

**EXPLANATORY MEMORANDUM TO
THE REPRESENTATION OF THE PEOPLE (SCOTLAND) (AMENDMENT)
REGULATIONS 2006**

2006 No. 834 (S.9)

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

2. Description

2.1 The Regulations make changes to provisions concerning postal and proxy voting and the supply of and access to the electoral register.

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

3.1 None.

4. Legislative Background

4.1 These Regulations amend the Representation of the People (Scotland) Regulations 2001, as amended by the Representation of the People (Scotland) Regulations 2002.

5. Extent

5.1 The Regulations extend to Scotland only.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Scotland, David Cairns MP, has made the following statement regarding Human Rights:

“In my view the provisions of the draft Representation of the People (Scotland) (Amendment) Regulations 2006 are compatible with the Convention rights.”

7. Policy background

7.1 On 11 October 2005, the Government introduced the Electoral Administration Bill into Parliament. The Bill aims to make progress on the Government’s three core principles for elections:

- (i) access to voting for all,
- (ii) highest possible turnout, and
- (iii) lowest possible fraud.

7.2 The Government announced that alongside the Bill, it would introduce secondary legislation, in line with the above principles, to improve public confidence in the electoral system.

Proposals relating to postal and proxy voting

7.3 The Regulations contain a number of measures intended to enhance the security of the electoral process, in particular postal voting, as well as making administrative improvements and allowing for greater access to the electoral process.

7.4 The proposed changes take into account proposals included in the Electoral Commission's *Voting for change* and *Securing the vote* reports, published in June 2003 and May 2005 respectively and also address matters raised by the Government in its policy discussion paper on Electoral Administration, published in May 2005, which sought views on proposed measures for changes and improvements to the electoral process. The policy discussion paper was sent to all MPs, electoral administrators, relevant stakeholder groups and voluntary organisations and placed on the DCA website. Over 160 written responses were received within the deadline period. Upon the introduction of the Electoral Administration Bill, the Government published a report setting out its consideration of the responses to the policy paper. The report included a list of proposals that had received the support of consultees and which the Government proposed to introduce by way of secondary legislation. These proposals are being implemented through the Regulations.

7.5 It is proposed that in the run up to an election the deadline for applying for a postal vote should be moved from 6 to 11 working days before the close of poll. This will give administrators more time to check applications and send out postal ballot papers prior to polling day. The Regulations leave the deadline for proxy applications at 6 days prior to polling day. This will allow electors who fail to apply for a postal vote before the deadline to appoint a proxy and get the opportunity to ensure their vote is cast. This will mitigate the effect of the change to 11 days on the elector who will be absent at the time of the election and is too late to apply for a postal vote. Furthermore, it is proposed to make provision for "emergency" proxy applications to be made up until 5pm on polling day to cater for situations where an elector unexpectedly becomes physically incapacitated after the deadline for appointing a proxy has passed, and who as a result will be unable to attend a polling station to vote. Applications will need to be supported by an attestation from, for example, a nurse or medical practitioner.

7.6 The Regulations enable returning officers to securely collect postal ballots that are returned to polling stations before the close of polls. These provisions have been introduced to enable returning officers to undertake the checks for postal votes before the close of polls.

7.7 Provisions to enhance the security of postal and proxy voting are included to improve voter confidence in the electoral system. Electoral Registration Officers (EROs) are obliged under the Regulations to notify applicants of decisions on postal vote applications and on requests for changes to a postal voter's arrangements. The proposed changes require voters to give a reason for postal votes to be re-directed to an address other than the elector's registered address and extend current arrangements for replacing lost or spoilt postal ballot papers to lost or spoilt declarations of identify and lost envelopes for return of postal ballot papers.

Changes relating to access to the electoral register

7.8 The Regulations include provisions relating to access to and the supply of the electoral register. In 2002, the Government established a new framework governing access to and the supply and sale of electoral registers. Representation of the People Regulations introduced in 2002 responded to privacy and security concerns expressed by the public about possible misuse of data from the electoral register. They also took into account the decision in the

Robertson case, which concerned the supply of the electoral register, where the High Court found that the supply of the register for direct marketing purposes without giving individual electors the opportunity to object was in breach of data protection and human rights legislation. Under current legislation there are now two versions of the electoral register: the full version and an edited version. The full register contains the names of all electors, and only certain people and organisations can have copies of it, subject to restrictions on its use. The main use of the full register is for electoral purposes, but it can be used for other purposes such as the prevention and detection of crime, and for checking a person's identity when they apply for credit. Members of the public may choose to have their names excluded from the edited version of the register, which may be purchased by anyone for any purpose.

7.9 The Government considers the broad policy governing access to and supply of electoral registers - as embodied by the 2002 Regulations - to be settled. The Government is introducing a limited number of changes that are being made within the framework established by those Regulations and address certain issues that have been raised.

7.10 The Regulations provide that certain bodies and agencies - including the Security Service, Government Communications Headquarters, the General Register Office for Scotland and the Secret Intelligence Service - may be supplied with the electoral register for specified purposes.

7.11 The Regulations amend current legislation to allow copies of the full register in printed and data form to be provided to the National Library of Scotland (NLS). Measures in the Regulations introduce further restrictions on the access to the full register where it is made available for inspection. These provide that the full register can not be inspected unsupervised and that any electronic register must be formatted in such a way that prevents it from being copied or from being searched by name of person. It is proposed to put in place arrangements for the storage of old electoral registers by public libraries and archives services and allow them after ten years to be used for research purposes.

7.12 The Regulations provide that the full electoral register may be used for the purposes of a local referendum conducted by the returning officer and elections of certain members of National Parks.

7.13 The Department for Constitutional Affairs carried out a public consultation on the proposed changes relating to access to the electoral register. A consultation paper was issued in August 2005 which was sent to a range of interested persons including, electoral administrators, MPs, librarians and archivists. Some 70 responses were received. Most were generally supportive of the proposed changes. As a result of the consultation, at the request of the Office for National Statistics, the Government has decided that the arrangements that are being put in place for the storage of old registers should apply to registers held by the Office for National Statistics and the General Register Office for Scotland.

8. Impact

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

9. Contact

9.1 Any queries about the content of this memorandum should be addressed to: Anna Wallace at the Scotland Office, e-mail: Anna.Wallace@scotland.gsi.gov.uk