

**EXPLANATORY MEMORANDUM TO  
THE SCOTTISH PARLIAMENT (ELECTIONS ETC.) (AMENDMENT) ORDER  
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 Order makes 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 This Order amends the Scottish Parliament (Elections etc.) Order 2007. The purpose of the draft Order is to implement changes introduced by the Electoral Administration Act 2006 for elections to the Scottish Parliament. The Order is made under sections 12 and 113 of the Scotland Act 1998.

- 4.2 The implementation of the Electoral Administration Act 2006 provisions for UK Parliament elections in Scotland is by way of the Representation of the People (Scotland) (Amendment) Regulations 2008 and the Absent Voting (Transitional Provisions) Regulations 2008.

5. **Territorial Extent and Application**

- 5.1 This instrument has UK extent, being the same as the Order it amends.

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 Scottish Parliament (Elections etc.)(Amendment) Order 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.

#### Absent Voting: Personal Identifiers

7.3 The Order sets 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 Order sets out the requirement for providing a signature and date of birth on an absent vote application form. It provides for the minimum dimensions of the box for providing signatures and the format in which dates of birth should be provided (dd/mm/yyyy). It also provides for applications from electors who wish to be exempt from providing personal identifiers due to disability or an inability to read or write. The Order provides 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. It also requires 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 Order also sets out how the identifiers will be used to check the validity of returned postal votes. It sets 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 Constituency 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 Constituency 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 para 12A of Schedule 3 to the 2007 Order (inserted by Article 12). If both do not match, the statement will be invalid and so the vote not count. Where a Constituency 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 Constituency Returning Officer’s decision that Officer will mark the postal voting statement “rejection objected to”.

#### Absent Voting: Transitional Provisions

7.5 The Order also sets out transitional provisions whereby Electoral Registration Officers will write to existing postal and proxy voters asking for their personal identifiers. The notice will require existing absent voters to provide the information within 6 weeks. Electoral Registration Officers must provide absent voters with information as to how the required personal identifiers will be used, and explain that failure to provide them will mean the voter will lose his or her entitlement to be an absent voter, though loss of entitlement will not prevent the person from making a fresh application for an absent vote.

7.6 Electoral Registration Officers must also include details of the types of elections that the person will no longer be entitled to vote in if they do not respond to the request. They must also include the date (which will not be less than 49 days from the sending of the initial notice) from which he or she shall cease to be entitled to vote by post or proxy in the event of their failure to provide the personal identifiers.

7.7 The Government recognises that there may be a risk that some existing postal or proxy voters will not respond and will lose their entitlement to vote by post or proxy. The Order attempts to minimise this risk by requiring the Electoral Registration Officer to send a reminder letter if the absent voter has not responded within three weeks of the initial notice. Also, Electoral Registration Officers will not ask postal voters to re-complete an entire new form, but rather just to provide their signature and date of birth, possibly on a form pre-printed with the existing information already held by the Registration Officer. Failure to respond will mean the Electoral Registration Officer will remove the person from the absent voting records and will notify them of this. The Electoral Registration Officer must explain the effect of removal from the absent voting record and remind the elector that they may make a fresh application.

7.8 The Order also provides that personal identifiers provided under the Representation of the People (Scotland) Regulations 2001 or the Absent Voting (Transitional Provisions) (Scotland) Regulations 2008 may be used for the purposes of Scottish Parliamentary elections. This means that existing absent voters may only be required to provide their identifiers once for these to be valid for both the UK Parliament and Scottish Parliament elections.

## **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](mailto:sheila.scobie@scotland.gsi.gov.uk) can answer queries regarding the instrument.