EXPLANATORY MEMORANDUM TO

THE MAYORAL AND POLICE AND CRIME COMMISSIONER ELECTIONS, RECALL PETITIONS AND REFERENDUMS (BALLOT SECRECY, CANDIDATES AND UNDUE INFLUENCE) 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 This instrument applies the offence of undue influence in section 114A of the Representation of the People Act 1983 (as introduced by section 8 of the Elections Act 2022 (the "Act")) to Police and Crime Commissioner ("PCC") Elections, Recall Petitions, and to Council Tax referendums, local authority referendums and neighbourhood planning referendums (the referendums collectively are referred to in this memorandum as "local government referendums"). Undue influence is an electoral offence which criminalises behaviour which seeks to, in various ways, coerce a person to vote in a certain way, or abstain from voting. This instrument will ensure the modernised offence of undue influence applies to these elections and referendums.

2.2 The instrument also makes amendments to elections rules to reflect the consequences of candidates being disqualified from standing for and holding certain elective offices by virtue of a disqualification order being made under section 30 of the Act.

2.3 This instrument amends candidate's consent to nomination forms that apply to county, district, London borough and single and combined authority mayoral elections. The updates to these forms reference the additional disqualification criteria as well as changes to qualification criteria for EU citizens also provided by the Act.

2.4 This instrument also implements changes to the commonly used names rules that a candidate may use on their nomination papers (and which will be used on the ballot paper) in accordance with section 10 of the Act.

2.5 This instrument also ensures that the offence introduced by section 1 of the Ballot Secrecy Act 2023 ("BSA") applies to PCC elections, recall petitions and local government referendums in England.

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) varies between provisions (see paragraphs 4.3 to 4.6 below).

4.2 Where the instrument produces a practical effect varies between provisions (see paragraphs 4.3 to 4.6 below).

4.3 Regulation 8 extends to and applies across the UK.

4.4 Regulation 4, which amends the rules for PCC elections, extends to and applies in England and Wales.

4.5 Regulation 11, which amends forms for PCC elections in Wales, extends to England and Wales and applies in Wales only.

4.6 Regulations 3, 5-7, 9 and 10 extend to England and Wales and apply only in England.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State, Baroness Scott of Bybrook, has made the following statement regarding Human Rights:

"In my view the provisions of the Mayoral and Police and Crime Commissioner Elections, Recall Petitions and Referendums (Ballot Secrecy, Candidates and Undue Influence) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 This statutory instrument makes amendments to the rules for conduct of elections and referendums and recall petitions in order to implement section 8 (undue influence), section 10 (candidate nomination paper: candidates commonly used names), section 15 (voting and candidacy rights of EU citizens) and Part 5 (disqualification of offenders for holding elective office etc) of the Act. This instrument also implements the Ballot Secrecy Act 2023.

6.2 Regulations 3, 4(4) and 9 include amendments to the relevant nomination rules such that a returning officer can hold a nomination paper invalid (in relation to the relevant election) if the person submitting the nomination paper is subject to a disqualification order under section 30 of the Act. These regulations, together with regulation 11, also replace the candidate consent to nomination form in the relevant conduct rules with a new form that implements section 15 of the Act and includes a declaration that a person is not disqualified by a disqualification order. These regulations also replicate for PCC elections and single and combined authority mayoral elections the amendments made by section 10 of the Act.

6.3 Regulation 10 amends the Combined Authorities (Mayors) (Filling of Vacancies) Order 2017 so that the timing of the vacancy in the office of a combined authority mayor due to the making of a disqualification order is determined in accordance with section 31 of the Act.

6.4 Schedules 2, 3 and 4 provide for updated nomination papers and consent to nomination forms for single authority mayoral elections, PCC elections and combined authority mayoral elections in England (and Wales in relation to PCC elections only), to implement sections 10, 15 and 30 of the Act. Schedule 5 provides for the updated Welsh language candidate consent forms and nomination papers for police and crime commissioner elections in Wales, to implement the changes in sections 10 and 30 of the Act.

6.5 Regulations 4(2), 5(a), 6(a), 7(2)(a) and (3)(a) and 8(2) and (3) replicate the offences introduced in section 1 of the BSA in relation to PCC elections and recall petitions and apply the offences in that Act to local government referendums.

6.6 Regulations 4(3), 5(b), 6(b), 7(2)(b) and (3)(b) and 8(4) replicate the offence of undue influence introduced by section 8 of the Act for PCC elections and recall petitions and apply this offence to local government referendums.

7. Policy background

What is being done and why?

7.1 Section 8 of the Act replaces the original offence of undue influence provided in section 115 of the Representation of the People Act 1983 with section 114A, in relation to parliamentary elections across the UK and local elections in England. Schedule 6 to the Act includes provision to make the equivalent amendments for elections to the Northern Ireland Assembly and local elections in Northern Ireland. This is because the drafting of the original offence has become outdated and difficult to interpret, with implications in terms of its application and enforcement, as set out in the Law Commission's Electoral Law reports (2016 and 2020). Section 8 and the equivalent amendments clarify the offence (including its scope and structure) and introduce modern terminology. The amended offence provides a clearer separation between the mental element of the offender (the purpose of the conduct), the prohibited activity, and how the activity is carried out. Section 8 and the equivalent amendments broaden the scope of the offence to include intimidatory behaviour directed at voters, in line with recommendations following the case of *Erlam & Ors v Rahman & Anor* [2015] EWHC 1215 (QB).

7.2 For PCC elections, recall petitions and English local referendums section 115 has previously been duplicated in or applied by secondary legislation. It is necessary therefore to ensure that these provisions are updated to reflect the new section number and drafting of the offence to ensure that section 114A applies to these elections and referendums as intended.

