EXPLANATORY MEMORANDUM TO

THE SCOTTISH PARLIAMENT (CONSTITUENCIES AND REGIONS) ORDER 2010

2010 No. 2691 (S. 8)

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order gives effect, without modifications, to the recommendations contained in the Report on the First Periodic Review of Scottish Parliament Boundaries by the Boundary Commission for Scotland. It defines the Scottish Parliament constituencies (other than those of the Orkney Islands and the Shetland Islands) including their names, boundaries and status. It also defines and names the Scottish Parliament regions.

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

3.1 The Order will textually amend Schedule 1 to the Scotland Act 1998 ("the 1998 Act") to replace provisions which define the existing constituencies and regions by reference to other instruments. Scotland Office considers this to be within scope of the enabling powers in paragraph 6(1) of that Schedule as the Order would otherwise be unable to give effect to the terms of the Boundary Commission's report. The Scotland Office recognises that the enabling powers could have been more clearly expressed so as to permit the amendment of those provisions. However, paragraph 6(1) of that Schedule and section 113(5) and (6) of the Scotland Act must be read so as to allow such textual amendment as any other reading would deprive the Scottish Parliament (Constituencies) Act 2004 ("the 2004 Act") of any meaning.

4. Legislative Context

4.1 The draft Order is laid before Parliament under paragraph 3(9) of Schedule 1 to the Scotland Act 1998 as amended by the 2004 Act. This is the first time the powers in Schedule 1 have been so used.

4.2 Schedule 1 to the 1998 Act (as amended) currently defines the constituencies and regions, but provides (at paragraph 3) for periodic reviews by the Boundary Commission for Scotland[1] which are to be given effect through Orders in Council. (The constituencies of the Orkney Islands and the Shetland Islands are excluded from the scope of those reviews: paragraph 3(1)). Paragraph 3(3) and (11) of Schedule 1 require the Boundary Commission to submit these reports to the Secretary of State and, where they recommend an alteration to constituency boundaries, lay them before the

[1] Schedule 1 to the 1998 Act makes reference to the Electoral Commission and to the Boundary Committee for Scotland. In terms of Section 1(2) and (3) of, and Schedule 2 to, the 2004 Act, these are to be read as references to the Boundary Commission for Scotland until the commencement of section 16 of the Political Parties, Elections and Referendums Act 2000. Section 16 was repealed by the Local Democracy, Economic Development and Construction Act 2009 and references to the Electoral Commission and the Boundary Committee for Scotland must continue to be read as references to the Boundary Commission for Scotland.

Scottish Parliament. The Secretary of State is then required to lay the report before Parliament. The Secretary of State is required, as soon as practicable after submission of the report, to lay before Parliament the draft of an Order in Council giving effect to the recommendations contained in the Report.

4.3 Unlike the position under the Parliamentary Constituencies Act 1986 (which includes a similar mechanism for setting the boundaries of Parliamentary constituencies), paragraph 3(9) does not permit the Secretary of State to modify the constituencies from those recommended by the Boundary Commission.

4.4 A Boundary Commission's report which alters constituency boundaries (and therefore the consequent Order in Council) must specify whether the constituencies are to have the status of burgh or county constituencies (Schedule 1, paragraph 3(8)). This status is used in the calculation of the expenses limit which applies to candidates in the election campaign, determined under orders on the conduct of the elections made under section 12 of the 1998 Act.

5. Territorial Extent and Application

5.1 This instrument extends to the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State at the Scotland Office, the Rt Hon David Mundell MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Scottish Parliament (Constituencies and Regions) Order 2010 are compatible with the Convention rights."

7. Policy background

7.1 The Boundary Commission submitted its Report on the First Periodic Review of Scottish Parliament Boundaries (http://www.bcomm-scotland.gov.uk/1st_holyrood/final_rec/index.asp) to the Secretary of State on 26 May 2010 and the report was laid before Parliament on the same day. The Secretary of State is required, as soon as practicable after submission of the report, to lay before Parliament the draft of an Order in Council giving effect to the recommendations contained in the Report.

7.2 The boundary changes will not affect the Parliament (or elections to the Parliament) until the next general election to the Parliament (whether it is an ordinary or extraordinary general election). Neither will they affect any by-election held before the dissolution of the Parliament.

7.3 The Boundary Commission's report was accompanied by two DVD-ROMs containing geographical information system data defining the constituency boundaries i.e. "the deposited data" referred to in Article 2 of the Order. This approach was necessary because a number of the recommended Scottish Parliament constituencies have boundaries which do not follow existing local government ward boundaries. (Previous Parliamentary, and therefore Scottish Parliament, constituencies have been made up of complete local government wards which are defined in existing legislation and can be referred to by listing the ward names.) The level of detail required to define the constituency boundaries means that the boundaries could not practically be shown on traditional maps at an appropriate scale. The local government wards (and part

wards) which fall within the constituencies are listed in the appendices to the Boundary Commission's report.

7.4 The master copies of the DVD-ROMs have been deposited with the Secretary of State for Scotland for safe keeping. Reference copies of the DVD-ROMs are deposited with the Boundary Commission for Scotland. Copies are also available in the Library of each House.

7.5 Maps of the boundaries are available online from the Boundary Commission for Scotland's website or in hard copy by writing to the Commission. Hard copy A2 sized maps are also available in the Library of each House. Indicative maps of the constituencies are included in the Explanatory Note to the Order.

7.6 A Written Ministerial Statement, made by the Secretary of State on 26 May 2010 confirming that the Boundary Commission's report had been laid, informed Members (among other things) that A2 sized maps and the DVD-ROMs are available in the Libraries.

8. Consultation outcome

8.1 The Boundary Commission's statutory consultation and local public inquiry process allowed for consideration of representations and concerns about the Commission's proposals raised by politicians, local authorities and others during the review. Final decisions on recommendations were ultimately a matter for the Commission. Details of the consultation and local inquiries and their outcomes are included in the Commission's report.

8.2 The intention is for the new boundaries to apply to the Scottish Parliament elections in May 2011. Scotland Office consulted electoral administrators and the Electoral Commission over the proposed timing of the Boundary Commission's final report and on the proposed timing of the commencement of the Order. The outcome was that administrators agreed to start the necessary preparatory work in advance of the legislation coming into force (given the proximity to the next general election to the Scottish Parliament in May 2011).

8.3 In addition, the Scotland Office consulted electoral administrators over the impact and risk of the boundary changes being applied to any extraordinary general election called between the legislation coming into force and 5 May 2011, and on the impact of having to run any by-elections between 1 December and 5 February (the latest a by-election could be held) on old boundaries. Administrators supported running an extraordinary general election after 1 December on the basis of new boundaries. As for by-elections, their view was that this was a localised risk that could be managed should the need occur.

9. Guidance

9.1 The Scotland Office will keep partners informed of the proposed timing of the commencement of the legislation and will write to them in due course to confirm the commencement date.

9.2 The Electoral Commission will consider whether any guidance to electoral administrators is required.

10. Impact

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

10.2 The impact on the public sector is limited to local authorities having to review the polling districts within their areas and Electoral Registration Officers being required to adapt their electoral registers accordingly.

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

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Order does not introduce new policy so there is no policy to monitor and review. The boundary changes the Order introduces will be subject to review by the Boundary Commission in accordance with Schedule 1 to the 1998 Act. The boundaries will remain in place until such time as they are altered by further legislation.

13. Contact

13.1 Rhona Carr at the Scotland Office (rhona.carr@scotlandoffice.gsi.gov.uk 0131 244 9008) can answer any queries regarding the instrument.