POLICY NOTE

THE REPRESENTATION OF THE PEOPLE (SCOTLAND) AMENDMENT REGULATIONS 2018

SSI 2018/xxx

1. The above instrument, if approved by the Scottish Parliament, will be made in exercise of the powers conferred by sections 9B(1A), 10ZC(3), 10ZD(3), 10ZE(4) and, 53(1)(b)(i) and (1)(c) and (3) and paragraphs 1(2) and (2A), 3ZA, 5(1B), 10 and 13(2) of schedule 2 of the Representation of the People Act 1983 and all other powers enabling them to do so. The instrument is subject to affirmative procedure.

Policy Objectives

2. This instrument is being made to improve access to the anonymous electoral registration scheme, and to enhance the wider registration scheme in respect of the register of local government electors in Scotland.

3. Similar Regulations will be laid before the UK Parliament by the Secretary of State for Scotland which will make the same changes for the register of UK parliamentary electors in Scotland. Bringing into force legislation which has been approved by both Parliaments at the same time, will ensure that the electoral registration process will remain consistent for all elections in Scotland.

4. Regulations will also be laid before the UK Parliament to make the same changes in respect of the registers of Parliamentary and local government electors in England and Wales. In addition, Regulations will be laid which improve access to the anonymous registration scheme in respect of the registers of Parliamentary, Northern Ireland Assembly and local government electors in Northern Ireland. The cumulative effect of these instruments will be to ensure that the anonymous electoral registration system achieves the same outcomes throughout the UK, and the wider registration system the same throughout GB.

<u>Changes to the anonymous registration scheme</u>

5. The anonymous registration scheme is intended to allow those whose safety may be at risk, should their location become known, to register to vote but without their name or address appearing on the publically available electoral register.

6. The basis of the anonymous registration scheme is set out in sections 9B and 9C of the Representation of the People Act 1983 and in the Representation of the People (Scotland) Regulations 2001 (the 2001 Regulations). An application for anonymous registration must be accompanied by evidence, the form of which is specified in the 2001 Regulations. This instrument amends the evidence which is required under the 2001 Regulations with the aim of making it easier for individuals to access the scheme.

7. The anonymous registration scheme requires that an application is accompanied by evidence that proves the safety of the applicant, or other named persons in the applicant's household, would be at risk if the register contained the applicant's name or address. As specified in the 2001 Regulations, the evidence accepted is either one of the court orders or injunctions listed in regulation 31I, or an attestation by a "qualifying officer", as defined in regulation 31J.

8. When the scheme was introduced it was envisaged that those looking to register anonymously would include victims or witnesses of certain types of crime with an immediate risk to their safety. This was balanced against the public nature of the electoral roll as a key aspect of our democracy and transparency around voting. Consequently, the threshold of evidence required for an application to anonymous registration was set quite high.

9. During the summer of 2016, the UK Government received representations that the anonymous registration scheme was not sufficiently accessible to some who are entitled to use it, as they are currently unable to produce the evidence required under regulations 31I or 31J of the 2001 Regulations. This includes survivors of domestic abuse whose safety may be at risk from their abuser if their details are made available on the electoral register.

10. Regulations 8 and 9 of these Regulations both increase the accessibility of the anonymous registration scheme for those who genuinely need to use it, while continuing to respect integrity of the electoral register by requiring the provision of appropriate evidence. These changes extend the type of evidence accepted as proof that an individual's safety would be at risk if they appeared on the electoral register, thereby making it easier to access the scheme.

11. The first change expands the list of court orders in Regulation 31I of the 2001 Regulations, which are accepted as evidence to support and application, to include two new orders made under England and Wales and Northern Ireland legislation. These are Domestic Violence Protections Orders made under the Crime and Security Act 2010 or the Justice Act (Northern Ireland) 2015) and Female Genital Mutilation Protection Orders (made under the Female Genital Mutilation Act 2003). This updates the evidentiary requirements to reflect that new and relevant orders have been added to the statute book since the design of the anonymous registration scheme. It also ensures it covers a wider range of situations of violence particularly against women and girls. Domestic abuse interdicts under the Domestic Abuse (Scotland) Act 2011 are already covered by the existing legislation.

