties to assist in promoting individual registration among existing electors who will eventually come off the register if they are not individually registered.

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

3.1 None

4. Legislative Context

4.1 These regulations are made under the powers conferred by section 53(1) and (3) of, and paragraphs 10B(1) and (2) and 11A of Schedule 2 to, the Representation of the People Act 1983. Because the Regulations will in practice be of limited duration, they are contained in a free-standing instrument rather than in the main regulations on electoral registration and access to registers, which are of general application.

5. Territorial Extent and Application

5.1 This instrument extends to Great Britain.

6. European Convention on Human Rights

6.1 The Minister of State at the Cabinet Office has made the following statement regarding Human Rights:

In my view the provisions of the Draft Representation of the People (Supply of Information) Regulations 2014 are compatible with the Convention rights.

7. Policy background

7.1 The Electoral Registration and Administration Act 2013 introduces a new system for the registration of parliamentary and local government electors. Political parties and certain other bodies will continue to be able to have access to the register of electors for specified purposes, but the register will not

indicate whether or not an elector with an entry in the register is individually registered – that is to say the entry is as a result of the elector having made an application under the new system or is a previous entry which has been confirmed through matching the information with other publicly-held data. These Regulations allow registered political parties other than minor parties, as defined in section 160(1) of the Political Parties, Elections and Referendums Act 2000, and people nominated to act for parties in particular constituencies, to request a list of electors in a constituency that includes an indication of whether that person is individually registered. This information may be requested once by each party and person in relation to each constituency and only within a specified time period: 1 January to 27 February 2015 in England and Wales and 2 March to 10 April 2015 in Scotland (where the transition to IER is taking place on a later timescale). Electoral Registration Officers (EROs) must provide the information if it is held in 'data form' (i.e. as an electronic data file) within 14 days of receiving this request.

7.2 This information will be available only for electoral registration purposes (or in civil or criminal proceedings), allowing the parties to use it to promote registration under the new IER system. Under the terms of the 2013 Act, those electors who are not confirmed on the register through data-matching or do not make a successful IER application will be removed from the register following the second or third transitional canvass (i.e. in December 2015 or December 2016). These Regulations allow parties to assist in increasing the numbers of IER entries on the register during the transition.

7.3 The use of this information is restricted to the period up to 7 May 2015, the expected date of the next UK Parliamentary Election; the period before General Elections is usually the peak time for new applications, meaning that an increased proportion of electors are expected to have registered under IER by 7 May and the information provided under these Regulations will be out of date.

7.4 Special category electors (such as those registered through service or overseas declarations or declarations of local connection) are excluded as they are not normally registered at their place of residence and their registration cycle is different from that for other electors. Anonymous electors are excluded for reasons of security.

8. Consultation outcome

8.1 The Electoral Commission has been consulted on this instrument as required by section 7(1) of the Political Parties, Elections and Referendums Act 2000. The Electoral Commission's response to the formal consultation asked for clarification, explanation or a change in regulations on a number of points.

8.2 The Government explained that minor parties and independent representatives were excluded because they do not have a wide role in electoral registration currently, and would be even less likely to make full use of this particular data. On balance, it was felt best to restrict the additional information to those most able to make use of it for the purposes of electoral registration.

8.3 The references in the Explanatory Memorandum to registered political parties and local constituency parties have been clarified.

8.4 Given that EROs will be writing in December 2014 to existing electors who have been asked to make an IER application and who have not yet done so and who will have therefore lost their entitlement to an absent vote, it was considered that starting the window from 1 January 2015 in England and Wales and 2 March 2015 in Scotland, would be more appropriate than starting it on 1 December 2014. The Cabinet Office's Expert Panel of Electoral Administrators suggested that the window from 1 January 2015 in England and Wales and 2 March 2015 in Scotland would be appropriate for the information to be made available. It was also considered that the information would be more useful if it was made available closer to the General Election.

8.5 Consideration is being given to issuing guidance to political parties to ensure that making information on electors' IER status available does not cause unclear or mixed messages about what electors need to do. The Government has explained that the instrument does not seek to impose limits on which activities by political parties may constitute promoting electoral registration amongst eligible electors as we feel that would be inappropriate to set out in law. The Regulations make clear that the information must be used for the purposes of registration only, which is narrower than the use of the register, which is for electoral purposes.

8.6 The Government has confirmed that the powers under which these Regulations are being made does not include power to create criminal offences. However, the offences in section 55 of the Data Protection Act 1998 (unlawful obtaining etc. of personal data and selling unlawfully obtained data) would apply to what happens under these Regulations. The maximum fines are the same as that for the offence of misuse of the electoral register.

8.7 Consultation about the format that electoral registers are currently supplied in has established that both Electoral Management Systems suppliers and the parties will be able to access the information in data form. This is expected to include a range of commonly used electronic formats in which the electoral register is currently supplied.

8.8 The Government has explained that the power to make the Regulations derives from paragraph 10B of Schedule 2 to the Representation of the People Act 1983, which allows regulations to be made dealing with the provision of the electoral register, 'and other documents'.

8.9 The Information Commissioner (ICO) has also been consulted on these Regulations. The ICO did not consider that they raised any new or significant data protection or privacy issues. They did request that any guidance given on the Regulations make reference to the ICO's data sharing code of practice, which we will include, if Cabinet Office issues guidance on the Regulations. This request has also been passed to the Electoral Commission should the Commission issue guidance around the supply of the registers in 2014/15.

8.10 The Government has confirmed that it would be possible, after 7 May 2015, to make a further instrument making the information available again, were the transition to continue into 2016.

9. Guidance

9.1 The Electoral Commission will continue to issue guidance to EROs about electoral registration, including all aspects of the operation of IER.

10. Impact

10.1 An overall Privacy Impact Assessment for individual electoral registration is at https://www.gov.uk/government/publications/individual-electoral-registration-impact-assessment.

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

10.3 A separate full regulatory impact assessment has not been prepared for this instrument because no impacts on the private or voluntary sectors are foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 These Regulations make a one-off change allowing political parties access to certain information about electors pertinent to the transition to IER. No monitoring or review of its effect is planned.

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.