EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (OVERSEAS ELECTORS ETC.) (AMENDMENT) (NORTHERN IRELAND) 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 to implement the changes to the voting rights of British citizens overseas that are made by section 14 of, together with Schedule 7 to, the Elections Act 2022 (c. 37) ("the EA 2022"). EA 2022 removes the 15-year limit on voting rights for British citizens abroad, extending the overseas franchise to all British citizens who have been previously registered or resident in the UK.

2.2 The instrument amends existing legislation (see section 6 below for further details) to enable eligible overseas electors ("OEs") to apply to be registered, and the Chief Electoral Officer ("CEO"), who is the registration office for Northern Ireland, to determine their eligibility, under the new criteria.

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 as follows; Part 1 extends to England and Wales, Scotland and Northern Ireland. Part 2, regulation 27(1) to the extent that it concerns the amendments made by regulation 5 to 7, 13 and 14, 19 and 20(a)(ii) and (iii) and regulations 27(2) and (3) and 28 extend to Northern Ireland only. Regulation 27(1) to the extent that it concerns amendments made by regulation 22 extends to England and Wales only. Regulation 27(1) to the extent that it concerns the amendments made by regulation 23 extends to Scotland only. Any amendment made by Part 3 has the same extent as the provision amended

4.2 The territorial application of this instrument (ie where the instrument produces a practical effect) is the same as its extent.

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 (Overseas Electors etc.) (Amendment) (Northern Ireland) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 The instrument principally makes provision related to the expansion of the franchise for parliamentary elections, in respect of British citizens overseas, by sections 1 to 1E of the Representation of the People Act 1985 (c. 50), as substituted by section 14 of EA 2022.

6.2 EA 2022 extends the franchise to all British citizens (including eligible Irish citizens) who have been previously registered as an elector or resident in the UK and made related changes to deliver improvements for OEs, including extending the length of time an overseas elector may remain registered between renewals from one year to up to three years. Eligible Irish citizens, as now, are individuals that were born in Northern Ireland, qualify as British citizens (even if they choose not to identify as such) and whose last residence in the UK was in Northern Ireland.

6.3 Part 2 of this instrument makes amendments to the Representation of the People (Northern Ireland) Regulations 2008 (S.I. 2008/1741) ("the 2008 Regulations") to reflect the new qualification conditions for registration as an OE. The amendments make changes to the requirements of the overseas elector's declaration and registration application requirements and introduce requirements for and processes relating to the new renewal declarations which OEs must complete in order to remain registered for a further period of time. The amendments in Part 2 also introduce specific powers relating to the evidence which the CEO may require a person seeking to be registered as an OE to provide in order to demonstrate the necessary connection to the address claimed as their qualifying address. The evidence specified includes documentary evidence and attestations.

6.4 The instrument also makes changes related to the evidence prescribed in late registration cases for the purposes of section 13BA and 13BC of the Representation of the People Act 1983 (which concern all types of electors, not just overseas electors). These cases arise where an applicant is not registered before the date the nominations for candidates for an election or recall petition close. So long as the registration officer receives such prescribed information as they require before the "late registration" deadline, the applicant may be added to the register and vote in that election or recall petition. Part 2 amends the 2008 Regulations to update the ways in which an applicant's identity, nationality and address can be verified during late registration periods by updating the documentary evidence that can be produced and allowing attestations to be provided.

6.5 Part 2 also amends the 2008 Regulations to set out the general requirements that an attestation must meet in order to be valid and provides for a limit on the number of applicants for whom an individual can provide a particular type of attestation in a given period.

6.6 Part 3 contains consequential amendments and Part 4 introduces transitional arrangements, including for those registered as overseas electors at the point that these measures come into force

6.7 This instrument is laid in parallel with a separate instrument implementing the overseas electors franchise expansion for Great Britain.

7. Policy background

What is being done and why?

7.1 The EA 2022 made new provisions, and amended existing electoral law, to allow the Government to meet some of its 2019 manifesto commitments, including to "make it easier for British expats to vote in Parliamentary elections, and get rid of the arbitrary 15-year limit on their voting rights."

7.2 When commenced, the OE provisions in the EA 2022 will extend the franchise for UK Parliamentary elections to all British citizens living overseas who have been previously registered to vote or previously resident in the UK.

