EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE AND RECALL PETITION (NORTHERN IRELAND) (AMENDMENT) REGULATIONS 2023

[2023] 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 The purpose of this instrument is make amendments to the rules governing the administration and conduct of Parliamentary elections and Northern Ireland Assembly elections to implement section 6 of, and parts of Schedules 1 and 4 to, the Elections Act 2022 ("the 2022 Act") relating to proxy voting.

2.2 Additionally, these Regulations make provision restricting access to the dates of birth lists that, under provisions in Schedule 1 to the Elections Act 2022, must be provided by the Chief Electoral Officer to polling stations in Northern Ireland at Parliamentary and Assembly elections. The regulations also extend the period for which entries can be retained on the register following a canvass, implement equivalent changes to the signing sheet process at recall petitions to those which are made in Schedule 1 to the Elections Act 2022 to polling station processes and introduce an appeals process for refusal to grant an application for an electoral identity card.

2.3 This instrument also amends the notifications that must be sent to postal voters who apply for their postal ballot papers to be sent to a different address to the one on record.

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 Part 1, and some of Part 3, of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland. The extent of Parts 2 and 4, and the rest of Part 3 is Northern Ireland only.

4.2 The reason why parts of Part 3 extend to England and Wales and Scotland, as well as Northern Ireland, is as follows. Part 3 relates to recall petitions, and amends the Part 3 of the Recall of MPs Act 2015 (Recall Petition) Regulations 2016 (the "Recall Regulations"), which make provision about recall petition throughout the UK. The Voter Identification Regulations 2022 ("Voter ID Regulations") made a number of amendments to Part 3 of the Recall Regulations (as a result of changes to the law made by the 2022 Act), most of which only extended to England and Wales and Scotland. Regulation 12 extends certain of those amending regulations to Northern Ireland, meaning that in Part 3 of the Recall Regulations there will be a single text,

applicable across the whole of the United Kingdom, for any regulation that extends to England and Wales, Scotland and Northern Ireland.

4.3 This extension to Northern Ireland of amendments made by the Voter ID Regulations has no substantive effect, since all of the amendments extended by regulation 12 are expressly limited to England, Wales and Scotland. However, regulation 12 extends these amendments to Northern Ireland for two reasons: first because many of the provisions of the Recall Regulations that were inserted by these amendments now need to be further amended for Northern Ireland, and secondly to provide a consistent approach to extend across the whole of Part 3 of the Recall Regulations.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Northern Ireland. Part 1 extend to England and Wales, Scotland and Northern Ireland. Part 2 extends to Northern Ireland only. In Part 3 regulations 11, 12, 13(2) and (6), 14, 16, 18, 19 and 21 extend to England and Wales, Scotland and Northern Ireland. Regulation 13(1), (3) to (5), 17 and 20 extend to Northern Ireland only.

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 Representation of the People and Recall Petition (Northern Ireland) (Amendment) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 These Regulations make various changes to the rules for Parliamentary elections, recall petitions and Assembly 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 changes to proxy voting in GB.

6.2 Part 2 makes amendments to the Representation of the People (Northern Ireland) Regulations 2008 (the "2008 Regulations"), which set out the rules governing Parliamentary elections in Northern Ireland. Similar changes are also made to the rules governing local elections in Northern Ireland by a separate instrument: the Local Elections (Northern Ireland) Order 2023 (which is an Order in Council).

6.3 Part 3 makes amendments to the Recall Regulations as they apply in Northern Ireland. Some of these amendments mirror the amendments to the 2008 Regulations made by Part 1 of these Regulations. Others follow changes made to the rules for the Parliamentary Election Rules (i.e. the rules set out in Schedule 1 to the Representation of the People Act 1983) and changes already made to Recall Regulations for England, Wales and Scotland by the Voter ID Regulations.

6.4 Part 4 amends the Northern Ireland Assembly (Elections) Order 2001 to apply some of the changes made by Part 1 to Assembly Elections.

