EXPLANATORY MEMORANDUM TO

THE LOCAL ELECTIONS (NORTHERN IRELAND) (AMENDMENT) ORDER 2024

2024 No. [XXXX]

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 This Order amends the legislation for local elections in Northern Ireland, to make provisions designed to strengthen the security of postal voting, in particular provisions concerning the handing in of postal votes.

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 Northern Ireland.

4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

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

"In my view the provisions of the Local Elections (Northern Ireland) Order 2024 are compatible with the Convention Rights."

6. Legislative Context

6.1 This Order makes provision related to the handing in of postal votes for local elections. Section 5 of the Elections Act 2022 ("the 2022 Act") amended the Representation of the People Act 1983 ("the 1983 Act") to include the power to make regulations relating to the procedural requirements and limitations for handing in postal voting documents for parliamentary elections to the Chief Electoral Officer, who is the Returning Officer for the whole of Northern Ireland. The Representation of the People (Postal Vote Handling etc.) (Northern Ireland) (Amendment) Regulations 2024 makes provision under this power for Parliamentary elections. This Order makes equivalent changes for local elections under section 84 of the Northern Ireland Act 1998 ("the 1998 Act").

6.2 In Part 2 of this Order, article 3 amends Part 1 of Schedule 2 to the Local Elections (Northern Ireland) Order 1985 (S.I. 1985/454) ("the 1985 Order") by replacing the Statement as to Postal Ballot Papers form in the Appendix.

6.3 In Part 2, articles 4-8 of this Order amend Part 3 of Schedule 2 of the 1985 Order. Article 5 amends paragraph 15 of Part 3 of Schedule 2, concerning the receipt of covering envelopes, to ensure that, going forward, paragraph 15 only applies to postal votes returned by post.

6.4 Article 6 inserts new paragraphs 15A to 15G into Part 3 of Schedule 2. These new paragraphs require a person handing in one or more sets of postal voting documents for a local election in Northern Ireland to the returning officer to complete a "return of postal voting documents form" when doing so, setting out the information prescribed in those paragraphs (see new paragraphs 15A and 15B). New paragraph 15C requires 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). New paragraphs 15D and 15E set out the steps to be taken in relation to the postal voting documents after the returning officer has decided whether or not to reject any of them. The new paragraphs also set out the steps to be taken in relation to postal voting documents left behind without being handed in (see new paragraph 15F). Postal voting documents which are rejected or left behind without being handed in are not forwarded to the count. New paragraph 15G provides for the treatment and custody of postal voting documents and return of postal voting documents forms.

6.5 New paragraphs 15H and 15I require the Chief Electoral Officer to compile a list of electors whose postal voting documents were rejected or left behind under these provisions and to then send a notification to those electors, and if appropriate their postal proxy, within 3 months to inform them of this fact.

6.6 Article 7 amends paragraph 17 of Part 3 of Schedule 2 to the 1985 Order to ensure that when opening covering envelopes the returning officer ensures that ballot papers are kept face downwards and takes precautions to prevent the votes from being seen and to ensure that the returning officer is not permitted to view the corresponding number list.

6.7 Article 8 amends paragraph 19 of Part 3 of Schedule 2 to the 1985 Order to make provision for the forwarding of documents such as the return of postal voting documents form to the proper officer at the relevant council at the end of the poll. It also provides for the list of electors whose postal voting documents were rejected or left behind, the associated rejected postal ballot papers and return of postal voting document forms to be sent to the proper officer as soon as reasonably practicable after the notification to electors whose postal ballot papers were rejected or left behind have been sent.

6.8 Part 3 of this instrument amends schedule 5 to the Electoral Law Act 1962 (the 1962 Act) (the local election rules). Article 9 amends rule 45 to provide that a postal ballot paper shall not be duly returned if it is one that falls to be rejected under new paragraph 15C of Part 3 of Schedule 2 to the 1985 Order.

6.9 Article 9 also amends the local election rules to make changes to the forms related to postal voting for local elections in Northern Ireland to reflect the new rules around the handing in of postal votes and changes made to proxy voting in a separate instrument.

6.10 Article 10 replaces the declaration of identity form for combined Parliamentary and local elections in Schedule 1 to the Elections Act 2001.

6.11 Article 11 amends paragraph 4 of Schedule 3 to the Local Elections (Northern Ireland) Order 2010 to provide that the proper officer of the relevant council cannot make available for inspection the list of electors whose postal ballot papers were rejected or left behind. This is in addition to the requirements of existing paragraph 4, which provides that ballot papers and corresponding number lists cannot be made available for inspection.

7. Policy background

What is being done and why?

7.1 The 2022 Act made changes to a wide range of electoral legislation. A number of these changes 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 non devolved elections and other polls, including measures to safeguard postal and proxy voting. The measures in the 2022 Act 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. The provisions to regulate the handing in of postal votes to the returning officer in this instrument are part of this package of wider measures.