7.3 The EA 2022, and the secondary legislation which will flow from it, will also deliver changes and consequential amendments to the registration process for overseas electors, including the processes by which applicants will have their connection to their relevant previous UK address verified.

7.4 Additionally, the planned extension of the registration period for overseas electors, along with associated changes, are designed to make it easier for overseas electors to remain on the register ahead of elections.

7.5 This instrument amends the electoral registration process to enable eligible individuals to apply to be registered as OEs, and enable the CEO to determine their eligibility, under the new criteria. It also makes requisite changes to the registration and renewal processes for OEs.

7.6 The policy intention behind this instrument is to:

- Ensure there are feasible means by which persons applying to register can have their eligibility determined, including via supporting evidence provided by the applicant or accessed by the CEO.
- Ensure existing overseas electors are transitioned onto the new renewals framework for their declaration, and establish a consistent approach to the renewal of their declaration.
- Maintain electoral integrity by establishing proportionate barriers to fraudulent activity.

7.7 This instrument will:

- Amend the contents of an application and declaration for overseas applications to reflect the requirements in the EA 2022.
- Establish a new declaration renewal reminder timetable and set out when reminders are to be sent ahead of an OE's period of registration expiring, and establish provisions as to the form, contents and the manner by which renewal declarations may be transmitted to the CEO.
- Amend existing processes by which persons making applications to be registered as OEs may have their connection to the address claimed as their qualifying address verified, including to create processes that do not rely on the CEO consulting historic copies of electoral registers.
- Amend provisions relating to the information that the CEO may require specified authorities to provide for the purposes of verifying information provided in support of an application for registration as an OE.

- Amend the existing identity, address and nationality verification requirements during late registration periods, to update the evidence that must be provided as additional evidence for the purposes of determining an applicant's entitlement to be registered. These provisions apply to both domestic and OE applications during the late registration period. The lists of documentary evidence will be more consistent with documents that can be produced across the rest of the UK, where an OE or domestic applicant's identity or address cannot be verified via a date of birth and National Insurance Number check against Department of Work and Pensions (DWP) or local records.
- Set out the general requirements which attestations must meet and limit the number of applicants for whom a single attestor can provide a particular type of attestation within a given period. Require the CEO to take a copy of original documents provided in accordance with the 2008 Regulations and return the original documents to the persons who provided them.
- Make consequential amendments to the 2008 Regulations and other electoral legislation.
- Implement transitional arrangements for OEs whose entitlement expires on or soon after the commencement date, helping to ensure existing OEs can transition onto the new 3 year renewal framework as quickly as possible, and make other transitional arrangements.

Explanations

7.8 Part 2 of this instrument amends the 2008 Regulations and relates in particular to the expansion of Overseas Electors franchise. It amends existing regulations and introduces new regulations to enable eligible British citizens living abroad to register to vote under the new criteria. It also covers requirements for renewal declarations, which allow OEs to remain on the register.

Overseas Electors Registration: Application process

7.9 OEs are categorised as Special Category Electors. When registering to vote, as well as providing the same information as ordinary electors in their application, they must provide additional specific information, through a declaration, to register as a special category elector.

7.10 The requirements for an overseas elector's declaration are set out in new regulation 20 of the 2008 Regulations (substituted by regulation 5) which prescribe additional requirements, expanding upon the requirements set out in the EA 2022. This regulation requires an OE's declaration to include an indication as to whether the declarant's name has changed since they were last registered or resident in the UK. They are also required to provide an explanation as to that change of name. Also included are requirements that the declarant provide their present address (likely to be overseas) and their British passport details. If they were under 18 when they left the UK, or if they were previously registered in respect of a Declaration of Local Connection, declarants may be required to provide additional information in order to satisfy the CEO as to their connection to their address, since it may be more challenging to connect this cohort to a previous address.

Overseas Electors Registration: Determination Process

7.11 In determining applications, the CEO will take account of supporting evidence, including documentary evidence or an attestation, to verify an applicant's identity and address. The amendments to regulation 5 of the 2008 Regulations clarify that communications which are required to be in writing and include a signature may be transmitted electronically. The amendments also make clear that such communications include attestations.

