

EXPLANATORY MEMORANDUM TO
THE OVERSEAS ELECTORS, POSTAL VOTE HANDLING AND SECRECY
(AMENDMENT) RULES 2023

2023 No. 1233

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 This instrument makes updates to the rules for the administration and conduct of local authority, parish council and Greater London Authority (“GLA”) elections to apply provisions in the Elections Act 2022 (“the 2022 Act”) concerning the handling and handing in of postal votes. The instrument also makes a consequential change to the rules for parish polls as a result of the measure in the 2022 Act concerning the secrecy of voting, and revokes a redundant order as a result of the changes being made under the 2022 Act to expand the franchise for overseas electors.

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 (that is, where the instrument produces a practical effect) is primarily England. The revocation in rule 6 applies to England and Wales, Northern Ireland and Scotland.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

- 6.1 These Rules implement the measures related to the handling and handing in 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 at a 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 Rule 2 amends the Parish and Community Meetings (Polls) Rules 1987 (S.I. 1987/1) in consequence of the amendments made to section 66 of the RPA 1983 by section 7 of the 2022 Act.
- 6.6 Rules 3 to 5 amend the Local Elections (Principal Areas) (England and Wales) Rules 2006 (S.I. 2006/3304), the Local Elections (Parishes and Communities) (England and Wales) Rules 2006 (S.I. 2006/3305) and the Greater London Authority Elections Rules 2007 (S.I. 2007/3541) respectively. These consequential amendments, relating to the new procedures for the handing in of postal voting documents at polling stations to the rules governing the conduct of local government elections in England, clarify that a person who is handing in a postal vote is entitled to admission into a polling station for that purpose, and that a postal ballot paper is only duly returned if it does not fall to be rejected in accordance with the new postal vote handling procedures set out in the Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341). Additionally, the Rules update prescribed forms for use at those elections.
- 6.7 Rule 6 revokes the Holders of Hereditary Peerages (Overseas Electors) (Transitional Provisions) Order 2001 (S.I. 2001/84) (“the 2001 Order”), which is redundant as a result of the expanded franchise for British citizens overseas under the 2022 Act. Section 3(1) of the House of Lords Act 1999 (“the 1999 Act”) provided that the holder of a hereditary peerage who was not a member of the House of Lords was entitled to vote at Parliamentary elections. Prior to the expanded franchise introduced by the 2022 Act, the holder would not have been able to register as an overseas elector based on previous registration prior to the coming into force of section 3(1) of the 1999 Act. This was because franchise qualifications set out in section 1(3) and (4)(b) of the Representation of the People Act 1985 for British citizens overseas were based on previous parliamentary registration, and prior to section 3(1) of the 1999 Act the holder of a hereditary peerage as a member of the House of Lords would only have been able to register as a local government elector. Article 2 of the 2001 Order therefore widened the franchise qualifications in section 1 of the Representation of the People Act 1985 to include reference to registers of local government electors published prior to the coming into force of section 3(1) of the 1999 Act in respect of those holders.
- 6.8 The expanded franchise for British citizens overseas set out in section 14(1) of the 2022 Act does not distinguish between previous registration as a parliamentary elector or as a local government elector. Consequently, the 2001 Order is redundant from the coming into force of the expanded franchise.

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 help ensure they are able to cast their vote securely and in private without intimidation or coercion from others.
- 7.3 The 2022 Act included 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. 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 Representation of the People (Postal Vote Handling and Secrecy) (Amendment) Regulations 2023 (S.I. 2023/1225) (“the 2023 Regulations”) make changes to apply these provisions to Parliamentary elections and other polls.
- 7.4 This instrument makes necessary changes to ensure the provisions concerning the handling and handing in of postal votes, and secrecy provisions, are implemented at local, parish and GLA elections.

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 The new offence is set out at section 112A of the 1983 Act and applies to Parliamentary elections and local elections in England. 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 a range of other polls, including all levels of local council elections (including parish councils) in England, and also GLA elections.

Handing in of postal votes

- 7.7 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.
- 7.8 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. As indicated, the 2023 Regulations make provision on these matters.

- 7.9 The 2022 Act made changes to allow persons aged 18 and over to hand in postal votes at polling stations at parliamentary elections and to provide that postal votes that are rejected under the postal vote handing in requirements are not counted. This instrument replicates these new provisions at local, parish and GLA elections.

Extending secrecy protections to absent voting

- 7.10 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.
- 7.11 The amendments made by section 7 to section 66 of the 1983 Act provide 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.
- 7.12 These changes 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 GLA elections.
- 7.13 The instrument makes a consequential change to rules for parish polls as a result of the measure concerning the secrecy of voting with regards to companions of disabled voters. The current wording refers specifically to blind voters and the instrument updates it to cover any disabled voter.

Election forms

- 7.14 The instrument makes changes to certain forms at local, parish and GLA elections in order that forms include updated information on the new requirements concerning the handing in of postal votes and the secrecy of absent voting.

Changes concerning overseas electors

- 7.15 The instrument also revokes the 2001 Order, which (as set out above) is redundant as a result of the changes being made under the 2022 Act to expand the franchise for overseas electors.

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 this instrument and had no substantive comments on the instrument.

10.2 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 this instrument 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 Jacob Young MP, Parliamentary Under Secretary of State at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.