EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (POSTAL VOTE HANDLING ETC.) (NORTHERN IRELAND) (AMENDMENT) REGULATIONS 2024

2024 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 These Regulations amend the legislation for Parliamentary elections and Assembly elections to make provisions principally designed to strengthen the security of postal voting, in particular provisions concerning the handing in of postal votes. They also make amendments to the Representation of the People (Franchise Amendment and Eligibility Review) (Northern Ireland) Regulations 2023 and include transitional provisions relating to the candidacy rights of EU citizens (see section 15 of, and Schedule 8 to, the Elections Act 2023).

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 Northern Ireland.

4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

5.1 Steve Baker MP, Minister of State, Northern Ireland Office has made the following statement regarding Human Rights:

"In my view the provisions of the Representation of the People (Postal Vote Handling etc.) (Northern Ireland) (Amendment) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 These Regulations make provision related to handing in of postal votes. They also make amendments and transitional provisions relating to the voting and candidacy right of EU citizens (the Regulations amend provisions made in the Representation of the People (Franchise Amendment and Eligibility Review) (Northern Ireland) Regulations 2023 (S.I. 2023/1176).

6.2 Section 5 of the Elections Act 2022 ("the 2022 Act") amends the Representation of the People Act 1983 ("the 1983 Act") to include the power to make regulations relating to the procedural requirements and limitations for handing in postal voting

documents for Parliamentary elections to the Chief Electoral Officer who is the Returning Officer for the whole of Northern Ireland.

6.3 In Part 2, regulations 3-10 of these Regulations amend the Representation of the People (Northern Ireland) Regulations 2008 (S.I. 2008/1741) ("the 2008 Regulations").

6.4 Regulation 4 amends the 2008 regulations by inserting regulation 81B which provides that postal ballot papers can only be returned to the returning officer by hand or by post and must be returned in a covering envelope. Regulation 5 is a consequential amendment.

6.5 Regulation 6 inserts new regulations 84A to 84I. These new regulations require a person handing in one or more sets of postal voting documents for a Parliamentary election in Northern Ireland to the returning officer to complete a "return of postal voting documents form" when doing so, setting out the information prescribed in those regulations (see new regulations 84A and 84B). New regulation 84C requires the rejection of postal voting documents where that return form is not fully completed with the required information; where it is suspected that the person handing in the postal ballot papers is doing so on behalf of more than five other electors (whether on that occasion or in respect of the same election, taking into account other postal voting documents previously handed in); and where the person handing in the postal voting documents is suspected to be committing an offence under section 112A of the 1983 Act (i.e. handling postal ballot papers as a political campaigner). New regulations 84D and 84E set out the steps to be taken in relation to the postal voting documents after the returning officer has decided whether or not to reject any of them. The new regulations also set out the steps to be taken in relation to postal voting documents left behind without being handed in (see new regulation 84F). Postal voting documents which are rejected or left behind without being handed in are not forwarded to the count. New regulation 84G provides for the treatment and custody of postal voting documents and return of postal voting documents forms.

6.6 New regulations 84H and 84I require the Chief Electoral Officer to compile a list of electors whose postal voting documents were rejected or left behind under these provisions and to then send a notification to those electors, and if appropriate their postal proxy, within 3 months to inform them of this fact.

6.7 Regulation 7 amends regulation 86 of the 2008 regulations to ensure that when opening covering envelopes the returning officer ensures that ballot papers are kept face downwards and takes precautions to prevent the votes from being seen and to ensure that the returning officer is not permitted to view the corresponding number list.

6.8 Regulation 8 amends regulation 91 of the 2008 regulations to make provision for the forwarding of documents such as the return of postal voting documents form to the Clerk of the Crown at the end of the poll. It also provides for the list of electors whose postal voting documents were rejected or left behind, the associated rejected postal ballot papers and return of postal voting document forms to be sent to the Clerk of the Crown as soon as reasonably practicable after the notifications to electors whose postal ballot papers were rejected or left behind have been sent.

6.9 Regulation 9 amends regulation 117 of the 2008 regulations to provide that the following documents cannot be made available for inspection by the Chief Electoral Officer; counted ballot papers, corresponding number lists, certificates of

employment, the list of electors whose postal ballot papers were rejected or left behind, and rejected or left behind ballot papers.

6.10 Regulation 10 makes changes to the Parliamentary forms related to postal voting for elections in Northern Ireland to reflect the new rules around the handing in of postal votes and changes made to proxy voting in separate regulations.

