EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (NORTHERN IRELAND) (AMENDMENT) REGULATIONS 2025

2025 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. Declaration

2.1 Hilary Benn MP, Secretary of State for Northern Ireland at the Northern Ireland Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Eleanor Hayden, Deputy Director for Transformation, Constitution & Rights Group at the Northern Ireland Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Katherine Herrick, Head of Elections Policy at the Northern Ireland Office email: Elections.Unit@nio.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 extend the period (retention period) for which the Chief Electoral Officer for Northern Ireland (CEO) can retain electoral register entries of certain persons, who have not responded to the canvass but whom the CEO is nevertheless satisfied remain entitled to be registered, from three to six years. The instrument requires the CEO to communicate with, and review information regarding the residence of, those persons during the retention period. This instrument makes small administrative changes to the process of electors receiving their Digital Registration Number where it has been lost.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) in which the instrument forms part of the law of) is, except for regulation 7, Northern Ireland.

4.3 Regulation 7 extends to the United Kingdom.

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

5. Policy Context

What is being done and why?

5.1 Section10ZA of the Representation of the People Act 1983 (the 1983 Act) provides that an electoral canvass must be held every ten years, and in intervening years if the Secretary of State for Northern Ireland agrees with a recommendation from the CEO that a canvass should be held. The canvass involves the CEO contacting all eligible individuals in Northern Ireland and requiring them to fill in a canvass form. Unlike the canvass process in Great Britain, electors in Northern Ireland are required to complete a full, new application form in order to be retained on the register. If an elector does not respond to the canvass, or their canvass form is incomplete, then the default position under the 1983 Act is that the CEO will remove them from the register.

5.2 This default position is qualified by The Representation of the People (Northern Ireland) Regulations 2008 (the 2008 Regulations). The 2008 Regulations provide an exception to the rule that all non-respondents to the canvass must be removed from the register, and allows for some non-respondents to become Retained Electors. In this instance, the CEO must be satisfied that they remain resident at the address on the register, alongside certain other requirements that must be met. The Regulations provide that the CEO can retain the Retained Electors on the register for two years following the end of canvass. This was extended to three years following the most recent canvass, which was held in 2021. This exception does not prevent the CEO from removing the retained electors before the end of this period.

5.3 Following the 2021 canvass, there are currently approximately 87,700 Retained Electors under these provisions who will be removed from the register on 1 February 2025, when the revised register is published in Northern Ireland. The CEO has advised that, using the local and government data available to him, he is able to accurately assess whether Retained Electors are eligible to be on the register, despite the fact they did not complete a new form at the last canvass. The CEO's assessment is that almost all of the Retained Electors are likely to be resident at the address on the register, and are therefore eligible to be registered to vote at this address.

5.4 To avoid a large number of electors (who are entitled to be registered) being removed from the register, and the consequent impact on the quality of the electoral register, these regulations extend the period for which electors can be retained from three to six years following the 2021 canvass. The retention period will also be extended to six years following any future canvass. These regulations do not allow for unlimited retention of Retained Electors as, despite the quality of the data upon which the CEO relies in order to assess entitlement, the 1983 Act provides that everyone must re-register at some point between canvasses, even where they are still resident at the address on the register.

5.5 To support the extension of the retention period from three to six years, these Regulations also introduce a framework for auditing the Retained Elector entries on the register. This includes engagement with the Retained Electors to help ensure that they are not retained for any longer than necessary and to encourage them to re-register.

5.6 Alongside this framework, the CEO will retain the ability to remove Retained Electors from the register on the basis of other information received. For example, if a notification of death is received from the Registrar.

Residence Audit

5.7 In each year of the retention period, the CEO will be required to carry out a residence audit. This will involve a check of all Retained Electors on the register against internal data held by the Electoral Office for Northern Ireland (EONI), to assess whether the CEO is satisfied that the Retained Elector is still resident at the address on the register. Where in years one to three of the retention period the CEO is satisfied, no further action will be required in that year and no correspondence will be sent. There are additional requirements in years four-six (see below for more detail on these requirements).

5.8 Where the residence audit flags that a Retained Elector may no longer be resident at the address on the register, the CEO will be required to send a removal warning notice. This notice will state that the Retained Elector has 28 days to complete an application for registration or they risk being removed from the register. This notice must be sent by post.

Household Notice

5.9 In years four and five, following the residence audit and where the CEO is satisfied, the CEO must send Retained Electors a household notice by post or email. The household notice will list all the electors in the household and flag which of these persons are Retained Electors. The notice will inform Retained Electors that they did not respond to canvass, that they must apply for registration and that if they do not, they risk being removed from the register. However, if they do not respond, the CEO will not be required to take any further action at this stage.

Final Year Notices

5.10 In year six, all remaining Retained Electors will be sent a final year notice. The final year notice will inform them that they did not respond to the canvass and they must therefore complete an application for registration or they will be removed from the register by the end of the retention period. If there is no response within a reasonable timeframe, a second final year notice must be sent. These notices may be sent by post or email.

