EXPLANATORY MEMORANDUM TO

THE REPRESENTATION OF THE PEOPLE (OVERSEAS ELECTORS ETC.) (AMENDMENT) REGULATIONS 2023

2023 No. 1406

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 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) ('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 Electoral Registration Officers ('EROs') to determine their eligibility, under the new criteria.

2.3 The instrument includes provisions about absent voting arrangements at Police and Crime Commissioner ('PCC') elections in Wales.

2.4 The instrument also makes provision related to the changes to EU citizens' right to vote and stand in elections.

2.5 The instrument corrects two small errors in an earlier instrument (see regulation 16(2)(b) and (7)). The Department has complied with the requirement stated in paragraph 4.7.6 of Statutory Instrument Practice to consult with the SI Registrar. Having done so, the Department has concluded that it is not necessary to apply the free issue procedure in this case.

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 England and Wales and Scotland.

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

5. European Convention on Human Rights

5.1 Jacob Young MP has made the following statement regarding Human Rights:

"In my view the provisions of the Representation of the People (Overseas Electors etc.) (Amendment) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 The instrument 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 who have been previously registered as an elector or resident in the UK and makes 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.

6.3 Chapter 1 of Part 2 of this instrument makes amendments to the Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341) ("the 2001 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, as well as providing for a new form of verification using government-held data to link the previous UK address in respect of which an OE is to be registered. The amendments also update the ways in which an applicant's identity can be verified by reference to documentary evidence and introduce a limit on the number of identity verification attestations that an individual can provide in a given period across different areas of electoral legislation. The amendments also introduce requirements for and processes relating to the new renewal declarations which OEs complete in order to remain registered for a further period of time. Finally, the amendments introduce new powers for EROs to be able to seek additional evidence including attestations from applicants where needed to establish that an applicant meets the new qualification conditions.

6.4 Chapter 2 of Part 2 makes equivalent amendments to the Representation of the People (Scotland) Regulations 2001 (S.I. 2001/497) to those made to the 2001 Regulations by Chapter 1 of Part 2. Chapter 3 of Part 2 makes amendments to other elections related legislation, in consequence of the new expanded franchise as well as for the purposes of implementing the cross-cutting limits for attestations for identity verification purposes.

6.5 Part 3 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 countermanded polls re-run after 7 May 2024.

6.6 The instrument makes amendments to the Representation of the People (Postal and Proxy Voting etc.) (Amendment) Regulations 2023, laid before Parliament separately, in relation to absent voting arrangements at Police and Crime Commissioner (PCC) elections in Wales to ensure that absent voting applications will be made under the new requirements being introduced for such applications by those Regulations.

6.7 The instrument is also linked to the recent Representation of the People (Postal and Proxy Voting etc.) (Amendment) Regulations 2023, relating to new restrictions on postal and proxy voting entitlements (PPVR). This SI makes further amendments to absent voting restrictions for Overseas Electors. The PPVR SI amended the three-year limit on postal voting entitlements with an Overseas Elector's registration entitlement,

whilst this SI also amends the proxy vote signature refresh period to align with the registration entitlement.

6.8 This instrument is laid in parallel with a separate instrument implementing the overseas electors franchise expansion for Northern Ireland.

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 deliver 'votes for life' and 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 improvements and consequential amendments to the registration process for overseas electors, including the processes by which applicants have their identity and 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, will make it easier for overseas electors to remain on the register with an absent vote arrangement in place 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 EROs 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 relevant ERO;
- Create a workable registration system for electoral administrators that minimises time-consuming processes where possible;
- Ensure existing overseas electors are transitioned onto the new renewals' framework for both their declaration and their absent vote arrangement, and establish a consistent approach to the renewal of their declaration and voting arrangement; and
- 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.
- Amend the existing identity verification requirements, to enable documentary evidence to be used, where an OE applicant's identity cannot be verified via a Date of Birth and National Insurance Number check against DWP records.

- Amend the existing identity verification requirements to update attestations requirements including who can provide an attestation, and the number of attestations a single attestor can provide within a qualifying period.
- Amend existing processes by which applicants may have their connection to their qualifying address verified, including to create processes that do not rely on EROs consulting historic copies of electoral registers. Establish a new declaration renewal reminder timetable and set out how many 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 are transmitted to the registration officer.
- Reduce the current 5-year signature refresh up to 3 years for OEs with proxy voting arrangements, in order to align the signature expiration date with an OE's period of registration and postal vote expiration cycle.
- 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.