12. The second type of change relates to those who are qualifying officers able to provide attestations.

13. In regulation 31J of the 2001 Regulations, the seniority required for a police attestation is lowered from superintendent to inspector. As the domestic abuse leads in their local areas, inspectors are frequently in contact with those who have suffered from abuse and are therefore well qualified to assess the level of risk to an individual's safety. An inspector is highly trained and will be able to fully

understand the responsibility they have been given to attest applications. Electoral Registration Officers are also able to check their credentials.

14. In regulation 31J of the 2001 Regulations, the list of qualifying officers that can act as attestors is expanded to include medical and healthcare professionals registered with the General Medical Council (GMC) or Nursing and Midwifery Council (NMC). The nature of work conducted by medical and healthcare professionals means they are frequently in contact with survivors of domestic abuse and well qualified to assess the level of risk to an individual's safety. As registered practitioners they meet UK professional standards and Electoral Registration Officers are able to check their credentials on the relevant databases.

15. In regulation 31J of the 2001 Regulations, refuge managers are added to the list of qualifying officers able to act as attestors. This will ensure that all individuals who are resident in a refuge have easy access to an individual who can attest to their safety being at risk. Refuge managers are specialists in their field and well placed to attest whether an individual's safety is at risk, since they are in direct and sustained contact with domestic abuse survivors. They are also approachable for those looking to use the scheme, therefore helping to increase accessibility.

16. In practise, an attestation from a refuge manager will show the name of the refuge and the local authority. The Electoral Registration Officer can then confirm that the refuge is registered on the 'Routes to Support' directory, a UK-wide online database of domestic abuse services. Guidance will also encourage refuge managers to include direct contact details so the Electoral Registration Officer can contact them if required. The government will also work with the Electoral Commission to encourage co-operation between specialist domestic abuse support organisations and electoral administrators.

Changes to the wider registration system

17. The wider registration system changes in these Regulations amend the 2001 Regulations to improve the registration system in relation to the register of local government electors in Scotland by adding additional warnings on the application for registration form, expanding the sources of information which can be used by Electoral Registration Officers when determining to delete deceased voters and changing the status of some correspondence from mandatory to discretionary.

18. The initial drive for the wider registration system changes came from a UK wide consultation carried out in search of ways to improve the voter registration system. From this, it was determined that four measures could be implemented to achieve this goal.

19. The first two measures (set out in regulation 3) require the Electoral Commission to include two additional statements on the paper application form to register to vote, which it is required to design under regulation 26 of the 2001 Regulations. The exact wording of these statements will be for the Electoral Commission to determine as part of their design of the form, but must have the effect of the following prescribed statements.

- that persons who are not qualifying Commonwealth citizens, citizens of the Republic of Ireland or relevant citizens of the Union are not eligible to register to vote, and that Electoral Registration Officers may request checks against government records or seek further evidence in respect of an applicant's nationality; and

- where an applicant has moved from an address within 12 months of the date of their application, they must provide their previous address, and any other mandatory information required on the application form, and that not doing so may delay the registration process.

20. Regulation 26(3) of the 2001 Regulations already requires that 'the application form must contain a statement that persons without lawful immigration status are ineligible to register to vote, and that Electoral Registration Officers may request checks in relation to an applicant's immigration status against Home Office records'. This additional warning expands on this to specifically include warnings in relation to the provision of nationality information and to act as a fraud deterrent.

21. The inclusion of the second statement will raise the applicant's awareness that they must provide all mandatory information required, including their previous address, and inform them of the risk of delay for not doing so. This additional warning does not change the existing mandatory information required for an application, including the requirement to provide an address at which the applicant has ceased to reside within the previous 12 months of the date of their application

22. Regulation 4 of this instrument expands the sources of information which, on their own, can be used by the Electoral Registration Officer to support the removal of an entry from the register as a result of the death of an elector. Currently, in some limited circumstances the Electoral Registration Officer can find they are unable to remove an entry in the register, even though they have reason to believe the elector has died, as they have not received a death certificate or notification from a Registrar, but have been informed of the death by another source.

23. Currently the Electoral Registration Officer requires a second piece of evidence before they can remove the entry from the register and, in the highly sensitive period following a death, the Electoral Registration Officer will often choose not to write to the deceased elector's relatives, in order to avoid causing further distress at a sensitive time. This makes it very difficult for the Electoral Registration Officer to timeously remove the entry from the register and thereby maintain the accuracy of the electoral register.

