EXPLANATORY MEMORANDUM TO

THE VOTER IDENTIFICATION REGULATIONS 2022

2022 No.

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.

2. Purpose of the instrument

2.1 These Regulations implement the voter identification measures set out in the Elections Act 2022. In particular, the Regulations make provision as to the application process by which a voter can obtain an electoral identity document (referred to below as a 'Voter Authority Certificate') or an Anonymous Elector's Document. The Regulations also make changes to polling station conduct rules for certain elections and referendums, and to petition signing place rules for recall petitions under the Recall of MPs Act 2015 to implement the requirement to show photographic identification.

3. Matters of special interest to Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument is England and Wales and Scotland. Regulations 23 and 24 also extend to Northern Ireland, and regulation 41 extends to Northern Ireland only.

4.2 The territorial application of this instrument is England and Wales and Scotland. Regulations 23 and 24 also apply to Northern Ireland and regulation 41 applies to Northern Ireland only.

5. European Convention on Human Rights

5.1 The Rt Hon Andrew Stephenson, Minister for Housing and Communities has made the following statement regarding Human Rights:

"In my view the provisions of the Voter Identification Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 These Regulations are the second of four statutory instruments (following the Elections Act 2022 (Commencement No. 2) Regulations 2022 (S.I.2022/916) as well as a further set of commencement Regulations and a set of rules to follow in due course) that will implement the voter identification measures of the Elections Act 2022 (set out in section 1 of, and Schedule 1 to, that Act).

6.2 These measures in the Act aim to prevent electoral fraud and increase public confidence in the electoral system. The measures, as a whole, introduce the

requirement for voters to present photographic identification (from a list of specified documents) in order to vote in person at a polling station in parliamentary elections. The measures also provide for new forms of photographic identification created specifically for voting – Voter Authority Certificates and Anonymous Elector's Documents – which can be obtained free of charge from electoral registration officers ('EROs') where a voter does not otherwise have access to a specified form of photographic identification.

6.3 Part 2 of the Regulations make provision about the application processes (including identity verification processes and exceptions) for obtaining Voter Authority Certificates and Anonymous Elector's Documents from their ERO. Part 3 of the Regulations sets out the provisions relating to the determination of these applications, including the criteria by which applications are determined by the ERO (regulation 11) and provision regarding the retention of application information and documents following determination (regulation 14).

6.4 Part 4 of the Regulations make provision requiring the Electoral Commission to design the new forms of photographic identification (regulation 15) in accordance with requirements for those designs set out in Schedule 3, and to make those designs available to EROs. Part 4 also makes provision as to the issuing and delivery or collection of Voter Authority Certificates and Anonymous Elector's Documents to voters following a successful application, as well as the circumstances in which an ERO may also issue a voter with a temporary Voter Authority Certificate (regulation 18). Chapter 4 of Part 4 also makes provision about the record of issued identification documents that an ERO must maintain, as well as the supply, disclosure and use of such record (regulations 21 to 23) and associated offences for contravention of the restrictions on such supply etc. (regulation 24).

6.5 Part 5 of the Regulations makes provision requiring an ERO to issue reminders to electors registered anonymously as to the requirement for an Anonymous Elector's Document in order to vote in person at a polling station. Part 5 also provides for the replacement by an ERO of an Anonymous Elector's Document if an anonymous elector's electoral number is subsequently changed (which has the effect of invalidating the issued document). Regulation 30 also allows an anonymous elector to request a replacement anonymous elector's document where their original document is lost, stolen, destroyed or damaged in close proximity to the day of poll for an election or referendum, or the end of the signing period for a recall petition, at which the elector intends to vote or sign a recall petition in person.

6.6 Part 6 of the Regulations prescribes the form of the ballot paper refusal list for use at parliamentary elections in Great Britain, and sets out the circumstances in which information can be obtained from a completed and sealed ballot paper refusal list or signing sheet refusal list after the election, referendum or recall petition to which the list relates.

6.7 Part 7 of the Regulations provides for the application of rule 40B of the parliamentary election rules. This rule, introduced by Schedule 1 to the Elections Act 2022, requires the collection and disclosure of information related to voter identification by presiding officers in polling stations, the collation of that information by the relevant ERO and provision of the collated information to the Secretary of State. Section 59A of the Representation of the People Act 1983 (also introduced by Schedule 1 to the Elections Act 2022) requires the Secretary of State to prepare and publish reports on the effect of the voter identification requirements on the first two parliamentary general

elections held after the day on which the section comes into force, and the first ordinary elections of councillors for local government areas in England which are held on an ordinary day of election after the day on which the section comes into force and which are not combined with a parliamentary general election. In preparing those reports, the Secretary of State must have regard to information provided in accordance with rule 40B.

6.8 Regulation 34 prescribes the information which is to be collected by the presiding officer, and regulation 35 prescribes the way in which the relevant ERO has to collate that information.

6.9 Part 8 makes amendments relating to the conduct of parliamentary elections where the poll of the parliamentary election is combined with the poll of another election or referendum. Regulation 36 amends regulation 98 of the Representation of the People (Scotland) Regulations 1986 (S.I. 1986/1111), which modifies parliamentary election rules where the poll for a parliamentary election is combined with the poll for a local government election in Scotland, as a result of the voter identification measures but also to update the modifications in light of previous amendments to the parliamentary elections rules. Regulation 37 makes amendments to Schedule 2 to the Representation of the People (Combination of Polls) (England and Wales) Regulations 2004 (S.I. 2004/294) which applies to combined polls in England and Wales.

