EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (ENGLAND AND WALES AND NORTHERN IRELAND) (AMENDMENT) REGULATIONS 2024

2024 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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Simon Hoare, Parliamentary Under Secretary of State for Local Government at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

2.2 Liz Owen, Deputy Director for the Registration and Franchise Division at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Susie Child at the Department for Levelling Up, Housing and Communities email: CorrespondenceRegistrationandFranchise@levellingup.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The purpose of this instrument is to remove an unintended requirement for certain dual nationals to provide an indication of whether they meet a historical residency requirement, when they apply to register to vote, when that information will have no bearing those individuals' eligibility to register to vote.

4.2 It amends existing secondary legislation (see section 6 below for further details) to refine the definition of "relevant EU applicant" in electoral law, so applicants with particular dual nationalities will no longer be required to provide irrelevant information.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, Wales and Northern Ireland.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 Following the UK's exit from the European Union, European citizens living in the UK retained the rights to vote and stand as a candidate in certain elections that were conferred as a consequence of the UK's membership of the EU. Voting rights did not form part of the Withdrawal Agreement, as such matters are for individual states. Therefore, the UK undertook to update the franchise in respect of European citizens, using the Elections Act 2022 to remove the automatic right of EU citizens to vote and/or stand as a candidate in those elections.

5.2 Regulations (see section 6.1 below) introduce changes to remove the automatic right of EU citizens to vote and stand as a candidate in local elections in England and Northern Ireland, and Police and Crime Commissioner (PCC) elections in England and Wales, from 7 May 2024. This Instrument amends those regulations in order to fix an error, which currently creates two undesirable outcomes as part of the online voter registration process, which were not part of the original policy intention.

5.3 When the changes to voting rights take effect, voting rights for local elections in England and Northern Ireland, as well as for Police and Crime Commissioner elections in Wales, will only be granted to two groups of European Union citizens (excluding citizens of Ireland, Malta and Cyprus, whose electoral rights do not derive from EU citizenship). The first group are "qualifying EU citizens" (as defined by section 203A of, and Schedule 6A to, the Representation of the People Act 1983), i.e. citizens from EU member States with which the UK has a voting and candidacy rights (VCR) Treaty (at the time of writing, these are Spain, Portugal, Luxembourg, Poland, and Denmark).

5.4 The second group are "EU citizens with retained rights" (as defined by section 203B of the Representation of the People Act 1983), i.e. citizens from EU member States with which the UK does not have a treaty but who have been legally resident since before 31 December 2020, the Implementation Period Completion Day for the UK's exit from the EU. Consequently, in order to register to vote as an "EU citizen with retained rights", relevant applicants must indicate whether they meet the criteria. In practice this involves being asked to answer a new 'historical residency' question.

5.5 Currently, the definitions of "relevant EU applicants" used in respect of this new requirement in regulations for England and Wales, and the equivalent regulations in Northern Ireland inadvertently capture individuals who are citizens of certain EU countries and who also have citizenship of another particular country which gives them an unrestricted or less restricted eligibility for registration. As a result, those applicants with particular dual or multiple nationalities will be legally required to answer a historical residency question when registering to vote, despite the question being immaterial to that person's eligibility to register to vote, as their eligibility will rest on the other nationality they hold. This instrument replaces the definition to avoid this outcome.

What was the previous policy, how is this different?

5.6 This legislation does not change a substantive policy and instead it is designed to amend a current definition in order to remove an unintended consequence of the definition's wording.

5.7 The definition of "relevant EU applicant" was intended to be drafted so that only individuals whose eligibility would depend on their answer to the historical residency

question (HRQ) would be required to answer it. Only individuals who are unable to register on any basis other than as an 'EU citizen with retained rights' should be required to answer the HRQ.

5.8 However, the current definition means that, a voter registration application from someone with dual nationality of both an EU country (which is not Malta, Cyprus, Denmark, Spain, Portugal, Poland or Luxembourg) and the UK, Commonwealth (exc. Malta/Cyprus), Ireland, or a state with which the UK has a voting and candidacy rights treaty; must contain the required historical residency requirement indication to be legally complete, even though their eligibility to register to vote would not depend on their historical residency.