7.12 Existing regulation 24 allows the CEO, outside of the period of late registration to request additional information or evidence from a person making an application to be registered where initial checks are not successful. This includes where the applicant is an overseas elector. Following the changes made by these Regulations, the additional evidence which the CEO may require to demonstrate the applicant's connection to the address claimed as their qualifying address is now specified in new regulations 27ZA to 27ZH. Except during late registration (see section 7.24) the CEO will continue to rely on the general power in regulation 24 in relation to verifying an applicant's identity or nationality. Further detail on the process for verifying an applicant's connection to the address claimed as the qualifying address is set out below.

7.13 Regulation 23 of the 2008 Regulations has been updated to reflect the new registration requirements and require the CEO, as now, to inform applicant of the reasons for rejected application.

7.14 The instrument also amends existing regulation 38A, to ensure overseas electors who wish to register anonymously can be recorded appropriately in the electoral register.

Qualifying Address Verification

7.15 Where the CEO is unable to verify an applicant's previous registration via a register check, or where an applicant was never previously registered, an applicant's connection to their qualifying address can be established via checking DWP records or other locally-held records under existing legislation, documentary evidence provided by the applicant or an attestation.

7.16 New regulation 27ZB enables the CEO to request additional evidence of the applicant's qualifying address, and sets out a non-exhaustive list of conclusive documentary evidence. The regulation also gives the CEO discretionary powers to accept documents not present on the list, as long as they bear the name of the applicant and the address they are applying in respect of.

7.17 New regulation 27ZC establishes an attestation process for demonstrating connection to a previous residence. This is similar to the existing process for identity attestations in GB. An individual may provide an address attestation for no more than two applicants. The instrument provides a cross-cutting identity attestation limit such that an individual may not provide more than two identity attestations in support of voter applications across the UK in a given period. Similar cross cutting attestation limits apply UK wide, in relation to address attestations. New regulation 27ZH and 27ZI provides further provision for attestations, and clarifies the meaning of the term "qualifying attestor".

7.18 New regulation 27ZA applies where the applicant was under the age of 18 when they were last resident in the UK, and are less likely to have appropriate documentary evidence to support their application. It enables the CEO to request that the applicant provide the name of a parent or guardian of the applicant who was resident at the

applicant's qualifying address, as well as the date they were last registered there. It further requires the applicant to provide a birth certificate where they provide the name of a parent, and where they provide the name of a guardian enables the CEO to request other evidence demonstrating the applicant's connection to that guardian.

7.19 New regulation 27ZD enables the CEO to request additional evidence to support applications where the applicant was previously registered in pursuance of a service declaration, OE declaration or as a merchant seaman. New regulation 27ZE performs a similar function, but for applicants applying in respect of a previous registration under a declaration of local connection, or who could have been registered under such a declaration (including where the individual left the UK prior to the legislation governing these declarations coming into force). New regulation 27ZF provides for an attestation process for those applying in respect of previous registration as a special category elector under new regulations 27ZD and 27ZE.

Declaration Renewals

7.20 In order to make it easier for OEs to remain registered, the EA 2022 established a three-year fixed point renewal process, ensuring that an OE's declaration will expire on the third 1st November after their declaration was made.

7.21 This instrument makes requisite changes to the requirements for the CEO to notify electors of the need to renew, and sets out the process for renewing their entitlement. New regulation 23A of the 2008 Regulations (as inserted by regulation 8 of this instrument) requires that the CEO send out a renewal reminder after 1 July in the year that the OE's declaration is due to expire and no later than 1 October. This regulation gives the CEO administrators discretion to manage the renewal process as they see fit, balancing it with their other priorities.

7.22 New regulation 23B sets out further requirements for a renewal declaration, in addition to those included in the EA 2022. It requires that the renewal declaration include the OE's present address.

7.23 New regulation 23C requires that the ERO inform the declarant of the outcome of their renewal declaration, whether that be successful or unsuccessful.

Late Registration: domestic and overseas electors

7.24 Regulations 10 and 11 respectively amend regulation 25 and insert new regulations 25A to 25C. They amend the evidence which must be provided in late registration cases (that is, cases where a person is not registered before or on the date the nominations for candidates for an election or recall petition close – see paragraph 6.4). The existing regulation 25, which contains lists of evidence that may be requested during this late registration period, was out of date, and the new lists mirror the evidence that may be requested in support of applications in GB and include the ability to require an attestation if documentary evidence cannot be provided by the applicant..