24. This amendment will allow the Electoral Registration Officer to use a single source of information, where a death certificate or notification from a Registrar is not available, to determine whether an elector's entry should be removed from the register. Additional sources could be information from other council services, such as a Council Tax death notice, information from a relative or a care home professional, or information received as part of the annual canvass of households.

25. Detailed consideration has been given to whether this could increase the risk of fraud as part of the registration system but the risk is considered to be minimal due to Electoral Registration Officers initially being required to seek notification from a Registrar or a death certificate before relying on the new additional sources of information.

26. The Electoral Registration Officer must continue to be satisfied that the information they have received allows them to determine that the elector has died and should be removed from the register. Where they have any concerns they remain able to seek additional sources of information to support their decision

27. The changes made by regulations 5, 6, and 7 of this instrument rationalise, where appropriate, the correspondence sent by the Electoral Registration Officers to electors. Regulations 5 and 6 amend the notices which Electoral Registration Officers must send when they conduct a review of an elector's entry on the register. The amendments will now require additional information to be included in a notification to an elector that a review is being undertaken. They also allow for the sending of a notification of the outcome of a review to be discretionary where the Electoral Registration Officer has not received any response to a notice from the elector who is subject to review.

28. Regulation 10 of this instrument changes regulation 93A of the 2001 Regulations to allow the Electoral Registration Officer discretion as to whether to send confirmation that the elector has been included in or omitted from the edited register, following a request from the elector to be included in or omitted from the edited register. There is no added benefit to the elector of this letter and anecdotal evidence suggests that it causes confusion. This change also brings the registration system into line with other public services which receive instructions from citizens but don't provide confirmation of subsequent action.

Consultation

Stakeholder consultation

29. Because of the UK wide nature of the changes to the anonymous registration scheme, a single consultation was carried out by the Cabinet Office covering the whole of the UK. A policy statement was published in March 2017 for public comment. The policy statement can be viewed here (https://www.gov.uk/government/news/government-commits-to-helping-survivors-of-domestic-abuse). The 12 formal responses to this consultation were received from a range of organisations including: representative bodies for medical professionals, domestic violence and abuse support organisations, electoral administrators and their representative bodies and local authorities. All respondents were supportive of the changes suggested. The response to policy statement is available at (https://www.gov.uk/government/publications/a-democracy-that-works-for-everyone-survivors-of-domestic-abuse-response-to-policy-statement).

30. For the changes to the wider registration system, informal consultation was carried out in the summer of 2017 and a formal joint consultation was carried out by the

Scottish and UK Governments in October 2017. The result was positive with the Association of Electoral Administrators providing only minor drafting comments, which were considered in finalising the Regulations.

Statutory Consultation

31. In accordance with section 7(1) and (2)(e) of the Political Parties, Elections and Referendums Act 2000, the draft Regulations have also undergone formal consultation with the Electoral Commission who were supportive of the changes and raised only a few concerns.

32. The Electoral Commission had concerns about how widely the definition of a refuge manager may apply, and whether it could be interpreted to include all workers employed at a refuge, rather than just the 'manager'. Their concerns were addressed through a tightening of this definition.

33. On the checking of an applicant's nationality, the Electoral Commission were supportive of the measure but asked whether the change should also require the form to explicitly state the details of the offence in question and the penalties. In response, it was highlighted that Regulation 26(3)(c) of the 2001 Regulations already requires that the paper application form includes a statement that it is an offence to provide false information to an Electoral Registration Officer together with a statement of the maximum penalty for that offence.

34. On an applicant's previous address, the Electoral Commission expressed a need for clarity in what an Electoral Registration Officer should do if the elector did not provide the mandatory information. The Commission also questioned what would happen in the case of an elector moving back from overseas when they have not had a previous UK address in the last 12 months. In response it was explained that the existing requirements for an application for registration under regulation 26(1) of the 2001 Regulations already includes a requirement to provide an address at which the applicant has ceased to reside within the last 12 months. This will be unchanged by this instrument. The additional statement only seeks to draw the applicant's attention, on the application form, that not providing their previous address (along with any other mandatory information) may delay the registration process. Electoral Registration Officer will continue to proceed as they currently do where any mandatory information has not been provided as part of an application and in line with the Commission's guidance that deals with this situation specifically. In addition, the 2001 Regulations already state that, where an address the applicant has ceased to reside at in the previous 12 months is not in the United Kingdom, an indication must be provided of whether the person was registered in pursuance of an overseas elector's declaration during this period.