5.9 The change made by this legislation will mean that applicants with dual nationalities (as set out above in paragraph 5.8) will no longer be legally required to answer a Historical Residency Question, which is immaterial to their application to register to vote.

6. Legislative and Legal Context

How has the law changed?

6.1 The Representation of the People, (Franchise Amendment and Eligibility Review) Regulations 2023 (S.I. 2023/1150) for England and Wales, and the Representation of the People, (Franchise Amendment and Eligibility Review) (Northern Ireland) Regulations 2023 (S.I. 2023/1176) implemented changes to the voting and candidacy rights for EU citizens in England and Wales and Northern Ireland respectively. These Regulations inserted a definition of 'relevant EU applicant' into regulation 3(1) of the Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341) ("the 2001 Regulations") and an equivalent description into regulation 27(1)(caa) of the Representation of the People (Northern Ireland) Regulations 2008 (S.I. 2008/1741) ("the 2008 Regulations").

6.2 Regulation 26(1)(fa) of the 2001 Regulations requires an applicant for electoral registration who is a 'relevant EU applicant' to include in their application "an indication as to whether the applicant meets the requirements set out in section 203B of the [Representation of the People Act 1983". A similar requirement is contained in regulation 27(1)(caa) of the 2008 Regulations. Section 203B of the Representation of the People Act 1983 sets out the requirements by which a person qualifies for electoral registration by virtue of being an "EU citizen with retained rights".

6.3 As described above in section 5, the current definition of 'relevant EU applicant' will inadvertently require applicants with particular dual nationalities to provide an indication of whether they meet those eligibility requirements, which was not part of the original policy intention. Therefore, the purpose of this legislation is to replace the definition of 'relevant EU applicant' in both the 2001 Regulations and the 2008 Regulations.

Why was this approach taken to change the law?

6.4 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 Throughout the development of this legislation, consultation has taken place with the Electoral Commission. Notice of the legislation has also been provided to the Northern Ireland Office and Welsh Government. No further consultation has been undertaken, as this legislation is intended as a means of making a minor amendment to existing legislation.

8. Applicable Guidance

8.1 The Electoral Commission provides electoral registration guidance to Electoral Registration Officers. We will continue to work closely with the EC regarding the development of any relevant guidance.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact or costs associated with it.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this legislation only makes a straightforward amendment to a definition.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 To ensure transparency with regard to the implementation of the EU voting and candidacy rights ('EUVCR') provisions in the Elections Act 2022, regulations 25 (England) and 26 (Wales) of the Representation of the People (Franchise Amendment and Eligibility Review) Regulations 2023 (S.I. 2023/1150) requires Electoral Registration Officers (EROs) to report on the operation of the review process by reporting certain anonymised data to the Electoral Commission (EC) as soon as is practically possible after 31st January 2025 (including, for example, the number of people who were reviewed, the number of people deemed to be ineligible on the basis of non-response, etc.) The Secretary of State for Levelling Up, Housing and Communities will use existing powers to require the EC to prepare a report on EUVCR implementation and present it to Parliament.

10.2 Additionally, section 62 of the Elections Act 2022 commits the Government to review the operation of that Act (including the EUVCR provisions) within five years of the Act being passed. We envisage that the data that will be collected as part of this initial review exercise, and in respect of Northern Ireland equivalent data provided by the Chief Electoral Officer, will also be used in that review.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument corrects an error in the Representation of the People (Franchise Amendment and Eligibility Review) Regulations 2023 (S.I. 2023/1150) and the Representation of the People (Franchise Amendment and Eligibility Review) (Northern Ireland) Regulations 2023 (S.I. 2023/1176). These errors were not reported by the Joint Committee on Statutory Instruments.

11.2 As outlined in sections 5 and 6 above, the error will require some applicants for electoral registration, from 7th May, to give a small amount of unnecessary information as part of their application. To avoid entirely or otherwise to minimise as far as possible the impacts of this on applicants, the instrument will come into force on the day after the day on which it is made.

12. European Convention on Human Rights

12.1 Simon Hoare, Parliamentary Under Secretary of State for Local Government at the Department for Levelling Up, Housing and Communities has made the following statement regarding Human Rights:

"In my view the provisions of the Representation of the People (England and Wales and Northern Ireland) (Amendment) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").