7.3 This Order implements measures concerning the handing in of postal votes at local elections in Northern Ireland. A separate instrument will make the same changes for Parliamentary and Assembly elections in Northern Ireland. The Representation of the People (Postal Vote Handling and Secrecy) (Amendment) Regulations 2023 ("the GB instrument") makes similar changes for Parliamentary elections in Great Britain and local elections in England. Other changes made by the GB instrument, including extending the postal vote handling offence for political campaigners to certain elections and extending secrecy provisions to absent voting, were made for Northern Ireland elections in the Elections Act 2022.

Handing in of postal votes

7.4 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.

7.5 The 2022 Act provides 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 for a parliamentary election, and to set out the procedure to be followed for the handing in of postal votes at parliamentary elections. Postal votes not handed in in accordance with the requirements will be rejected. As set out above this Order makes equivalent amendments to local elections under powers in the 1998 Act.

7.6 The Order sets out provisions prescribing the number of electors for whom P can hand in postal votes to the Returning Officer (at the Electoral Office for Northern Ireland Office). The upshot of these provisions is that, in relation to any particular election, P

can hand in the postal vote issued to P as an elector and postal votes for up to 5 other electors (including persons for whom P is voting by post as proxy). The provisions also ensure that, if P hands in postal votes for more than the permitted number of electors, those postal votes issued to P as an elector or as a proxy are not rejected.

7.6.1 To give examples of how the provisions would work in practice:

7.6.2 *Postal votes handed in on the same occasion in relation to the same election – paragraph 15C(1)(b)*

P hands in one postal vote for himself, two postal votes as proxy and four postal votes for neighbours.

For the purposes of assessing whether P has exceeded the permitted number of electors for whom P may hand in postal votes, any postal votes issued to P (whether as an elector or proxy) are ignored when calculating the number of electors for whom P has handed in postal votes. So the number of electors for whom P has handed in postal votes is 4.

Ordinarily the permitted number would be 5. But the permitted number is reduced by the number of electors for whom P has handed in postal proxy votes. P has handed in 2 postal votes as proxy, so the permitted number is reduced to 3.

P has exceeded the permitted number. P's own postal vote and the postal proxy votes are not rejected. However, the postal votes P has handed in on behalf of 4 neighbours are rejected.

7.6.3 *Postal votes handed in on different occasions in relation to the same election – paragraph 15C(1)(c)*

On the first occasion P hands in one postal vote for himself and one postal vote for a neighbour. Both votes are accepted.

On a subsequent (second) occasion, P hands in a further 3 postal votes for neighbours and two postal proxy votes issued to him.

As above, for the purposes of assessing whether P has exceeded the permitted number of electors for whom P may hand in postal votes, any postal votes issued to P as an elector or a proxy are ignored when calculating the number of electors for whom P has handed in postal votes. The number of electors for whom P has handed in postal votes is therefore 4 (one elector on the first occasion and three electors on the second).

The permitted number is 5 minus the number of electors for whom P has handed in postal votes as proxy. As P has handed in 2 postal proxy votes, the permitted number is 3.

The number of electors for whom P has handed in postal votes exceeds the permitted number on the second occasion. The two postal proxy votes which P handed in on the second occasion will not be rejected. However, the three postal votes for neighbours which P handed in on the second occasion will be rejected.

7.7 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.

7.8 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 returning officer and forwarded to a postal vote opening session to be dealt with along with other returned postal votes.

7.9 The Order provides for the rejection of postal ballots by the returning 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 left behind at the office of the Returning Officer and no accompanying form has been completed.

7.10 Postal votes that have simply been brought into the Electoral Office but which have been abandoned and have not been handed in with an accompanying form in the prescribed manner are treated as left behind postal voting documents. Rejected postal votes and left behind postal voting documents (as they have not been duly returned) will not be counted.

7.11 After the poll, the Chief Electoral Officer will put together a list of electors whose postal voting documents were rejected or left behind. As long as an elector's rejected or left behind postal voting documents include a declaration of identity (such that the elector can be identified), the Chief Electoral Officer will write to the elector notifying them that their postal voting documents were rejected (and the reason why) or left behind. If a proxy was entitled to vote on the elector's behalf, the Chief Electoral Officer will also notify the proxy.

7.12 The Order makes provision for the storage and destruction (after one year) of accepted and rejected postal voting documents after the poll, return of postal voting document forms and the list of rejected or left behind postal votes in line with the arrangements for other electoral documents.

7.13 The Order also mirrors changes made for Parliamentary elections in the 2022 Act to provide that postal ballot papers are not duly returned if they fall to be rejected under the new provisions set out in this Order.

7.14 Schedules 1 to 5 of the Order also replace certain forms used at local elections, in order that the forms include updated information on the new requirements concerning the handing in of postal votes and to reflect changes made in the 2022 Act to the proxy voting limit and extension of secrecy provisions to 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 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.

11. Guidance

11.1 The Electoral Commission provides 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 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 Electoral Commission produce reports on the administration and conduct of elections, and the Northern Ireland Office will consider any findings or recommendations made by them about the changes in these instruments that will apply at those polls.

14.2 In accordance with section 62 of the 2022 Act, the 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.