5.11 If the Retained Elector does not respond to either of these notices, they will be sent a final year removal warning by post. If they do not respond within 28 days, they will be removed from the register.

Appeals

5.12 Removals from the register following the residence audit will be subject to an appeals process under section 58(1)(b) of the 1983 Act. The appeals process will not apply to removals from the register at the end of the retention period as is currently the case with removals following the expiry of the retention period.

Minor Amendments

5.13 These regulations also make minor amendments:

- to the 1983 Act to make small administrative changes to the process of electors receiving their Digital Registration Number where it has been lost; and,
- to the 2008 Regulations to provide that, where the CEO is notified by another Registration Officer (e.g. a registration officer in England) that a Northern Ireland-registered elector has indicated that they have ceased to reside at their Northern Ireland address, the CEO may follow the summary removals process

in regulation 35 of the 2008 Regulations in removing that elector's register entry.

What was the previous policy, how is this different?

5.14 As set out above in paragraph 5.2, under the 2008 Regulations non-respondents to the canvass could be retained for two years (three years for the 2021 canvass) where certain conditions were met and the CEO was satisfied that the non-respondent was resident at the address on the register. Under the previous legislation, no further checks or engagement with the Retained Electors was required during the retention period.

5.15 These Regulations change this by extending the period of time that Retained Electors can be retained on the register following a canvass. The data available to the CEO now is of a much higher quality than when the retention provisions were first made. The CEO has made clear that he has full confidence in the data available to EONI and the longer retention period reflects this.

5.16 The Regulations also introduce checking and engagement process throughout the retention period. Previously there was no requirement for the CEO to attempt to contact a Retained Elector to encourage them to re-register. Statutory engagement with the Retained Electors will help ensure that as many Retained Electors as possible re-register before the end of the retention period, avoiding a large loss of electors from the register, related disenfranchisement, as well as, safeguarding the integrity of the register.

5.17 The intention of section 10A(5) of the 1983 Act is that everyone must re-register between canvasses. These Regulations strike the balance between ensuring that retained electors can be kept on the register for as long as possible, in light of the CEO's confidence in the data, whilst ensuring that everyone on the register re-registers between canvasses, as required by the 1983 Act.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument amends the 2008 Regulations, substituting the definition of "relevant period" in regulation 46B(6) and inserting new regulations 46C to 46F. These amendments will provide for the extension of the retention period and the new engagement and review requirements detailed above.

Regulation 4(1)(a) amends regulation 35 of the 2008 Regulations, correcting a defect. Currently, regulation 35(2) sets out a list of circumstances, under which the CEO may make a determination that an elector has ceased to be eligible for registration, without following the procedure set out in regulations 36 to 38. Sub-paragraph (b) currently refers to a notification under regulation 46. Although regulation 46 relates to a notice given by the CEO to other registration officers, it would not be a circumstance where the CEO would make such a determination. The substituted sub-paragraph (b) covers the situation where another registration officer notifies the CEO that an elector registered in Northern Ireland has applied for registration in another area and has stated that they have ceased to reside at their Northern Ireland address.

Regulation 7 amends section 10(7)(b) of the 1983 Act, adding "text message" as a method by which the CEO can issue a further notification of a Digital Registration Number.

Why was this approach taken to change the law?

6.2 The 2008 Regulations are the principal regulations dealing with elections and the electoral register in Northern Ireland. Regulation 46B provides for the retention of the register entries of electors who fail to respond to a canvass. This instrument mainly relates to these electors and retained register entries. Therefore, this instrument amends the 2008 Regulations.

Regarding the amendments to regulation 35(2)(b) of the 2008 Regulations and section 10(7)(b) of the 1983 Act, the approach taken is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 We have consulted with the Electoral Commission on the development of this policy and on the draft legislation as required by statute. We have also consulted the CEO and his office. The Electoral Commission were content with the Regulations as drafted and the CEO has confirmed the policy will be administratively deliverable.

8. Applicable Guidance

8.1 There is no guidance accompanying these regulations.

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 are no, or no significant, impact 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. The Regulations do not apply to businesses, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector. The regulations allow for the continued retention of existing entries on the register, codify activity that would have expected to be undertaken in order to meet the existing registration objectives of the CEO to ensure the quality and completeness of the register.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that the Northern Ireland Office will keep these Regulations under review in consultation with the Electoral Commission and the Chief Electoral Officer for Northern Ireland.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument corrects a defect by substituting regulation 35(2)(b) of the 2008 Regulations. In light of this correction, the Department is adopting the free issue procedure in relation to this instrument. The Department confirms that it has complied with the requirement stated in paragraph 4.7.6 of Statutory Instrument (SI) Practice to consult the SI Registrar on the use of the free issue procedure in relation to this instrument.

12. European Convention on Human Rights

12.1 Hilary Benn MP, the Secretary of State for Northern Ireland, has made the following statement regarding Human Rights:

"In my view the provisions of the Representation of the People (Northern Ireland) (Amendment) Regulations 2025 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").