

EXPLANATORY MEMORANDUM TO
THE REPRESENTATION OF THE PEOPLE (POSTAL AND PROXY VOTING
ETC.) (AMENDMENT) REGULATIONS 2023

2023 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations make amendments to the rules governing the administration and conduct of Parliamentary elections and other elections, referendums and recall petitions, primarily to implement sections 3 and 6 of, and Schedules 3 and 4 to, the Elections Act 2022 (“the 2022 Act”) relating to postal and proxy voting.
- 2.2 Additionally, these Regulations enable electors to apply online via a new digital service to vote by proxy or by post (also known as absent voting). The Regulations also create an identity checking process for absent vote applications, regardless of application method. This includes matching against Department for Work and Pensions held data, and powers for Electoral Registration Officers (“EROs”) to request additional evidence from the applicant for the purpose of identity checking.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument amends subordinate legislation made under section 2 (2) of the European Communities Act 1972. It therefore engaged the procedural and publication requirements of paragraphs 14 of Schedule 8 to the European Union (Withdrawal) Act 2018¹, which has been complied with.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Northern Ireland and Scotland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is primarily England. Part 2 and regulations 13 and 17 also apply to Wales. Part 3 and regulation 12 also applies to Scotland. Regulation 19 applies to England and Wales, Northern Ireland and Scotland. Regulation 21 applies to Wales only. Regulation 22 applies to England and Wales and Scotland.

¹ <https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>

5. European Convention on Human Rights

5.1 The Baroness Scott of Bybrook has made the following statement regarding Human Rights:

“In my view the provisions of the Representation of the People (Postal and Proxy Voting Etc.) (Amendment) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

6.1 These Regulations implement the measures related to postal and proxy voting which are set out in sections 3 and 6 of, and Schedules 3 and 4 to, the 2022 Act.

6.2 Additionally, these Regulations provide for an elector to apply online for an entitlement to vote by post or proxy at parliamentary elections in Great Britain and local government elections in England and make small adjustments to the way in which applications for electoral registration submitted online are processed

6.3 The measures in the 2022 Act provide that the maximum period that any elector or proxy may hold an entitlement to vote by post at parliamentary or local government elections will be approximately 3 years. This replaces the current ability to hold a postal vote arrangement on an indefinite basis or for a definite period that is longer than 3 years, as well as the need to provide a fresh signature for the purposes of postal vote verification every 5 years. These measures also provide that a person may only be appointed as a proxy to vote at parliamentary or local government elections for a maximum of two other electors, or a maximum of four other electors where at least two of those electors are registered in pursuance of a service declaration or an overseas elector’s declaration.

6.4 Part 2 of these Regulations amend the Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341) (“the 2001 Regulations”). Regulation 4 amends Part 3 of the 2001 Regulations, which relates to electoral registration, to minimise the processing of an applicant’s national insurance number submitted as part of an application for electoral registration, and to allow for the possibility of using information provided in a registration application submitted online to pre-populate absent vote and identity document applications submitted in close proximity by the same applicant.

6.5 Regulation 5 amends Part 4 of the 2001 Regulations, which relates to absent voters. The amendments require additional information to be provided by an applicant for a postal or proxy voting arrangement relating to polls that the UK Government has responsibility for (also known as reserved polls). These polls include:

- i. UK Parliamentary Elections
- ii. Recall Petitions held in England, Wales and Scotland
- iii. Local government elections in England,
- iv. Local referendums in England,
- v. Mayoral elections in England (which include local, London and London Assembly elections), and
- vi. Police and Crime Commissioner Elections in England and Wales.