7.3 Part 5 of the Act introduced the disqualification order, which is a court order disqualifying a person for five years from being nominated for election, being elected to, and holding a relevant elected office. The order is imposed by the court if it is satisfied the offender, in committing a relevant intimidatory offence (listed in Schedule 9 to the Act) was motivated by hostility toward the victim in their capacity as an electoral candidate, campaigner, or elected officeholder.

7.4 It is necessary to amend the nomination rules provided in secondary legislation to ensure the disqualification order is effectively enforced against a disqualified individual. The rules are amended to make clear that a Returning Officer (RO) is entitled to hold a nomination form invalid also in circumstances where the individual has been disqualified under the disqualification order provided by section 30 of Act. In addition, the consent to nomination form is amended to require an individual to declare whether they are disqualified under same the disqualification order. The consent to nomination form is further amended to include reference to the new candidacy requirements introduced by section 15 of the Act.

7.5 The vacancy rules in relation to elected combined authority mayors are amended by this instrument to ensure that where an elected combined authority mayor is disqualified as a result of the disqualification order, their office is vacated on the date determined in accordance with section 31 of the Act.

7.6 This instrument also implements changes that mirror section 10 of the Act, which permits greater flexibility in the commonly used names a candidate can put on their

nominations paper (and that will also be shown on the ballot paper). The legislation was previously unclear whether a candidate could use a commonly used name which included part of their legal name, and the Act provided clarity that a commonly used name can be a name which is different to their legal forename or surname or which uses their legal forename or surname in a different way. The provisions in the Act amended the existing rules for UK Parliamentary elections, elections to the Northern Ireland Assembly, and local elections in Northern Ireland. This instrument makes the same change to the conduct rules for other elections in England, and PCC elections in Wales, and also amends the nomination paper completed by candidates at these polls to reflect the new provisions concerning the use of commonly used names.

7.7 The BSA sought to strengthen the secrecy of votes cast in polling stations at elections and to address concerns of voters being accompanied by other persons into or near polling booths and being influenced into voting in a particular way (so-called 'family voting'). That Act introduced two new offences: (a) for a person to be with another person at a polling booth, or (b) for a person to be near a polling booth while another person is at that polling booth, in each case with the intention of influencing that other person to vote in a particular way or to refrain from voting. The Act applied those offences to UK Parliamentary elections and local elections in England, as well as elections in Northern Ireland. This instrument replicates those offences in order to provide the same protection for persons signing a recall petition and voting in PCC elections. This instrument also applies the offences in the BSA to local government referendums in England.

7.8 **Commencement and savings:** Other than the provisions implementing the offences in the BSA, which come into force on 2nd May 2024, these regulations come into force on 1st November 2023.

7.9 Provision is made by regulation 1(5) so that the powers of Returning Officers to hold a nomination form invalid do not take effect in relation to an election in respect of which a notice of election has already been published to avoid this power coming into effect in the middle of an election period. There is savings provision in regulation 1(6) so that the changes reflecting and implementing the amendments in sections 10 and 30 of the Act take effect for an election in respect of which the date of poll specified in the notice of election is on or after 2nd May 2024. This is to ensure that there is sufficient time for these new forms to be adopted before they take effect for the PCC, single authority and combined authority mayoral elections on 2nd May 2024. In addition, temporary modifications are made by regulation 2 so that the consent to nomination forms in Schedule 1 to this instrument, which implement section 30 of the Act, apply only for single authority and combined authority mayoral elections in relation to which the date of poll specified in the notice of election is within the period starting with 2nd May 2024 and ending at the end of 6th May 2024. Provision is made by regulation 1(7) so that the candidate consent to nomination forms which reflect not only section 30 of the Act but also the new citizenship requirements introduced by section 15 of and Schedule 8 to the Act only take effect for an election in respect of which the date of poll specified in the notice of election is on or after 7th May 2024.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because the instrument updates candidate's consent to nomination forms to reflect the new

candidacy rights of EU citizens as amended by section 15 of and Schedule 8 to the Act.

9. Consolidation

9.1 This instrument does not consolidate any current legislation.

10. Consultation outcome

10.1 The Department for Levelling Up, Housing, and Communities consulted the Electoral Commission on this instrument.

10.2 The Electoral Commission was consulted on this instrument and are content that the instrument delivers the intended purpose of amending the relevant legislation so that the changes made by the Elections Act 2022 and the Ballot Secrecy Act 2023 are reflected in the regulations for relevant elections, referendums and the recall of MPs. We considered and engaged on any comments raised by the Commission during the phase of consultation.

11. Guidance

11.1 The Electoral Commission provide regular guidance for candidates, voters, and Returning Officers. The Commission plan to update the relevant guidance to reflect the changes made by 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 because no, or no significant impact on the business, charities, voluntary bodies 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 There are no plans to monitor or review the instrument.

14.2 Section 62 of the Election Act 2022 commits the Government to review the operation of that Act within five years of the Act being passed. Any findings from the review of the provisions in that Act, including those which are reflected in this order, may be considered at that time.

15. Contact

15.1 Donald Mackinnon at the Department for Levelling Up, Housing and Communities Telephone 07871734061 or email: donald.mackinnon@levellingup.gov.uk can be contacted with any queries regarding the instrument.

15.2 Guy Daws at the Department for Levelling Up, Housing and Communities Telephone 0303 444 0439 or email Guy.Daws@levellingup.gov.uk can be contacted with any queries regarding the instrument.

15.3 Becca Crosier, Deputy Director for the Elections Division, at Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.4 Baroness Scott of Bybrook, as the Parliamentary Under Secretary of State at the Department for Levelling Up, Housing and Communities, can confirm that this Explanatory Memorandum meets the required standard.