35. With respect to both of these measures, the Electoral Commission asked whether it would be better to make the changes through the Commission's power to specify the design of the paper forms, rather than specifying the requirement in secondary legislation. In response to this, it was explained that the Electoral Commission is required to design a paper application form which meets the requirements set out in Regulation 26 of the 2001 Regulations. Regulation 26(3)

requires that certain statements be included on the form, and these two further statements were being added to the list on the same basis.

36. In response to the proposed changes in regulation 4, the Electoral Commission recommended that consideration should be given to allowing Electoral Registration Officers the option of requesting that a deceased elector's relatives confirm in writing any information provided by phone or in person before any action is taken. In response, it was noted that it remains the Electoral Registration Officer's responsibility to satisfy themselves that the information they have received is accurate, including requesting written confirmation, before determining, on a case by case basis, whether to remove a deceased elector from the register. Guidance for Electoral Registration Officers, which is provided by the Electoral Commission will assist Electoral Registration Officers in carrying out this responsibility.

37. The Electoral Commission also expressed concerns surrounding consistency of the use of information provided on the annual canvass form. The response was that, while this change will allow information from a canvass form that an elector has died to be used differently to other information provided on the form, in the highly sensitive circumstances where an elector has died, the registration system should take every step possible to minimise distress to the deceased's relatives whilst maintaining an accurate register. In the small number of circumstances where this provision will be needed, it is felt appropriate that an Electoral Registration Officer should be able to draw from the widest source of information possible, with the necessary safeguard that this should be considered only when it has not been possible to secure a death certificate or information from the registrar. This is what citizens would expect and is appropriate to this specific circumstance where particular sensitivity is important.

38. In response to the proposed changes which will rationalise correspondence, the Electoral Commission stated that as long as the elector under review is advised of the outcome of that review process; their right to appeal; and is told the date they will be removed from the register, they do not see why a further letter confirming the deletion would be necessary. It was explained that the amendments require that additional information be included in the notice that a review is being undertaken to inform the subject of a review that the Electoral Registration Officer can determine the review and remove their entry from the register after 14 days if the elector does not require that the review be heard, and that in this situation there would be no right of appeal. If the subject of a review does not require a review to be heard within 14 days the sending of a notification of the outcome of the review by the Electoral Registration Officer will be discretionary. However, if the subject of a review requires that it be heard, the Electoral Registration Officer must continue to send a notification of the outcome of the review informing the subject of any right of appeal, the time within which an appeal has to be given and any other information about the appeal which the Electoral Registration Officer considers necessary.

39. In response to the proposed change to the acknowledgement of changing the opt out/in status the Electoral Commission raised concerns that electors would expect confirmation of the change. The response highlighted that where an elector

requests their open register preference is changed, this is an instruction to the Electoral Registration Officer who must act accordingly. This is consistent to similar approaches in other services, for example when a citizen surrenders their driving licence they notify the Driver and Vehicle Licensing Agency but they do not receive a confirmation of their licence's revocation. This change does not stop Electoral Registration Officers from sending an acknowledgement where they deem it appropriate.

Future consultation

40. Whilst this instrument makes a number of changes to the evidence required to access the anonymous registration scheme, the Scottish Government believes that everyone who is eligible to vote should have the opportunity to vote and that this opportunity must not be constrained by any genuine concerns that they might be open to abuse if their names and addresses were available on the electoral register.

41. Therefore in the Scottish Government's consultation on electoral reform, which was published on 19 December 2017, the Scottish Ministers are seeking views on making anonymous electoral registration more widely available to other groups who are at risk of abuse rather than simply making it easier for those who are already entitled to anonymity to claim it. Any proposals flowing from the consultation will be considered and, if necessary, legislation will be brought forward to implement them.

Impact Assessments

42. The Order has no impact on the environment; privacy; equality; or children's rights and therefore no Impact Assessments are required for those areas. Consideration was given to the impact of the decision to allow refuge managers to attest applications for anonymous electoral registration, as the majority of the refuges operating in Scotland are for women. However since a range of individuals (including Police Inspectors, Chief Social Workers, any registered medical practitioner and any registered nurse or midwife) can attest applications, this change does not significantly disadvantage other groups.

Business Regularity Impact Assessment (BRIA)

43. A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is negligible.

Scottish Government
Directorate for Strategy and Constitution

January 2018