6.11 Part 3 of this instrument amends the Northern Ireland Assembly (Elections) Order 2001 ("the 2001 Order") to ensure that the postal vote handing limits and procedures set out above apply to Assembly elections. The 2001 Order applies with modifications Schedule 1 to the 1983 Act (containing the election rules) and the 2008 regulations to Assembly elections. Regulation 12 amends the modifications made to the election rules in Schedule 1 to the 1983 Act to provide that a postal ballot paper must be returned by post or by hand and must not be rejected under the new procedures in order to be duly returned. Regulation 13 ensures that new regulations 81B and 84A to 84I apply to Assembly elections and that the amendments made to the existing regulations in the 2008 Regulations also apply.

6.12 Part 4 of this instrument makes provision related to the changes to EU citizens' right to vote and stand in elections, following the end of UK's membership of the EU, to prevent duplicate notices being sent to review subjects following review of their eligibility to vote and to ensure that, following commencement of the changes, candidates and other registered EU citizens remain eligible to stand and hold office in elections re-run on or after 7 May 2024 where the poll was originally scheduled for a date on or before 6 May 2024.

7. Policy background

What is being done and why?

7.1 The 2022 Act made changes and additions to a wide range of electoral legislation. A number of these changes and additions were to implement recommendations made in the 2016 report 'Securing the Ballot', published by Sir Eric (now Lord) Pickles ("the Pickles Report").

7.2 The 2022 Act includes a number of measures that are designed to strengthen the security and integrity of the electoral process at Parliamentary elections and other polls, including measures to safeguard postal and proxy voting. The measures in the 2022 Act will give greater protection to persons with a postal or proxy vote arrangement and so ensure they are able to cast their vote securely and in private without intimidation or coercion from others. The provisions to regulate the handing in of postal votes to the returning officer in this instrument is part of this package of wider measures.

7.3 The Regulations implement measures concerning the handing in of postal votes at Parliamentary and Assembly elections. A separate instrument, the Local Elections (Northern Ireland) (Amendment) Order 2024, will make similar changes for local elections in Northern Ireland. The Representation of the People (Postal Vote Handling and Secrecy) (Amendment) Regulations 2023 ("the GB instrument") makes similar changes for Parliamentary elections in Great Britain and local elections in England. Other changes made by the GB instrument, including extending the postal vote handling offence for political campaigners to certain elections and extending secrecy provisions to absent voting, were made for Northern Ireland elections in the Elections Act 2022.

7.4 This instrument also makes provision in relation to Schedule 8 to the 2022 Act, which concerns the voting and candidacy rights of EU citizens. In particular, it makes changes to the franchise review process set out in the Representation of the People (Franchise Amendment and Eligibility Review) (Northern Ireland) Regulations 2023 (S.I. 2023/1176) and makes further transitional provision in relation to the candidacy provisions for EU citizens.

Handing in of postal votes

7.5 It will still be permitted for people who are not political campaigners subject to the new postal vote handling offence to handle and hand in postal voting documents that are issued to others. The 2022 Act seeks to ensure that the arrangements in place governing this are robust, with reasonable limits in place on the number of postal votes that may be handled/handed in, and which support the integrity of postal voting.

7.6 The 2022 Act provides for a power for regulations to be made to limit the number of electors on behalf of whom a person may hand in postal votes at a poll, and to set out the procedure to be followed for the handing in of postal votes. Postal votes not handed in in accordance with the requirements of the regulations will be rejected.

7.7 The Regulations set out provisions prescribing the number of electors for whom P can hand in postal votes to the Returning Officer (at the Electoral Office for Northern Ireland Office). The upshot of these provisions is that, in relation to any particular election, P can hand in the postal vote issued to P as an elector and postal votes for up to 5 other electors (including persons for whom P is voting by post as proxy). The provisions also ensure that, if P hands in postal votes for more than the permitted number of electors, those postal votes issued to P as an elector or as a proxy are not rejected.

7.7.1 To give examples of how the provisions would work in practice:

7.7.2 Postal votes handed in on the same occasion in relation to the same election – regulation 84C(1)(b)

P hands in one postal vote for himself, two postal votes as proxy and four postal votes for neighbours.

For the purposes of assessing whether P has exceeded the permitted number of electors for whom P may hand in postal votes, any postal votes issued to P (whether as an elector or proxy) are ignored when calculating the number of electors for whom P has handed in postal votes. So the number of electors for whom P has handed in postal votes is 4.

Ordinarily the permitted number would be 5. But the permitted number is reduced by the number of electors for whom P has handed in postal proxy votes. P has handed in 2 postal votes as proxy, so the permitted number is reduced to 3.

