

EXPLANATORY MEMORANDUM TO
THE LOCAL ELECTIONS (NORTHERN IRELAND) ORDER 2023
2023 No. 1083

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to make amendments to the rules governing the administration and conduct of local elections to implement parts of Schedule 6 to the Elections Act 2022 (“the 2022 Act”) relating to proxy voting.
- 2.2 Additionally, this Order makes provision restricting access to the dates of birth lists that, under provisions in Schedule 6 to the Elections Act 2022, must be provided by the Chief Electoral Officer to polling stations in Northern Ireland at local 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 is Northern Ireland only.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Northern Ireland.

5. European Convention on Human Rights

- 5.1 The Minister of State for Northern Ireland, Steve Baker MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Local Elections (Northern Ireland) Order 2023 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This Order makes various changes to the rules governing local elections in Northern Ireland. This instrument is also linked to the Representation of the People (Postal and Proxy voting etc.) (Amendment) Regulations 2023 which implements the changes to proxy voting in GB.
- 6.2 This Order makes amendments to the Local Elections (Northern Ireland) Order 1985 (the “1985 Order”), the Local Elections (Northern Ireland) Order 2010 (the “2010 Order”) and the Electoral Law Act 1962, (the “1962 Act”) which sets out the rules governing local elections in Northern Ireland. Similar changes are also made to the rules governing Parliamentary and Assembly elections in Northern Ireland by a separate instrument: The Representation of the People and Recall Petition (Amendment) (Northern Ireland) Regulations 2023.

- 6.3 Many of the changes in the Order are required as a result of changes to electoral law made by the 2022 Act.
- 6.4 Article 2 amends paragraph 9 of Schedule 2 to the 1985 Order to remove the requirement for a proxy vote application to provide details of the family relationship between the proxy and the person appointing them. This is required as a result of changes to the rules governing the number of persons for whom a proxy can act (see Schedule 6 to the 2022 Act).
- 6.5 Article 3 amends paragraph 12 of Schedule 2 to the 1985 Order to provide that, where a person (including a proxy) applies for a postal vote and requests that their ballot papers are sent to an address which is different from the address held on record by the CEO, the CEO must send to that address a confirmation that the ballot papers will be sent to the requested address, or a notification that the application has been refused.
- 6.6 Provision in the 2022 Act amended the rules set out in Schedule 5 to the Electoral Law Act 1962 (the “Local Election Rules”) so as to require the CEO to provide polling stations with a list of the dates of birth of voters, including proxies. Article 4 inserts a new Schedule 2A into the 2010 Order, allowing for the disclosure of the date of birth lists in two situations. New paragraph 2 provides a scheme for the police to be given a date of birth list where this is required for the purposes of crime prevention or enforcement of the criminal law. New paragraph 3 provides that a court may order the disclosure of a date of birth list if required for the prosecution of an electoral offence, or for the purposes of an election petition. Both new regulations include safeguards against onwards disclosure, breach of which is a criminal offence under new paragraph 4.
- 6.7 Article 5 and Schedules 1, 2 and 3 make changes to the forms used in local elections in Northern Ireland to reflect the changes made by the 2022 Act to the rules on the number of persons for whom a proxy may act, and to the acceptable forms of voter identification. Article 6 is a transitional provision which requires a proxy paper form for a proxy appointment made after 31 October 2023 but before 5 March 2024 to reflect the fact that the new rules on proxy appointments do not yet apply but that voting as a proxy on behalf of more than 4 people will be an offence after 5 March.

7. Policy background

What is being done and why?

- 7.1 The 2022 Act makes a wide range of changes to the electoral system. These include changes to proxy and postal voting and changes to the checks at polling stations to strengthen the security and integrity of voting.
- 7.2 The proxy measures also implement recommendations made in Sir Eric (now Lord) Pickles’ report on electoral fraud, entitled Securing the Ballot (“the Pickles Report”), which was published in August 2016. The Pickles Report made a number of recommendations designed to address electoral fraud including restrictions on the number of voters for whom a person may act as proxy.