6.5 Many of the changes in the Regulations are required as a result of changes to electoral law made by the 2022 Act.

Part 2

6.6 Regulation 3 inserts into the 2008 Regulations two new regulations about applications for electoral identity cards in Northern Ireland.

6.7 The first (new regulation 13A) requires the Chief Electoral Officer in Northern Ireland (the "CEO") to notify the applicant of the result of their application for a voter identity card. The second (new regulation 13B) provides a right of appeal against a refusal of an electoral identity card. This is included in consequence of the amendment made by the 2022 Act to section 58(1) of the Representation of the People Act 1983, adding a right of appeal over these decisions.

6.8 Regulation 4 amends regulation 46B of the 2008 Regulations, which gives the CEO the power to retain a person's entry on the electoral register even if the person's form in response to the canvass was not returned or not completely filled in. Currently under regulation 46B, such a person's entry can be retained on the register for two years following the canvass, but the amendments made to regulation 46B by regulation 4 extend this period to three years, but only in relation to the canvass conducted in 2021.

6.9 Regulation 5 removes some redundant references in the 2008 Regulations to the Police Information Technology Organisation, which was disbanded in 2007.

6.10 Regulation 6 makes two amendments to regulation 56 of the 2008 Regulations, which sets out the information required on an application for the appointment of a proxy.

6.11 The first requires a proxy application to include the proxy's date of birth. This is required as a result of the new duty in the 2022 Act to require the CEO to provide polling stations with a list of the dates of birth of voters, including proxies.

6.12 The second removes the requirement for the 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 4 to the 2022 Act).

6.13 Regulations 7 and 8 amend regulations 55A and 62 of the 2008 Regulations 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.

6.14 Regulation 9 inserts a new Part 6A into the 2008 Regulations, allowing for the disclosure of the date of birth lists in two situations. New regulation 114B 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 regulation 114C 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 (see section 66B of the Representation of the People Act 1983 as amended by the 2022 Act).

6.15 Regulation 10 and Schedules 2, 3 and 4 make changes to the forms used in Parliamentary 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. Regulation 11 is a transitional provision

which requires a proxy paper form for a proxy appointment made before 5th March 2024 to reflect the fact that the new rules on proxy appointments do not yet apply.

Part 3

6.16 Regulation 14 inserts into the Recall Regulations five new regulations relating to date of birth lists.

6.17 New regulation 13A imposes an obligation on the CEO to prepare date of birth lists for electors and proxies. These lists must be supplied to each petition signing place (see the amendment made by regulation 13(2) to regulation 19 of the Recall Regulations).

6.18 New regulations 13B and 45A contain provision akin to new regulations 114B and 114C of the 2008 Regulations (discussed above) about the disclosure of date of birth lists prepared for election petitions to the police and for the purposes of certain legal proceedings relating to recall petitions, and new regulation 124A makes it a criminal offence for a person to breach the restrictions in those regulations. New regulation 46A makes provision for the destruction of date of birth lists.

6.19 Regulation 15 contains an amendment to regulation 17 of the Recall Regulations which is consequential on the amendments to regulation 28 (explained below).

6.20 Regulation 16 amends regulation 20A of the Recall Regulations, so that its requirement for a private area in a petition signing place for the inspection of identity documents applies in Northern Ireland as well as in England, Wales and Scotland. Regulation 15(2) contains a consequential amendment to the application provision in the Recall Regulations (regulation 2).

6.21 Regulation 17 amends regulation 25 of the Recall Regulations (questions to be put to persons signing the petition).These changes relate to the power of the petition clerk to refuse to give a person a signing paper where the person has failed to answer a question satisfactorily.

6.22 Regulation 18 amends regulation 28 of the Recall Regulations, which is about the procedure for signing a petition in Northern Ireland. The changes relate to the requirements for voters to produce identification and the powers of the petition officer to withhold a signing sheet following a failure to do so.