6.10 Part 9 of the Regulations makes amendments to the Representation of the People (England and Wales) Regulations 2001 (SI 2001/341) and the Representation of the People (Scotland) Regulations 2001 (SI 2001/497). The main amendments are to allow for electors at parliamentary elections in Great Britain and local government elections in England to appoint a proxy to vote on their behalf, or to change their currently appointed proxy, up to 5pm on the day of poll of the election on grounds related to voter identification (see new regulation 56A, as set out in regulations 38 and 39 of the Regulations respectively). The amendments also update the list of qualifying relevant court orders that allow an elector to be registered anonymously to take account of domestic abuse protection orders under the Domestic Abuse Act 2021, with a similar amendment made to the Representation of the People (Northern Ireland) Regulations 2008 (SI 2008/1741).

6.11 Part 10 of the Regulations makes amendments which provide for the updated polling station/petition signing place processes equivalent to those made by Schedule 1 to the Election Act 2022 for parliamentary elections for the following:

- Recall Petitions in Great Britain;
- Police and Crime Commissioner Elections in England and Wales;
- Local and Combined Authority Mayoral elections (in England);
- Local Referendums on the governance of local authorities (in England);
- Neighbourhood Planning Referendums (in England);
- Council Tax Increase Referendums (in England)

6.12 Part 10 also provides a range of forms (both new and updated) for use at these polls (e.g. poll cards) and for recall petitions which have been updated in light of the voter identification requirements. Welsh and bilingual versions of the new prescribed forms for parliamentary elections and recall petitions will be set out separately in due course in two Welsh Form Orders.

7. Policy background

What is being done and why?

7.1 In August 2016, Lord Pickles published his report– Securing the Ballot[1]. The report set out 50 recommendations for improving the electoral system. Amongst them were recommendations to introduce a requirement for voters to show identification before voting. Similar systems exist in democracies across the world, and currently are in effect in Northern Ireland.

7.2 A number of other organisations have also called for a voter identification system to be implemented – such as the Electoral Commission and the Organisation for Security and Co-operation in Europe.

7.3 The Government's 2019 manifesto committed to "**protect the integrity of our democracy**, by **introducing identification to vote** at polling stations…".

7.4 The Elections Act 2022 sets out a wide range of changes to the electoral system. One of these measures is the new requirement for voters to present photographic identification (from a specified list of documents) in order to vote in person at the polling station – this will fulfil the Government's manifesto commitment.

7.5 The primary intention is that this will prevent the crime of personation (whereby an individual attempts to impersonate another in order to cast their vote illegally) from occurring at the polling station, protecting the electorate's votes from being stolen. This additional protection also aims to improve the public's confidence in the democratic system.

7.6 The new requirement for photographic identification will replace the current outdated system of verifying voters' identities. At present, a voter simply needs to give their name and address and they will be issued a ballot. This is information which could easily be obtained by another individual. The existing security feature – whereby polling station staff will call out the name of the voter, to allow for bystanders to object if they are not who they say they are – is no longer viable, and indeed is often not carried out by polling station staff.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 No consolidation will arise from this SI.

10. Consultation outcome

10.1 Significant consultation has been carried out with a range of stakeholders in the electoral sector, and this has extensively shaped the drafting of this SI. Stakeholders include organisations such as the Electoral Commission, the Association of Electoral Administrators and the Society of Local Authority Chief Executives, a range of individual returning officers, electoral registration officers and electoral administrators, civil society organisations and charities, and the devolved administrations.

[1] https://www.gov.uk/government/publications/securing-the-ballot-review-into-electoral-fraud

10.2 Formal consultations have been carried out, including with the Electoral Commission, the Information Commissioner's Office and the Scottish and Welsh Governments. Drafts of the SI were shared with them for feedback, and a number of small changes to drafting were implemented following their recommendations.

11. Guidance

11.1 Guidance for electoral administrators and polling station staff on the measures set out in these Regulations will be provided by the Electoral Commission ahead of the intended implementation date in January 2023.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 The impact on the public sector is set out in detail in the Impact Assessment that accompanies these regulations.

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 monitoring of this legislation will be conducted as part of monitoring the wider Elections Act 2022. In accordance with section 62 of the Elections Act 2022, the Secretary of State must prepare and publish a report on the operation of the Elections Act 2022, as well as lay a copy of the report before Parliament, between 4 and 5 years after the day on which the Elections Act 2022 was passed. The Government maintains extensive relationships with the electoral sector, and will be able to receive feedback from electoral administrators. In addition the Electoral Commission will be able to provide analysis.

14.2 Additionally, as describe above in the 'legislative context' section, there are separate monitoring and reporting requirements that are specifically related to voter identification. These Regulations itself sets out data collection measures – on data that must be collected at the polling station to support Government analysis of the impact of these measures. This will feed into the reports that the Secretary of State is required to publish on the effect of the voter identification requirements – as set out under section 59A of the Representation of the People Act 1983.

15. Contact

15.1 Guy Daws at the Department for Levelling Up, Housing, and Communities Telephone: 0303 444 0439 or email: 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 Rt Hon Andrew Stephenson, the Minister for Housing and Communities at the Department for Levelling Up, Housing, and Communities can confirm that this Explanatory Memorandum meets the required standard.