

## EXPLANATORY MEMORANDUM TO

### THE REPRESENTATION OF THE PEOPLE (PROXY VOTE APPLICATIONS) (CORONAVIRUS) (AMENDMENT) REGULATIONS 2022

2022 No. 175

#### 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 Her Majesty.

#### 2. Purpose of the instrument

- 2.1 The instrument will amend and extend for a further 12 months an existing amendment to the rules governing various elections in Great Britain, to allow for late urgent applications to vote by proxy on grounds of a requirement to self-isolate or in response to coronavirus-related medical advice.

#### 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 territorial extent of this instrument is England and Wales and Scotland, except for regulations 3 and 5 which extend only to England and Wales, and regulation 4 which extends only to Scotland.
- 4.2 The territorial application of this instrument is England for UK Parliamentary elections, local elections, and Police and Crime Commissioner (PCC) elections; Wales for UK Parliamentary elections and PCC elections; and Scotland for UK Parliamentary elections only. Regulations 3 and 5 apply only to those elections in England and Wales; regulation 4 applies only to Scotland.

#### 5. European Convention on Human Rights

- 5.1 Kemi Badenoch, Minister of State has made the following statement regarding Human Rights:

“In my view the provisions of the Representation of the People (Proxy Vote Applications) (Coronavirus) (Amendment) Regulations 2022 are compatible with the Convention rights.”

#### 6. Legislative Context

- 6.1 This instrument amends and extends the Representation of the People (Proxy Vote Applications) (Coronavirus) Regulations 2021 (“the 2021 Regulations”), brought into force on 24 March 2021 and which had been due to expire on 28 February 2022. That instrument made amendments to the provisions which provide for electors to appoint a proxy to vote for them, expanding the eligibility to apply for a proxy vote up to and including polling day, where electors are self-isolating on the basis of coronavirus

advice, or where a person they have already appointed to be their proxy is similarly affected by coronavirus. This instrument will amend the existing temporary provisions by extending them for a further year and by removing reference to ‘clinically extremely vulnerable’ people and people who are at the ‘highest risk of severe illness from coronavirus’, bringing the wording into line with the latest Government guidance. This wording related to people who were shielding, which is no longer in place, however the new arrangements will still allow people to appoint a coronavirus related proxy in instances where attendance at a polling station would be contrary to medical advice.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Ahead of the May 2021 elections, the 2021 Regulations were enacted to allow electors to appoint an emergency proxy vote, or to change their appointed proxy, in circumstances where they or their existing proxy appointment were unable to vote due to coronavirus, without the need for medical attestation, as is required for regular emergency proxy votes, and up until 5pm on polling day. This policy was based on ensuring that nobody would be left unable to vote should they, or their existing proxy, be unable to attend a polling station at short notice due to coronavirus. It was made clear when this legislation was brought into force that it was a temporary measure to address an exceptional requirement caused by the pandemic, and a sunset clause was included that would cause the legislation to expire after a year. Given that the pandemic is ongoing and people are still required to isolate where they test positive for coronavirus, this Instrument will extend the measures for a further 12 months to ensure people who are required to isolate at short notice are still able to vote. The instrument will also remove the existing reference to the ‘clinically extremely vulnerable’ and people who are at the ‘highest risk of severe illness from coronavirus’. This terminology was used in England and Scotland respectively and its removal will bring the wording into line with the latest Government guidance. Anyone following advice from a medical practitioner to isolate will still be able to apply for a coronavirus proxy, meaning anyone who is, in effect, shielding will not be adversely affected. The Government has consulted the Parliamentary Parties Panel on the extension of the measures and no concerns have been raised.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

- 9.1 There are no plans to consolidate the instruments being amended at this time.

## **10. Consultation outcome**

- 10.1 The Electoral Commission (EC) has been consulted in accordance with section 7(1), (2)(e) and (hc) of the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”). The EC are content with the Government’s decision to extend the existing arrangement for a further year and to update the wording to bring it in line with the latest Government guidance.

## **11. Guidance**

- 11.1 The Electoral Commission provided guidance to support the implementation of the existing changes introduced by the 2021 Regulations, and will continue to do so.

## **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 An Impact Assessment has not been prepared for this instrument because the legislation does not apply to activities that are undertaken by small businesses.

## **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 has a duty under section 6 of the 2000 Act to keep under review general matters that relate to elections and are able to submit a report to the Secretary of State. The Government will consider any recommendations made.
- 14.2 This instrument does not include a statutory review clause. However, the extended amendments expire at the end of the 28th February 2023, except in respect of elections or referendums for which notice has already been given on or before that date, but the poll takes place afterwards. The previous rules will therefore be in place for the elections scheduled to take place in May 2023.

## **15. Contact**

- 15.1 Gregory Brownlow at the Department for Levelling Up, Housing and Communities, email: [gregory.brownlow@cabinetoffice.gov.uk](mailto:gregory.brownlow@cabinetoffice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 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.
- 15.3 Kemi Badenoch, Minister of State at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.