This information – primarily the applicant’s national insurance number – is required for the purposes of identity checking

- 6.6 Regulation 5(7) amends regulation 56 of the 2001 Regulations to allow a person to submit a proxy application up to 5pm on the date of poll in circumstances where an earlier application is not received by the registration officer before a relevant deadline due to a technical defect in the digital service.
- 6.7 The amendments also provide for the online submission of postal or proxy voting applications. New regulation 56B and 56C of the 2001 Regulations (as inserted by regulation 5(8)) provide for the checking of applicant information against data held by the Department of Work and Pensions, as well as providing a power for a registration officer to request further documentary evidence from an applicant as necessary for the purposes of identity checking. New regulation 56D of the 2001 Regulations makes provision as to the processing of information provided in a postal or proxy voting application following determination.
- 6.8 Regulation 5(9) amends regulation 57 of the 2001 Regulations to require registration officers to send separate notification to an elector’s registered address where an application is made to redirect postal ballot papers to another address. New regulation 60ZA of the 2001 Regulations (as inserted by regulation 5(10)) requires a registration officer to notify an elector who has a postal voting entitlement for the maximum 3 year period that their entitlement is coming to an end and provide information as to how to make a fresh application. Regulation 5(11) amends regulation 60A of the 2001 Regulations so as to disapply the requirement to seek fresh signatures at five-yearly intervals from electors entitled to vote by post. Regulation 6 updates the prescribed form of the proxy paper issued to proxies upon appointment, as well as the poll cards issued to electors and proxies voting in person at polling stations.
- 6.9 Part 3 of these Regulations makes equivalent changes to the Representation of the People (Scotland) Regulations 2001 (S.I. 2001/497) as are made to the 2001 Regulations by Part 2
- 6.10 Part 4 of these Regulations amends the secondary legislation governing the conduct of the following:
- Recall Petitions in Great Britain and Northern Ireland;
 - Police and Crime Commissioner Elections in England and Wales;
 - Local and Combined Authority Mayoral elections (in England);
 - Local Referendums on the governance of local authorities (in England);
 - Neighbourhood Planning Referendums (in England);
 - Council Tax Increase Referendums (in England);
- 6.11 Amendments in Part 4 primarily update the statutory questions used in polling stations (or petition signing places) in line with the changes made to the parliamentary election conduct rules by paragraph 4 of Schedule 4 to the 2022 Act, and to update prescribed elector/proxy poll cards in each case. The amendments made in respect of Police and Crime Commissioner Elections and recall petitions also make equivalent provision to that contained in Schedules 3 and 4 to the 2022 Act and to the amendments contained in Parts 2 and 3 of these Regulations in respect of the separate postal and proxy voting/petition signing entitlements contained in the relevant secondary legislation.

- 6.12 Regulation 22 makes amendments to the Voter Identification Regulations 2022 (S.I. 2022/1382) to also minimise the processing of an applicant’s national insurance number provided as part of an identity document application, as well as making changes to identity checking attestation requirements consistent with similar changes made by Parts 2 and 3 of these Regulations.
- 6.13 Schedule 2 contains transitional provisions and savings relating to proxy appointments and elections, referendums and recall petitions during the period from 31st October 2023 to 31st January 2024. Parts 6 and 9 of Schedule 2 also contain provision which terminates certain proxy appointments and applications, and limits certain postal signing entitlements, relating to Police and Crime Commissioner elections and recall petitions, which are the equivalent of the provision set out in paragraph 4 of Schedule 3 and paragraphs 9 and 10 of Schedule 4 to the 2022 Act.
- 6.14 The amendments to the Representation of the People (England and Wales) Regulations 2001 and Representation of the People (Scotland) Regulations 2001 described above mean that this instrument engages the procedural and publication requirements within Schedule 8 to the European Union (Withdrawal) Act 2018, further details of which are set out at paragraph 8.1 and Annex 2 below. It has, however, no further link to the withdrawal of the United Kingdom from the European Union.

7. Policy background

What is being done and why?

- 7.1 The 2022 Act set out a wide range of changes to the electoral system. These include Regulations to make changes to proxy and postal voting.
- 7.2 These measures implement recommendations made in Sir Eric (now Lord) Pickles’ report on electoral fraud, entitled Securing the Ballot (“the Pickles Report”)², which was published in August 2016. The Pickles Report made a number of recommendations designed to address electoral fraud and to strengthen the integrity and security of voting. In complement to the measures to enhance the security of absent voting, the 2022 Act also included measures to ensure our processes are as modern and accessible as possible for voters.

