

EXPLANATORY MEMORANDUM TO
THE REPRESENTATION OF THE PEOPLE (ENGLAND AND WALES)
(AMENDMENT) REGULATIONS 2014

2014 No.

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

2. Purpose of the instrument

These Regulations amend the Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341) (“the 2001 Regulations”) and the Representation of the People (England and Wales) (Description of Electoral Registers and Amendment) Regulations 2013 (S.I. 2013/3198) (“the 2013 Regulations”) as part of the introduction of Individual Electoral Registration (IER) in England and Wales. The amendments enable EROs in two-tier local government areas to inspect for electoral registration purposes data kept by the other tier council, similarly to their counterparts in unitary authorities, and permit local authorities to disclose data to EROs subject to certain conditions. They also disapply the usual provisions for follow-up in cases where an Electoral Registration Officer (ERO) has invited a person to register to vote whom he or she has reason to believe would, if registered, be registered as a special category elector (such as an overseas voter or a person with a service declaration) or an elector with an anonymous entry.

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

3.1 The instrument relies on the anticipatory exercise of powers which were inserted in the Representation of the People Act 1983 by the Electoral Registration and Administration Act 2013.

4. Legislative Context

4.1 The new system of IER is contained in amendments to the Representation of the People Act 1983 (“the 1983 Act”) made by the Electoral Registration and Administration Act 2013, and in amendments to the 2001 Regulations made by the 2013 Regulations.

4.2 Registration criteria for special category electors are covered in the Representation of the People Acts. Part 1 of the Representation of the People Act 1985 extends the franchise to certain British citizens overseas. The requirements for service qualifications and declarations for registration are set out in sections 14 to 16 of the 1983 Act. Sections 7 to 7B of that Act sets out registration requirements for people remanded in custody, patients in mental hospitals and homeless people. Section 9B of that Act makes provision for anonymous registration and the steps that the ERO must take with regard to an anonymous entry.

- 4.3 Paragraph 1A of Schedule 2 to the 1983 Act enables provision to be made by regulations for the disclosing and checking of information required to be provided by a person making an application for electoral registration.
- 4.4 Regulation 35 of the 2001 Regulations authorises an ERO to inspect, for the purposes of his registration duties, records kept by the council by which he was appointed, and to make copies of information contained in such records.
- 4.5 Under section 201(2) of the 1983 Act the making of this instrument is subject to the affirmative resolution procedure.
- 4.6 Article 3 of the Lord President of the Council Order 2010 (S.I. 2010/1837) provides that the powers conferred on the Secretary of State under the 1983 Act (with exceptions which are not relevant to these Regulations) are exercisable concurrently by the Secretary of State and the Lord President of the Council.

5. Territorial Extent and Application

- 5.1 This instrument extends to England and Wales only. IER will apply in Great Britain and there is another instrument containing some of the same provisions as this instrument which will extend to Scotland (the Representation of the People (Scotland) (Amendment) Regulations 2014).
- 5.2 Given the different local government structure in Scotland, the Cabinet Office is consulting EROs and local government bodies there to establish whether there is any need in Scotland for equivalent provisions to those on disclosure of information by local authorities in these Regulations, and if so what form they should take.

6. European Convention on Human Rights

- 6.1 The Minister of State at the Cabinet Office has made the following statement regarding Human Rights:

In my view the provisions of the Representation of the People (England and Wales) (Amendment) Regulations 2014 are compatible with the Convention rights.

7. Policy background

- 7.1 The effect of regulation 35 of the 2001 Regulations in England and Wales has been that EROs in two-tier local government areas have no right to inspect records kept by the other tier (county) council which might be of help to them in maintaining and improving the accuracy of their electoral registers. (These are likely to include education records, which may be of assistance to EROs in improving registration levels among young people.) As EROs in unitary

authorities face no such difficulty, there is a difference in the extent to which EROs in different kinds of local authority can access potentially helpful data sets.

- 7.2 Previous discussions with the Electoral Commission (EC) and the Association of Electoral Administrators confirmed that amending the 2001 Regulations to permit EROs in two-tier authorities access to certain records held by their county council would be beneficial to their work to increase levels of registration among under-registered groups within their communities.
- 7.3 As part of data matching piloting work carried out in 2013 and enabled by the Electoral Registration Data Schemes (No. 2) Order 2012 (S.I. 2012/3232), EROs in four lower-tier authorities were authorised to receive specified data from their county council so that they could test its usefulness for increasing registration levels among attainers (young people about to attain voting age). While different areas received different data sets and the quality and suitability of the data varied, the participating EROs found data matching using county council data to be a useful exercise. The EC recommended in its evaluation of the pilot schemes that EROs in two-tier areas should be given a legal right of access to the data held by upper-tier authorities, so as to put them in a position analogous to that of their counterparts in unitary authorities.
- 7.4 The approach taken in the Regulations is a dual one which will so far as possible put EROs in unitary and two-tier areas on an equal footing where access to local data is concerned.
 - a. Regulation 2 amends the existing regulation 35 so as to authorise EROs in two-tier areas to *inspect* records kept by the county council and to make copies of information contained in them. This will place those EROs in broadly the same position as those in unitary authorities.
 - b. Regulation 3 inserts a new regulation 35A into the 2001 Regulations. This will authorise (but will not require) the authority by which the ERO was appointed - and, in two tier areas, the relevant county council - to *disclose* to the ERO information contained in records held by that authority, provided an agreement is in place between the authority and the ERO as to the processing of the information. An authority refusing to make the data available to the ERO in this way will be required to give the ERO written reasons for its refusal.
- 7.5 *Inspection* involves the ERO being allowed to see the records concerned and to make copies to assist them with their registration duties. Under an agreement for *disclosure* however an authority will be authorised to provide the data to the ERO, in a format to be agreed between them, so that it can be matched (possibly electronically) against electoral register information.

