

**EXPLANATORY MEMORANDUM TO
THE REPRESENTATION OF THE PEOPLE (SCOTLAND) (AMENDMENT)
REGULATIONS 2008**

2008 No.

- 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. Description**

2.1 The Regulations make changes following the Electoral Administration Act 2006 to provisions concerning the collection and retention of personal identifiers for postal and proxy voters, and the checking process at an election on returned postal votes.

- 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. The purpose of the Regulations is to implement changes introduced by the Electoral Administration Act 2006. The Regulations are made in exercise of powers conferred by section 53 of, and paragraphs 5A and 12 of Schedule 2 to, the Representation of the People Act 1983.

- 5. Territorial Extent and Application**

5.1 This instrument applies only to Scotland.

- 6. European Convention on Human Rights**

The Minister 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 2008 are compatible with the Convention rights.”

7. Policy Background

7.1 The Electoral Administration Act 2006 received Royal Assent on 11 July 2006 and aims to make progress on the Government's four principles found at the core of a healthy democracy:

- (i) improving access and engagement
- (ii) improving confidence in electoral security
- (iii) extending openness and transparency in party funding
- (iv) maintaining professional delivery of elections.

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

7.2 Following proposals made by noble Lords during the passage of the Electoral Administration Act 2006, provisions were inserted to require absent voters to provide personal identifiers to Electoral Registration Officers. The Act provides for persons voting by post or proxy to provide their signature and date of birth on their application form and on the postal voting statement that accompanies the ballot paper. These measures aim to improve security for postal voting, and protect against the risk of future incidences of fraud. They are also intended to provide greater evidence for a relevant police authority investigating any allegations or possible incidences of electoral fraud.

7.3 The Regulations set out the process by which personal identifiers are to be collected, and how they will be used to check the validity of returned postal votes. The Regulations set out the requirement for providing a signature and date of birth on an absent vote application form. They provide for the minimum dimensions of the box for providing signatures and the format in which dates of birth should be provided (dd/mm/yyyy). They also provide for applications from electors who wish to be exempt from providing personal identifiers due to disability or an inability to read or write. The Regulations provide Electoral Registration Officers, when dealing with absent voting applications, with a power to check certain signatures or dates of birth previously provided by the applicant to the local authority. They also require Electoral Registration Officers to keep a separate record of absent voters' personal identifiers, and to obtain a fresh signature from absent voters every 5 years to ensure signatures are up to date and take account of any changes to a person's signature.

7.4 The Regulations also set out how the identifiers will be used to check the validity of returned postal votes. They set the minimum level of checking of identifiers and provide that at an election, on each occasion the postal voters' ballot box is opened, not less than 20% of covering envelopes will be set aside by the Returning Officer for checking. All returned postal voting statements must have a date of birth and signature to be deemed to be duly completed and valid, unless the signature requirement has been waived. Furthermore, for those statements set aside for checking, the Returning Officer must compare the signature and date of birth on the postal voting statement with those provided by the voter and contained on the personal identifiers record created under regulation 61B of the 2001 Regulations (inserted by Regulation 6). If both do not match, the statement will be invalid and so the vote not count. Where a Returning Officer deems that a postal voting statement is

invalid he or she shall mark it “rejected” and agents will be entitled to see the identifiers for the voter to whom the statement was addressed and if they object to the Returning Officer’s decision the Returning Officer will mark the postal voting statement “rejection objected to”.

7.5 The Regulations also amend provisions for the fee for inspection of election returns. They remove the standing fee of £5, leaving the fee to be calculated on the basis of the price of copy of returns at the rate of 20p for each side of each page. This brings the fee in line with the equivalent fees in England and Wales and those for the Scottish Parliament.

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.

8.2 The impact on the public sector will be in relation to the new duties and responsibilities which these Regulations place on Electoral Registration Officers and Returning Officers.

9. Contact

Sheila Scobie at the Scotland Office e-mail: sheila.scobie@scotland.gsi.gov.uk can answer queries regarding the instrument.