Postal Voting

- 7.3 As part of the package of measures strengthening the security of the ballot, there will be a new requirement to reapply for a postal vote every 3 years, which will enhance security by ensuring a person’s eligibility to vote by post is reviewed on a regular basis. Additionally, by having to reapply every 3 years, electors will be kept more alert about the arrangements they have in place. This will support the Government’s efforts to encourage as many eligible electors to vote as is possible by empowering them to stay informed and in control.
- 7.4 Practically, this means that where an elector chooses to apply for a postal vote for the maximum period possible the postal vote arrangement will, for domestic postal voters, run until the third 31 January following the date on which the application is granted. This is to ensure that such postal vote applications will cease on 31 January in the year in question, which will give the elector time to apply for a fresh postal vote ahead of

² <https://www.gov.uk/government/publications/securing-the-ballot-review-into-electoral-fraud>

any scheduled elections for May in that year, if the elector wishes to continue to vote by post. Separate arrangements will be in place for overseas electors to align with their registration periods.

- 7.5 Transitional arrangements and mandatory communications from EROs will facilitate existing long term postal voters reapplying by 31 January 2026 once the provisions are commenced, if they wish to continue to vote by post.
- 7.6 The Regulations also include provision concerning postal vote re-directions to strengthen the current arrangements and alert postal voters if fraudulent activity is being attempted in relation to their postal vote. The Regulations provide that where:
- a person includes in their original postal vote application that their postal ballot papers should be sent to an address which is different to the address at which they are registered to vote, or
 - An existing postal voter (for the maximum or specified period) requests that their ballot papers for a particular election are sent to an address that is different from the usual address for this held on the record,
- the ERO must confirm in writing to the person at the address at which they are registered to vote, or the address held on the record, if the request is granted or refused. This replaces the current requirement for the ERO to ‘notify’ the persons concerned in these circumstances. The change will not apply to certain categories of elector who request a postal vote redirection, such as overseas electors, where it may be appropriate for the EROs to use other forms of communication, such as email.
- 7.7 The Regulations make similar provision in relation to applications for the redirection of postal votes from proxy postal voters.

Proxy Voting

- 7.8 The 2022 Act will also limit the number of electors for whom an individual may act as a proxy to four, of which no more than two can be ‘domestic’ electors (domestic electors are not overseas or service electors). Currently, a person may act as a proxy for 2 electors and an unlimited number of close family members. These existing arrangements have prompted concerns that they can give rise to situations where someone is coerced into appointing a proxy who could then effectively steal their vote. The new limit on the number of proxies a person may hold (for up to 4 overseas electors) is also designed to support overseas electors in identifying a proxy to vote on their behalf at elections
- 7.9 Transitional arrangements and mandatory communications from EROs will ensure existing proxy voters are aware of the changes, and know how to make new applications if they wish to continue voting by proxy
- 7.10 The Regulations replace certain prescribed forms used at Parliamentary and other elections, and other poll types, in order that those forms include updated information on the number of electors a person may now act as a proxy for.

Online Absent Vote Applications and Identity Checking

- 7.11 These Regulations create an identity checking process for absent vote applications and enable these applications to be made online. The new measures will strengthen the security and improve the accessibility and efficiency of the absent voting process.

- 7.12 Under existing law, electors must make applications for a postal or proxy vote in writing. Applications are then submitted by the elector to their local ERO. The paper-based application process can be cumbersome for both electors and electoral administrators. Handwritten information can often be difficult to decipher, and electors may be more likely to make mistakes (such as missing a section) on a paper application form.
- 7.13 In addition to making their application in writing, an elector applying for an absent vote must provide their personal identifiers (signature and date of birth) as part of the application. These identifiers were introduced as an anti-fraud measure, and for postal voting they are used to ensure that the ballot is completed by the registered elector. Despite this requirement, there remains a risk that multiple postal or proxy votes could be stolen via multiple fraudulent applications.
- 7.14 The UK Government will create a digital system to facilitate online applications being sent from electors to EROs and support the processing of these applications. The digital system will also facilitate identity checks by carrying out data matching between information provided by the applicant and records held by the Department for Work and Pensions. The results of this process will be shared with EROs.
- 7.15 These changes will bring absent voting in line with the Register to Vote application process, in which EROs check the identity of applicants before they are added to the electoral register. The Register to Vote digital service has been in place since 2014 and has successfully protected the integrity of the process whilst delivering on accessibility for electors.
- 7.16 These Regulations also enable integration between online Register to Vote and absent vote application journeys. It allows information provided as part of a Register to Vote application to be used to pre-populate an absent vote application.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