P has exceeded the permitted number. P's own postal vote and the postal proxy votes are not rejected. However, the postal votes P has handed in on behalf of 4 neighbours are rejected.

7.7.3 Postal votes handed in on different occasions in relation to the same election – regulation 84C(1)(c)

On the first occasion P hands in one postal vote for himself and one postal vote for a neighbour. Both votes are accepted.

On a subsequent (second) occasion, P hands in a further 3 postal votes for neighbours and two postal proxy votes issued to him.

As above, for the purposes of assessing whether P has exceeded the permitted number of electors for whom P may hand in postal votes, any postal votes issued to P as an elector or a proxy are ignored when calculating the number of electors for whom P has handed in postal votes. The number of electors for whom P has handed in postal votes is therefore 4 (one elector on the first occasion and three electors on the second).

The permitted number is 5 minus the number of electors for whom P has handed in postal votes as proxy. As P has handed in 2 postal proxy votes, the permitted number is 3.

The number of electors for whom P has handed in postal votes exceeds the permitted number on the second occasion. The two postal proxy votes which P handed in on the second occasion will not be rejected. However, the three postal votes for neighbours which P handed in on the second occasion will be rejected.

7.8 The provisions will allow reasonable numbers of postal votes to be handed in by an individual, which will facilitate participation, whilst strengthening the integrity of postal voting in line with the Pickles Report.

7.9 A person handing in postal votes will be required to complete a form setting out certain information, including their name and address, the number of persons whose postal votes they are handing in and the reason for this. Postal votes that are handed in in accordance with the requirements will be accepted by the returning officer and forwarded to a postal vote opening session to be dealt with along with other returned postal votes.

7.10 The Regulations provide for the rejection of postal ballots by the returning officer where:

1) the person handing in the postal votes fails to fully complete the accompanying return of postal voting documents form with the required information, or
2) the number of postal votes handed in by a person exceeds the permitted number, or
3) a party campaigner has handled a postal vote illegally (any postal votes of other voters that are handed in by that person will be rejected – but not their own), or
4) the postal votes have simply been left behind at the office of the Returning Officer and no accompanying form has been completed.

7.11 Postal votes that have simply been brought into the Electoral Office but which have been abandoned and have not been handed in with an accompanying form in the prescribed manner are treated as left behind postal voting documents. Rejected postal votes and left behind postal voting documents (as they have not been duly returned) will not be counted.

7.12 After the poll, the Chief Electoral Officer will put together a list of electors whose postal voting documents were rejected or left behind. As long as an elector's rejected or left behind postal voting documents include a declaration of identity (such that the

elector can be identified), the Chief Electoral Officer will write to the elector notifying them that their postal voting documents were rejected (and the reason why) or left behind. If a proxy was entitled to vote on the elector's behalf, the Chief Electoral Officer will also notify the proxy.

7.13 The Regulations make provision for the storage and destruction (after one year) of accepted and rejected postal voting documents after the poll, return of postal voting document forms and the list of rejected or left behind postal votes in line with the arrangements for other electoral documents.

Amendments relating to implementation of changes to EU citizens' right to vote and stand in elections.

7.14 Part 4 of this instrument makes provision related to the changes to EU citizens' right to vote and stand in elections, following the end of the UK's membership of the EU. Regulation 14 makes minor technical amendments to the 2008 regulations to reflect the new franchise. Regulation 15 amends the Representation of the People (Franchise Amendment and Eligibility Review) Regulations 2023, which implement the changes to the voting and candidacy rights of EU citizens that are made by the 2022 Act, to prevent duplicate notices being sent to review subjects following review of their eligibility to vote. Regulations 16 and 17 make transitional provision to ensure that, following commencement of the changes to EU citizens' right to vote and stand, candidates and other registered EU citizens remain eligible to stand and hold office in elections re-run on or after 7 May 2024.

Forms

7.15 Schedules 1 to 7 of the Regulations also replace certain forms used at Parliamentary and Assembly elections, in order that the forms include updated information on the new requirements concerning the handing in of postal votes and to reflect changes made in the 2022 Act to proxy voting limit and extension of secrecy provisions.

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 consolidation will arise from this instrument.

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.

11. Guidance

11.1 The Electoral Commission provides 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 as 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 Electoral Commission produce reports on the administration and conduct of elections, and the Northern Ireland Office will consider any findings or recommendations made by them about the changes in these instruments that will apply at those polls.

14.2 In accordance with section 62 of the 2022 Act, the 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.