Proxy Voting

- 7.3 The 2022 Act limits 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). Before the changes made by the 2022 Act, a person was allowed to act as a proxy for 2 electors and an unlimited number of close family

members. Those arrangements prompted concerns that they could give rise to situations where someone was coerced into appointing a proxy who could then effectively steal their vote.

- 7.4 Transitional arrangements and mandatory communications from the Chief Electoral Officer 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.
- 7.5 The Order replaces certain prescribed forms used at local elections, in order that those forms include updated information on the number of electors a person may now act as a proxy for.

Dates of birth lists

- 7.6 Schedule 6 to the Elections Act 2022 inserted new rule 16B into the Local Elections Rules to place a duty on the Chief Electoral Officer to provide polling stations with lists of the dates of birth of voters, including proxies. This is for the purpose of enabling polling station staff to carry out their existing duty to check on a voter's or proxy's date of birth, as provided for under rule 34, where the apparent age of the voter compared to the date supplied by the voter when they registered to vote (or were appointed as a proxy, in the case of a proxy registered to vote in Great Britain) raises a reasonable doubt as to whether the voter is the elector or proxy they represent themselves to be.
- 7.7 Under the Elections Act 2022 the Chief Electoral Officer, and persons to whom the Chief Electoral Officer has delegated functions, must not permit the date of birth lists to be inspected, supplied or the information in the lists to be made use of otherwise than as allowed under the rules or regulations made under the Act.
- 7.8 As the dates of birth lists contain personal information linked to identity, the Order ensures that the purposes for which the lists can be accessed and the persons who can access the lists are very narrow. These are:
 - The police. For the purpose of the prevention and detection of crime and enforcement of the criminal law.
 - Where a court orders inspection or production of the lists for the purpose of prosecution of electoral offences or for the purposes of an election petition.
- 7.9 The Order amends the requirements of an application for a proxy so that applications will be required to include the date of birth of the person being appointed as proxy. This is to ensure the date of birth of proxy who is registered in Great Britain can be checked against the date of birth lists provided to polling station staff. The dates of birth of voters registering in Northern Ireland are retained as part of the registration process.

Postal Voting

- 7.10 The Order also includes provision concerning postal vote redirections to strengthen the current arrangements and alert postal voters if fraudulent activity is being attempted in relation to their postal vote. The Order provides that where:
 - a person includes in their original postal vote application a request 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 Chief Electoral Officer 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. The requirement to send communications to a specific address is in addition to the current requirement for the Chief Electoral Officer to write to the persons concerned in these circumstances. The change will not apply to certain categories of elector who request a postal vote redirection, such as service electors, where it may be appropriate for the Chief Electoral Officer to use other forms of communication, such as email.

7.11 The Order makes similar provision in relation to applications for the redirection of postal votes from proxy postal voters.

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 This instrument does not consolidate any current legislation.

10. Consultation outcome

10.1 Throughout the development of the policy we have consulted with the Chief Electoral Officer for Northern Ireland and the Electoral Commission. We have also liaised closely with the Department of Levelling Up, Housing and Communities in relation to GB, which has consulted with the Electoral Commission, the Association of Electoral Administrators as well as representatives of the electoral sector through structures set up as part the Electoral Integrity Programme. We have undertaken formal consultation with the Information Commissioner's Office.

11. Guidance

11.1 The Electoral Commission provide guidance for electoral returning officers, including the CEO on electoral administration. We will work closely with the Commission in providing necessary guidance to the CEO.

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 because 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 EC will produce reports on the administration and conduct of elections, and the Northern Ireland Office 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, Government 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 Northern Ireland Office will continue to keep all electoral legislation under consideration to ensure it continues to support the integrity of elections and effective electoral administration.

15. Contact

- 15.1 Katherine Herrick at the Northern Ireland Office Telephone: 07824866744 or email: Katherine.herrick@nio.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Máire Cairns, Deputy Director for Elections Policy, at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Steve Baker MP, Minister of State at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.