Processing of information provided in connection with an application for registration

7.25 New regulation 15 amends regulation 27A of the 2008 Regulations to provide that where the CEO requests an original copy of a document, or where an applicant may proactively provide a document in support of their application (rather than a the request of the (CEO), the CEO must make a copy of the document and return the original to the applicant. The CEO must retain any information, documents, or in the

case of original documents having been provided copies of such documents, until the CEO considers they are no longer required

Requests for Information

7.26 Regulation 41 of the 2008 Regulations provides that the CEO may require from a specified authority or person specified information for the purpose of assisting the CEO in their registration duties including in relation to determining a registration application. The specified authority or person is required to provide the information, or request extra time, or confirm the information is not held. The requirement to disclose information only applies to information held on or after 6 June 2007. New regulation 18 amends this regulation such that where the CEO requests information in relation to an individual applying to be an overseas elector and where that information predates 6 June 2007 the specified person or authority is not bound to provide it but must use what they consider reasonable endeavours to locate the information and inform the CEO where they are unable to do so.

Consequential Amendments to other Electoral Legislation (Part 3)

7.27 Regulation 21 makes consequential amendments to the Northern Ireland (Elections) Assembly Order 2001 ("the 2001 Order"). Article 3(1) of that Order provides for provisions of the 2008 Regulations which are listed in the table in Schedule 2 to apply for the purposes of an assembly election, subject to any modifications set out in that table. The table in Schedule 2 includes reference to regulations 3 and 5 of the 2008 Regulations (respectively, interpretation and communication of applications, notices etc), which this instrument is amending. None of the definitions inserted by this instrument into regulation 3 are relevant to assembly elections. Regulation 21 accordingly amends the table in Schedule 2 to omit them for these purposes.

7.28 The remaining regulations in Part 3 amend provisions which apply a limit on the number of persons for whom a "qualifying attestor" can make a particular type of attestation.

7.29 The instruments being amended are:

- The Representation of the People (England and Wales) Regulations 2001 (SI 2001/341)
- The Representation of the People (Scotland) Regulations 2001 (SI 2001/497)
- The Police and Crime Commissioner Elections Order 2012 (SI 2012/1917)
- The Recall of MPs Act 2015 (Recall Petition) Regulations 2016 (SI 2016/295)
- The Voter Identification Regulations 2022 (SI 2022/1382)

Transitional Arrangements (Part 4)

7.30 Regulation 27 introduces transitional arrangements for those applying to be registered as overseas electors, and those already registered as overseas electors, before these Regulations come into force. Regulation 28 introduces transitional arrangements for applications made before these Regulations come into force more generally.

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 existing legislation. There are no plans to consolidate the legislation.

10. Consultation outcome

10.1 The policy framework for the previous Overseas Electors Bill (2017-2019) was subject to a full public consultation and feedback from this consultation (published in 2018) has formed the basis for the measures in this instrument.

10.2 Throughout the development of the policy, significant consultation, led by Department of Levelling Up, Housing and Communities (DLUHC) has taken place with the Electoral Commission (EC) and the Association of Electoral Administrators. Through structures set up as part the Electoral Integrity Programme, consultation has also taken place with representatives of the electoral sector across the UK and relevant interest groups. The NIO has consulted the Chief Electoral Officer for Northern Ireland.

10.3 There has been consistent engagement between DLUHC and NIO to ensure consistency of approach in relation to the franchise and registration changes. The provisions in relation to Great Britain will be made via a separate instrument, the Representation of the People (Overseas Electors etc.) (Amendment) Regulations 2023.

11. Guidance

11.1 The EC provide detailed guidance for electoral registration officers in Great Britain on running electoral registration. The CEO will have regard to this guidance.

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 is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

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 NIO will consider any findings or recommendations made by the EC about the changes in this instrument that will apply at those polls.

14.2 In accordance with section 62 of the EA 2022, the Secretary of State for DLUHC must prepare and publish a report on the operation of the EA 2022, as well as lay a copy of the report before Parliament, between 4 and 5 years after the day on which the EA 2022 was passed.

14.3 The NIO will continue to keep all electoral legislation under consideration to ensure it continues to support electors' participation in elections and effective electoral administration.

15. Contact

15.1 Katherine Herrick at the Northern Ireland Office can be contacted with any queries regarding the instrument. Email:Katherine.herrick@nio.gov.uk

15.2 Ciaran Hayes, Deputy Director for the Prosperity Group, 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.