- 7.6 Over 200 authorities could potentially benefit from these changes. The results from the pilot schemes indicated that as many as 100,000 eligible voters might be identified through two-tier data matching, and there is also a possibility that some authorities may be able to use information obtained under this legislation as part of their work confirming existing electors at the transition to IER in the summer of 2014
- 7.7 With regard to Regulation 4, the effect of current regulations is that after the transitional period EROs are required to take specified steps to encourage applications to register in certain cases. They must send an invitation to register and, where necessary, two reminder letters and a canvasser to the elector's residence. These steps are expensive where, for example, electors are based overseas, and impractical in the case of sending a canvasser to an overseas residence. While EROs should make every effort to encourage applications, it is the policy view that these steps should not be mandatory in these cases.
- 7.8 The amendment disapplies these required steps in the case of those individuals whom the ERO has reason to believe would, if registered, have anonymous entries in the register, given the need for greater sensitivity in the case of such voters. As with special category electors, EROs can issue reminders if they wish, which would be consistent with their duty under section 9A of the 1983 Act to take all necessary steps for the purpose of securing that, as far as reasonably practicable, people entitled to be on the register are on it.

8. Consultation outcome

- 8.1 The EC, the Information Commissioner and such other persons as were considered appropriate have been consulted on this instrument as required by section 53(5) of the 1983 Act and section 7 of the Political Parties, Elections and Referendums Act 2000.
- 8.2 During the policy consultation the EC was asked for views on the Government's proposal to include in the draft legislation a provision to the effect that where disclosure has been refused, the authority concerned would be required to set out its reasons in writing to both the requesting ERO and to the EC. The EC responded that in these circumstances it should not be a requirement for the authority concerned to notify the EC as this could create an expectation that the EC should then formally investigate the issue or take some form of action, which the EC would not be in a position to do. The EC did note that they would be content to "provide informal support to any requesting ERO (who would have been notified of the relevant authority's decision to refuse) who wished to pursue the matter". In response to the EC's views, the instrument does not require reasons in writing to be given to the EC.

- 8.3 During the consultation on the instrument, the EC sought clarification on two points. First, while the EC saw the reason for disapplying the requirement to visit the address of an overseas or service voter, it asked why reminder invitations to register should not be sent. We have responded that we will set out in guidance that EROs have discretion to take such steps as are reasonably practicable to encourage registration applications, such as issuing reminders; but that in view of the cost burden there is no intention to mandate steps to chase an invitation to register in the case of these people. Second, the Commission welcomed the two-tier areas data sharing provisions but noted that regulation 35 and regulation 35A differed in their descriptions of the purposes for which the ERO would use the data. We have explained that the wording reflects the fact that these two provisions are made under different powers, and the wording reflects that.
- 8.4 The Information Commissioner's Office (ICO) recognises the public interest in measures being in place to assist lower-tier authorities in confirming electors to the new register and ensuring that electoral registers are as complete and accurate as possible. The ICO has welcomed the position whereby effective data sharing will enable many electors to be transferred to the individual electoral roll without being required to register, therefore simplifying the transition to IER. The ICO acknowledges however that an individual local authority may not wish to enter into a data sharing agreement to share electoral data (in the absence of a legislative requirement for authorities to share data in these circumstances it remains their decision whether to do so or not), but the ICO understands that this is considered unlikely to be a widespread approach among local authorities. The ICO has also welcomed an assurance already given that reference to its Data Sharing Code of Practice will be included in any guidance relating to these Regulations. So far as the other provisions of the Regulations are concerned, the ICO has said that both proposed measures seem entirely appropriate in relation to the arrangements they are intended to address, particularly with regard to the arrangements for anonymous entry where the ICO expects that EROs will wish to take account of the sensitivity of the registration and ensure that appropriate measures, including those for the security of the data, are in place. Having considered the purpose of the Regulations, the ICO does not consider that they raise any new or significant data protection or privacy issues.
- 8.5 The Association of Electoral Administrators (AEA), the Local Government Association (LGA) and the Society of Local Authority Chief Executives (SOLACE) were also consulted on both the policy proposals and the draft Regulations. The AEA had no comments on the draft instrument but warmly welcomed the intentions behind it. The LGA was content with the drafting of the instrument. SOLACE considered the proposed change to be a positive one and supported the draft instrument. During the earlier policy consultation SOLACE had suggested that the proposal could be strengthened by including a presumption in favour of disclosure. We have responded to this by adopting (in regulation

35A(4)) a suggestion originally from the AEA, that an authority which refuses a request from an ERO to disclose information must give the ERO written reasons for that refusal.

9. Guidance

9.1 Guidance will continue to be issued to registration officers as and when required on all aspects of individual registration, including the requirements for local data matching. This will, as mentioned above, include reference to the ICO's Data Sharing Code of Practice.

10. Impact

10.1 An overall Privacy Impact Assessment for individual electoral registration, including the use of data matching to confirm existing electors on the register, is at <https://www.gov.uk/government/publications/individual-electoral-registration-impact-assessment>.

10.2 A privacy impact assessment for the local data matching to be undertaken under these regulations will be published on legislation.gov.uk alongside the SI and EM.

10.3 A full regulatory impact assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 Under section 53(6) of the 1983 Act the Secretary of State has the power to require the EC to produce a report relating to disclosure of information to another person for the purpose of assisting a registration officer.

13. Contact

Carol Gokce at the Cabinet Office, tel 020 7271 2679: email Carol.Gokce@cabinet-office.gsi.gov.uk can answer any queries regarding the instrument.