

EXPLANATORY MEMORANDUM TO
THE REPRESENTATION OF THE PEOPLE (POSTAL VOTE HANDLING AND
SECRECY) (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.

2. Purpose of the instrument

- 2.1 These Regulations make updates to the rules for the administration and conduct of Parliamentary elections and other polls, to apply to them provisions in the Elections Act 2022 (“the 2022 Act”) designed to strengthen the security of postal and proxy voting, in particular provisions concerning the handling and handing in of postal votes and the secrecy of postal and proxy voting. The Regulations also make changes concerning postal and proxy voting that replicate for various polls changes made by the 2022 Act for Parliamentary elections.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 is primarily England. Regulations 2 and 8 also apply to Wales. Regulation 3 applies to Scotland only. Regulation 10 applies to England and Wales and Scotland and Northern Ireland. Regulation 12 applies to Wales only.

5. European Convention on Human Rights

- 5.1 Baroness Scott of Bybrook, Parliamentary Under Secretary of State, Department for Levelling Up, Housing and Communities, has made the following statement regarding Human Rights:

“In my view the provisions of the Representation of the People (Postal Vote Handling and Secrecy) (Amendment) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 These Regulations implement the measures related to the handling of postal votes and secrecy which are set out in sections 4, 5 and 7 of the 2022 Act.
- 6.2 Section 4 of the 2022 Act inserts new section 112A into the Representation of the People Act 1983 (“the 1983 Act”). This new section creates a criminal offence where

postal voting documents for a Parliamentary election or local government election in England are handed in by a political campaigner. The term “political campaigner” is defined in section 112A(7) of the 1983 Act, and includes candidates, election agents and members of registered political parties who carry on activities designed to promote a particular outcome at the election.

- 6.3 Section 5 of the 2022 Act amends the 1983 Act to include the power to make regulations relating to the procedural requirements and limitations for handing in postal voting documents to polling stations or returning officers.
- 6.4 Section 7 of the 2022 Act amends section 66 of the 1983 Act, which relates to the requirement of secrecy in respect of the ballot. The amendments make it a criminal offence for a person to obtain or attempt to obtain information or communicate any such information as to the official mark on, or number or other unique identifying mark on the back of, a postal ballot paper, or as to the candidate for whom the postal voter at a Parliamentary election or local government election in England is about to vote or has voted by marking their postal ballot paper. The amendments make certain exceptions in respect of proxy voters and information sought or communicated for the purpose of published statements or forecasts.
- 6.5 Regulation 2 of these Regulations amends the Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341) (“the 2001 Regulations”). It inserts new regulations 79A to 79D and 82A to 82D. These new regulations require a person handing in one or more sets of postal voting documents for a Parliamentary election in England and Wales or a local government election in England at a polling station or to a returning officer to complete a “return of postal voting documents form” when doing so, setting out the information prescribed in those regulations. The new regulations also require the rejection of postal voting documents where that return form is not fully completed with the required information; where it is suspected that the person handing in the postal ballot papers is doing so on behalf of more than five other electors (whether on that occasion or in respect of the same election, taking into account other postal voting documents previously handed in); and where the person handing in the postal voting documents is suspected to be committing an offence under section 112A of the 1983 Act (i.e. handling postal ballot papers as a political campaigner). The new regulations also require the rejection of postal voting documents left behind at a polling station or with the returning officer, as well as making provision as to the processing of any rejected postal voting documents at the conclusion of the poll.
- 6.6 Regulation 3 makes similar amendments to the Representation of the People (Scotland) Regulations 2001 (S.I. 2001/497) in respect of Parliamentary elections in Scotland to those described above in respect of the 2001 Regulations.
- 6.7 Regulations 5 to 7, 9 and 11 makes amendments to the secondary legislation governing the conduct of local authority mayoral elections in England, local government referendums in England and combined authority mayoral elections in England, in consequence of the implementation of the 2022 Act measures described above.
- 6.8 Regulation 8 makes amendments to the secondary legislation governing the conduct of police and crime commissioner elections (“PCC elections”) in England and Wales. The amendments make equivalent provision to that described above in relation to the 2001 Regulations for postal voting documents used at PCC elections, as well as

equivalent new offences to those in section 112A of the 1983 Act and section 66 of the 1983 Act as amended by the 2022 Act. Regulation 8 also updates certain prescribed forms used in PCC elections, and regulation 12 makes equivalent updates to Welsh versions of those forms.

