

EXPLANATORY MEMORANDUM TO

DRAFT: THE SCOTTISH PARLIAMENT (ELECTIONS ETC.) (AMENDMENT) ORDER 2007

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 This Order amends the Scottish Parliament (Elections etc.) Order 2007 to provide the Electoral Commission with access to ballot papers and other records used in the election of the Scottish Parliament, for the purposes of conducting a statutory review under section 6(2) of the Political Parties, Elections and Referendums Act 2000 (PPERA).

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

3.1 None.

4. **Legislative Background**

4.1 This Order is made under section 12(1)(a) of the Scotland Act 1998.

5. **Territorial Extent and Application**

5.1 This instrument has UK extent.

6. **European Convention on Human Rights**

6.1 The Secretary of State for Scotland, the Rt Hon Des Browne MP, has made the following statement regarding Human Rights:

In my view the provisions of the Scottish Parliament (Elections etc.) (Amendment) Order 2007 are compatible with the Convention rights.

7. **Policy background**

7.1 The Scottish Parliament (Elections etc.) Order 2007 provided the rules under which the 2007 Scottish Parliamentary elections were held. Under those rules, following the count, ballot papers, along with a complete electronic copy of the data stored in the electronic counting machines, were sealed up and were sent to the relevant sheriff clerks. An order may be made for them to be opened by a sheriff or the Court of Session only for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot

papers, or for an election petition. An election court may also order opening of the sealed packets containing these items, but otherwise they must currently remain sealed.

7.2 A feature of the 2007 Scottish Parliamentary elections was the higher than normal incidence of ballot paper spoilage, and the Electoral Commission have commissioned an independent review of this and other issues. It would be useful for that review to be able to conduct an analysis of the spoiled papers to ascertain what caused the high levels of spoilage, in order that it may be avoided in the future. However, at present, the Commission have no ability to access those ballot papers.

7.3 This order provides a means by which that access may be enabled. It provides that where the Secretary of State makes a request to the Commission to undertake a review under section 6(2) of the PPERA, which includes a request that it examine ballot papers, the Commission may require sheriff clerks to provide access to ballot papers and to electronic records stored along with them.

7.4 The Commission will not have access to the ‘corresponding number list’, which links elector numbers to ballot papers. Without this list it will not be possible for the Commission to link any ballot paper with any individual voter.

7.5 When the Commission has concluded their scrutiny, the order provides that they must reseal all documents and images, return them to the sheriff clerks and destroy all copies which they may have made.

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 on sheriff clerks, who will need to produce the relevant papers and records.

9. Contact

Matt Lewsey at the Scotland Office Tel: 0131 244 9032 or 020 7270 6816 or email: Matt.Lewsey@scotland.gsi.gov.uk can answer any queries regarding the instrument.