- 9.1 No consolidations will arise from this instrument.

10. Consultation outcome

- 10.1 The Electoral Commission (EC) were consulted on these Regulations. They asked questions and sought clarification on certain points but were broadly content and no substantial policy objections were raised in this process. They also agreed to wording changes made to the associated forms and communications.
- 10.2 The statutory consultation with the Information Commissioner's Office was completed.
- 10.3 Changes being made to absent voting via this instrument only apply to reserved polls. However there has been continuous engagement on these measures with Scottish Government and Welsh Government at official and ministerial level. As part of that engagement we consulted specifically on certain provisions concerning proxy voting which amend the legislation governing the combination of polls, including the combination of certain reserved polls with the polls at local elections in Scotland and Wales.

10.4 Since the passage of the 2022 Act we have consistently engaged with delivery partners including the Association of Electoral Administrators, and a range of individual returning officers, electoral registration officers and electoral administrators representative of local authorities across the country. This ongoing consultation has shaped the effective design of the service and the drafting of the SI.

11. Guidance

11.1 The Electoral Commission issues guidance to electoral administrators relating to the administration and conduct of elections, referendums and recall petitions, and to candidates standing at elections. They will update the guidance as necessary in advance of future polls to reflect the changes set out in this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The EC will produce reports on the administration and conduct of elections, and the Department for Levelling Up, Housing and Communities will consider any findings or recommendations made by the EC about the changes in these instruments that will apply at those polls.

14.2 In accordance with section 62 of the 2022 Act, the Secretary of State must prepare and publish a report on the operation of the 2022 Act, as well as lay a copy of the report before Parliament, between 4 and 5 years after the day on which the 2022 Act was passed.

14.3 The Department for Levelling Up, Housing and Communities will continue to keep all electoral legislation under consideration to ensure it continues to support electors' participation in elections and effective electoral administration.

15. Contact

15.1 Elizabeth Jacobs at the Department for Levelling Up, Housing and Communities Elizabeth.jacobs@levellingup.gov.uk can be contacted with any queries regarding the instrument.

15.2 Peter Richardson at the Department for Levelling Up, Housing and Communities email: peter.richardson@levellingup.gov.uk can be contacted with any queries regarding the instrument.

15.3 Becca Crosier, Deputy Director for Elections, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.4 Baroness Scott of Bybrook at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Scrutiny statement where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972

1.1 Baroness Scott of Bybrook has made the following statement regarding this instrument:

“I have taken the following steps to make the draft instrument published in accordance with paragraph 14(2) of Schedule 8 to the European Union (Withdrawal) Act 2018 available to each House of Parliament: Copies of the draft instrument were published on the gov.uk website. Copies of the draft instrument were also deposited in the libraries of both Houses of Parliament for comment and for any recommendations. A draft of the instrument will be laid under the draft affirmative procedure not before a period of 28 days from the date of publication. Following Enhanced Scrutiny, the draft SI has been amended as a result of feedback from the electoral sector and parliamentarians on ensuring as much time as possible is afforded to administrators and voters alike in adapting to the changes. Under the previous transitional arrangements, existing long term postal voters would have been subject to the new requirements by 31 January 2026 at the latest, though those electors with a long-term postal vote whose signature was due to be ‘refreshed’ before 31 January 2026 would have needed to reapply before that date. We are now specifying that all existing long-term postal voters will need to reapply by 31 January 2026, and not before then.”