6.23 Regulation 29 of the Recall Regulations makes provision about the endorsement of petition signing sheets by the petition clerk on behalf of persons who are unable to sign the petition themselves. It applies (with modifications) the procedures for signing the petition contained in regulations 27 and 28 of the Recall Regulations. Paragraphs (3) and (4) of regulation 19 make amendments to regulation 29 of the Recall Regulations that are consequential on the amendments to regulation 28. Regulation 18(2) makes a minor drafting change to regulation 29(1) to make the application of the signing procedures in regulations 27 and 28 to the situation where the signing sheet is to be endorsed by the petition clerk more straightforward.

6.24 Regulations 20 and 21 make amendments to regulations 30 and 31 of the Recall Regulations that are consequential on the amendments to regulation 28.

6.25 Regulation 37 of the Recall Regulations sets out a list of documents that are required to be sealed in separate packages by the petition clerk at the end of the petition signing period. Regulation 22 amends this list to add the date of birth lists provided to the petition signing place under regulation 19(3)(e) (as inserted by regulation 14(2)).

Part 4

6.26 The Northern Ireland Assembly (Elections) Order 2001 provides for certain provisions that apply to Parliamentary elections to apply to Assembly elections. The provisions of the 2008 Regulations that apply to Assembly Elections are set out in a table in Schedule 2 to the Order. Regulation 23 amends that table to add in a reference to new regulations 114A to 114C (inserted by regulation 8), which are about the disclosure of date of birth lists to the police and for the purposes of certain legal proceedings relating to elections.

7. Policy background

What is being done and why?

7.1 The 2022 Act set out 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 could have acted 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. The new limit on the number of proxies a person may hold (for up to 4 overseas electors) is also designed to support overseas electors in identifying a proxy to vote on their behalf at elections

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 Regulations replace certain prescribed forms used at Parliamentary, local and Assembly 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 1 to the Elections Act 2022 inserted new rule 19B into the Parliamentary Elections Rules 1983 to place a duty on the Chief Electoral Officer to provide polling stations with a list of the dates of birth of voters, including proxies. This is for the purpose of enabling polling station staff to carry out their duty to check on a voter's or proxy's date of birth, as provided for under rule 37, 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 Regulations ensure 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 Regulations amend 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 that for a proxy who is registered in Great Britain their date of birth can be checked against the date of birth lists provided to polling station staff.

Postal Voting

7.10 The Regulations also include 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 Regulations provide 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 an indefinite 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 Regulations make similar provision in relation to applications for the redirection of postal votes from proxy postal voters.

Retention of entries on the register

7.12 The 2008 Regulations contain provision to allow for the retention of electors on the register who, following a canvass, have not returned a completed form. Unlike the canvass process in GB, voters in NI are required to complete a full application in order to be retained on the register. The provisions set out circumstances in which it is likely that entries on the register will be accurate, even if a canvass form has not been returned, and permits entries to be retained in these situations.

7.13 Following the 2021 canvass there are currently 100,000 electors retained under these provisions and who will be removed from the register on 1 December this year at the

end of the retention period. The Chief Electoral Officer has advised that using local and DWP data, the CEO is able to accurately assess whether the individuals in the retained group are, other than the fact they have not completed a new form, eligible to be on the register. Her assessment is that almost all of the retained group are highly likely to be eligible to be registered to vote at the address they are currently registered at.

7.14 The Regulations make provision to extend the retention period by one year until 1 December 2024. This ensures that these electors who are eligible to remain registered, remain so for any election that is held in this period.

Amendments to mirror changes in Schedule 1 of Elections Act

7.15 These regulations also make amendments to the Recall Petition Regulations to ensure that changes to voting processes made for Parliamentary elections are also applied to recall petitions to ensure consistency across electoral events. This includes the duty on the Chief Electoral Officer to provide dates of birth lists to signing places at recall petitions and to provide a private place at signing places for the production of ID.

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.