- 6.9 Regulation 10 makes amendments to the secondary legislation governing the conduct of recall petitions under Recall of MPs Act 2015. The amendments make equivalent provision to that described above in relation to the 2001 Regulations for postal signing documents used at recall petitions, as well as equivalent new offences to those in section 112A of the 1983 Act and section 66 of the 1983 Act as amended by the 2022 Act.

7. Policy background

What is being done and why?

- 7.1 The 2022 Act made changes and additions to a wide range of electoral legislation. A number of these changes and additions were to implement recommendations made in the 2016 report ‘Securing the Ballot’, published by Sir Eric (now Lord) Pickles (“the Pickles Report”).
- 7.2 The 2022 Act includes a number of measures that are designed to strengthen the security and integrity of the electoral process at Parliamentary elections and other polls, including measures to safeguard postal and proxy voting. They will give greater protection to persons with a postal or proxy vote arrangement and so ensure they are able to cast their vote securely and in private without intimidation or coercion from others.
- 7.3 The Regulations implement measures including provisions concerning the handling and handing in of postal votes, and extending secrecy provisions that apply to voting in person to postal and proxy voting.
- 7.4 The Regulations also extend these changes to various other types of polls.

Postal vote handling offence for political campaigners

- 7.5 Section 4 of the 2022 Act introduces a ban on political campaigners handling a postal ballot paper/voting document that was issued to another person. The ban is supported by a new offence. There is an exemption from this restriction for political campaigners who are a family member or designated carer of the other person.
- 7.6 These new provisions are designed to prevent activities and behaviour that has been a cause for concern at previous elections, in particular to prevent political campaigners from collecting - or ‘harvesting’ - the votes of other postal voters. The new offence is set out at section 112A of the 1983 Act and applies to Parliamentary elections and local elections in England.
- 7.7 The way that the 1983 Act (and the conduct rules for other polls) works means that the new offence (at section 112A of the 1983 Act), once commenced, in addition to Parliamentary elections, will apply to all levels of local council elections (including parish councils) in England, and also local authority and combined mayoral elections and Greater London Authority elections.
- 7.8 The Regulations make the necessary amendments to ensure that the new offence (with necessary modifications) also applies to local referendums in England.

- 7.9 The legal framework for PCC elections and recall of MP petitions means that provisions in the 1983 Act do not automatically apply for these polls. The Regulations insert equivalent provisions on the new offence (modified as necessary) into the conduct rules for these polls to ensure that the new postal vote handling offence applies to PCC elections and recall of MP petitions across the UK.

Handing in of postal votes

- 7.10 It will still be permitted for people who are not political campaigners subject to the new postal vote handling offence to handle and hand in postal voting documents that are issued to others. The 2022 Act seeks to ensure that the arrangements in place governing this are robust, with reasonable limits in place on the number of postal votes that may be handled/handed in, and which support the integrity of postal voting.
- 7.11 The 2022 Act therefore provides for a power for regulations to be made to limit the number of electors on behalf of whom a person may hand in postal votes at a poll, and to set out the procedure to be followed for the handing in of postal votes. Postal votes not handed in in accordance with the requirements will be rejected.
- 7.12 The Regulations set out provisions (using the powers in the 2022 Act) that provide that, in addition to their own postal vote, an individual will be able to hand in at a polling station or to the Returning Officer (for example, at council offices) the postal votes of up to five other electors. The provisions will allow reasonable numbers of postal votes to be handed in by an individual, which will facilitate participation, whilst strengthening the integrity of postal voting in line with the Pickles Report.
- 7.13 A person handing in postal votes will be required to complete a form setting out certain information, including their name and address, the number of persons whose postal votes they are handing in and the reason for this. Postal votes that are handed in in accordance with the requirements will be accepted by the ‘relevant officer’ (that is, the Presiding Officer or a polling station clerk in the polling station, or where postal votes are handed in to the Returning Officer, the Returning Officer or person acting under their authority) and forwarded to a postal vote opening session to be dealt with along with other returned postal votes.
- 7.14 The Regulations provide for the rejection of postal ballots by the relevant officer, where:
1. the person handing in the postal votes fails to fully complete the accompanying return of postal voting documents form with the required information, or
 2. the number of postal votes handed in by a person exceeds the permitted number, or
 3. a party campaigner has handled a postal vote illegally (any postal votes of other voters that are handed in by that person will be rejected – but not their own), or
 4. the postal votes have simply been dropped and abandoned at the polling station/with the Returning Officer and no accompanying form has been completed.
- 7.15 The Regulations provide that rejected postal votes will not be counted.
- 7.16 After the poll, the Returning Officer will put together lists of rejected postal ballot papers, and the registration officer, where possible, will write to the persons whose postal votes have been rejected under the postal vote handing in requirements to notify them that their vote was rejected and the reason (or reasons) why. Registration

officers already notify postal voters after a poll where their postal vote has been rejected due to an issue with the personal identifiers (signature and date of birth) they provided when returning their postal ballot paper at the poll.

