EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (POSTAL AND PROXY VOTING ETC.) (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. Purpose of the instrument

2.1 The instrument makes amendments to rules governing the administration and conduct of Parliamentary elections and other elections, referendums and recall petitions, to correct errors in the Representation of the People (Postal and Proxy Voting etc.) (Amendment) Regulations 2023 (S.I. 2023/1147) ("the 2023 Regulations").

2.2 The corrections relate to transitional provisions regarding the information shown on postal poll cards and proxy postal cards for certain elections and referendums, as well as the equivalent petition notices for certain recall petitions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The instrument corrects errors which are similar to those identified by the Joint Committee on Statutory Instruments in respect of the Local Government and Greater London Authority Elections (Miscellaneous Amendments) Regulations 2023 (S.I. 2023/1066) in the Committee's [Fifth] Report of Session 2023-24.

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 England and Wales, Northern Ireland and Scotland.

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

5. European Convention on Human Rights

5.1 Simon Hoare MP, Parliamentary Under Secretary of State 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 (Postal and Proxy Voting Etc.) (Amendment) Regulations 2024 are compatible with the Convention rights."

6. Legislative Context

6.1 The 2023 Regulations made provision related to parliamentary elections petitions in England and Wales and Scotland, police and crime commissioner elections in England and Wales, local authority and combined authority mayoral elections and local referendums in England and recall petitions across the UK. The provision related to the implementation of section 3 (restriction of period for which person can apply for a postal vote) and section 6 (limit on the number of electors for whom a proxy can vote) of the Elections Act 2022 (c. 37)

6.2 Associated with those changes, the 2023 Regulations contained transitional provision modifying the prescribed form of official poll cards issued to postal voters and proxy postal voters at those elections (and equivalent petition notice forms for recall petitions) ahead of the subsequent replacement of those prescribed forms by the Representation of the People (Postal Vote Handling and Secrecy) (Amendment) Regulations 2023 (S.I. 2023/1225).

7. Policy background

What is being done and why?

7.1 The Elections Act 2022 set out a wide range of changes to numerous aspects of the electoral system.

7.2 This included changes to the rules surrounding the number of people for whom an individual can act as proxy when voting. The changes were implemented by the 2023 Regulations and supported by new offences. These changes came into force on 31 October 2023.

7.3 To ensure a smooth change of rules, the 2023 Regulations set out a transitionary period which would allow proxy arrangements that had been set up prior to the new rules coming into force to continue until 31 January 2024 (and longer if a poll were already underway). This was to avoid a 'cliff-edge' where all pre-existing proxy arrangements were cancelled simultaneously – which could create administrative issues and leave insufficient time for electors to reapply for new proxy arrangements.

7.4 The change in proxy rules also needed to be reflected on the information provided on elections forms – such as poll cards - and these needed to be updated for polls held during the transitionary period, as well as for polls after.

7.5 The 2023 Regulations provided the necessary updates for the forms used for any polls for which notice was given prior to 31 January 2024 (i.e. up until the end of the transitionary period).

7.6 The forms for postal poll cards and proxy postal poll cards for any polls held after the transitionary period were to be set out in the Representation of the People (Postal Vote Handling and Secrecy) (Amendment) Regulations 2023. However, these forms do not come into force for any polls where the day of poll is prior to 1 May 2024.

7.7 There is therefore a gap in the transitional provisions - for any polls for which notice is given on or after 31 Jan 24, and the day of poll is on or before 1 May 24, no new provision has been given. Any polls taking place during this time would have to use the postal poll cards and proxy postal poll cards used prior to the 2023 Regulations coming into force, which would provide incorrect information on the rules and offences surrounding proxy voting. The same gap applies in respect of postal signing petition notices and proxy postal signing petition notices for any recall petition for

which the Speaker's notice (given in accordance with section 5(1) and (5)(a) of the Recall of MPs Act 2015) is given on or after 31 January 2024 and for which the beginning of the petition signing period is on or before 1 May 2024.

7.8 This instrument will correct the error in the 2023 Regulations by making additional transitional provision for the relevant postal poll cards and proxy postal poll cards (and equivalent recall petition notices) during that intervening period.

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 No consolidations will arise from this instrument.

10. Consultation outcome

10.1 The Electoral Commission were consulted on this instrument. They were content with the instrument and agreed to the amendments made to the forms.

11. Guidance

11.1 The Electoral Commission issues guidance to electoral administrators relating to the administration and conduct of elections, referendums and recall petitions, and to candidates standing at elections. They will update the guidance as necessary in advance of future polls to reflect the changes set out in 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 as no, or no significant, impact on the private, voluntary or public sector 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 Electoral Commission will produce reports on the administration and conduct of elections, and the Department for Levelling Up, Housing and Communities 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, the Secretary of State 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 Department for Levelling Up, Housing and Communities 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 Guy Daws at the Department for Levelling Up, Housing and Communities (guy.daws@levellingup.gov.uk) can be contacted with any queries regarding the instrument.

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

15.3 Simon Hoare MP, Parliamentary Under Secretary of State at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.