- 7.17 The Regulations make provision for the storage and destruction (after one year) of accepted and rejected postal voting documents after the poll, in line with the arrangements for other electoral documents.
- 7.18 The Regulations ensure that the new provisions concerning the handing in of postal votes apply to Parliamentary elections in Great Britain, local authority and combined mayoral elections, and local referendums in England. The Regulations also make the necessary changes to apply the provisions to the handing in of postal votes at PCC elections and to the handing in of postal signing sheets at Recall of MP petitions across the UK. The provisions as applied to Northern Ireland are slightly different in that postal signing sheets cannot be handed into the signing place and can only be returned to the Petition Officer.
- 7.19 These provisions will also be supplemented in a parallel Statutory Instrument which will make equivalent amendments that apply to Parliamentary, local and Assembly elections in Northern Ireland.

Extending secrecy protections to absent voting

- 7.20 Currently, requirements protecting the secrecy of a person's vote are in place for people voting in a polling station (at section 66 of the 1983 Act). Section 7 of the 2022 Act extends the existing secrecy provisions to postal and proxy voting. The measure implements a recommendation on this issue in the Pickles Report which found that the secrecy of the ballot is fundamental to the ability of voters to cast their vote freely without pressure to vote a certain way.
- 7.21 Section 7 provides for it to be an offence for a person to seek information about who a postal voter is voting for at the time they are completing their ballot paper or to communicate such information obtained at that time.
- 7.22 The offence does not apply to opinion polling activity asking how a postal voter has voted or intends to vote to avoid criminalisation of opinion pollsters.
- 7.23 The measure also provides that a person voting as proxy for another elector at an election must not communicate at any time to any person, except the elector for whom they are voting as proxy, any information as to the candidate for whom that person is about to vote or has voted (as proxy), or the number or other unique identifying mark on the back of a ballot paper sent or delivered to that person.
- 7.24 The changes made by section 7 of the Act to section 66 of the 1983 Act apply to Parliamentary elections and local elections in England. As with new section 112A of the 1983 Act, the changes to section 66 of the 1983 Act, once commenced, in addition to Parliamentary elections, will apply to all levels of local council elections (including parish councils) in England, and also to local authority and combined mayoral elections and Greater London Authority elections.
- 7.25 The Regulations make the necessary amendments to ensure that the new offence provisions (with necessary modifications) apply to local referendums in England, PCC elections and Recall of MP petitions across the UK.
- 7.26 The Regulations make changes to certain forms at Parliamentary and other elections, and other poll types, in order that forms include updated information on the new

requirements concerning the handing in of postal votes and the secrecy of absent voting.

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 consolidation will arise from this instrument.

10. Consultation outcome

10.1 The Electoral Commission were consulted on these Regulations. The Electoral Commission asked questions and sought clarification on certain points but were content on most issues and no substantial policy objections were raised in this process. They also agreed to wording changes made to the associated forms.

10.2 Changes being made by this instrument to absent voting 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 the Welsh Government specifically on certain provisions in the instrument concerning the combination of postal ballot packs at combined polls which would impact on local elections in Wales (there is no equivalent impact at local elections in Scotland).

10.3 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 new requirements and the drafting of the instrument.

11. Guidance

11.1 The Electoral Commission issues guidance to electoral administrators relating to the administration and conduct of elections, and also to candidates standing at elections, and will update the guidance as necessary in advance of future polls in light of 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 has not been prepared for this instrument as no, or no significant, impact on the private, voluntary, or public sectors is foreseen.

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 approach to monitoring of this legislation is that the Electoral Commission 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 Electoral Commission 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 Peter Richardson at the Department for Levelling Up, Housing and Communities Telephone: 0303 444 0488 or email: peter.richardson@levellingup.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Becca Crosier, Deputy Director for the Elections Division, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Scott of Bybrook, Parliamentary Under Secretary of State at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.