7.8 This instrument also makes provision in relation to two other measures in the Elections Act 2022: changes to the franchise for EU citizens and changes to postal and proxy voting. These measures have been legislated for separately in Representation of the People (Franchise Amendment and Eligibility Review) Regulations 2023, No. 1150, and Representation of the People (Postal and Proxy Voting Etc) (Amendment) Regulations 2023, No. 1147. Since they were laid in Parliament, further improvements have been made to the provisions in those instruments.

Explanations

7.9 Part 2 of this instrument relates 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

7.10 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.

7.11 The requirements for an overseas elector's declaration are set out in new regulation 18 of the 2001 Regulations (inserted by regulation 4(2)) which prescribes 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 must provide additional information in order to satisfy an ERO as to their connection to their address, since it may be more challenging to connect this cohort to a previous address.

7.12 Regulation 21 of the 2001 Regulations enables the transmission of the contents of the OE's declaration to the relevant ERO.

Overseas Electors Registration: Determination Process

7.13 Once an ERO has received an application to register from an overseas elector, a determination must be made as to its validity. In determining applications, EROs will take account of supporting evidence, including documentary evidence or an attestation, to verify an applicant's identity and address. Amendments to regulation 3 of the 2001 Regulations provide for the electronic submission of this supporting evidence. The amendments to regulation 5 of the 2001 Regulations permit EROs to send notices concerning attestations electronically.

7.14 To enable EROs to verify the information provided in an OE's application, the instrument sets out provisions for an exceptions process where initial checks are not successful. The instrument makes a number of amendments to existing regulation 26B, as well as introducing new regulations 26C to 26J to cover the specific additional requirements for applications for OE registration. Further detail on the process for verifying an applicant's identity, connection to qualifying address, and nationality, is set out below.

7.15 Regulation 22 of the 2001 Regulations has been updated (by regulation 18(5)) to reflect the new registration requirements and require EROs, as now, to inform applicant of the reasons for rejected application.

7.16 The instrument also amends existing regulation 45, to ensure overseas electors who wish to register anonymously can be recorded appropriately in the electoral register.

Identity Verification

7.17 EROs will be able to verify an applicant's identity firstly by checking National Insurance Number (among other data) against DWP records, documentary evidence, checks against locally held data (on a discretionary basis), or an attestation from a suitably qualified elector.

7.18 Where an applicant has not provided a national insurance number as part of their application, or where the check against national insurance number has not resulted in a match, regulation 26B permits documentary evidence to be submitted by the applicant.

7.19 The list of documentary evidence is largely the same as the existing list of permissible documentary evidence for electors resident in the UK, with specific amendments. It removes the date of issue requirement on photocard driving licences issued outside the UK and its Crown Dependencies, and requires that any financial and social history documents submitted by overseas applicants were issued in the UK or its Crown Dependencies, to ensure that EROs can verify the validity of such documents.

7.20 The instrument also amends the attestation requirements for identity verification. This introduces a cross-cutting limit on the number of individuals a registered elector can provide identity attestations for in support of applications to register to vote, for absent voting arrangements and for voter authority certificates. An individual will only be able to provide attestations for two individuals within an electoral year, or since the attestor's entry was added to the register in that local authority area.

7.21 New regulation 26J enables EROs to ask for further evidence as to a change of name, to support applications where the declarant may have changed their name since they were previously registered or resident.

Nationality verification

7.22 Existing regulation 24A is also amended, giving EROs the power to request additional information of evidence in relation to an applicant's nationality, to be used where the ERO has reason to doubt that the applicant is a British citizen.

Qualifying Address Verification

7.23 Where EROs are 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 an automated match against Department of Work and Pensions records, documentary evidence provided by the applicant, or EROs checking locally-held records (on a discretionary basis). Where this is not possible, an ERO may request an attestation.

7.24 New regulations 29ZAA and 29ZAB allow for the verification of information provided in an application for registration as an overseas elector against data held by the Department of Work and Pensions. Under regulation 29ZAB, the applicant's name, address and date of birth are sent to the Department of Work and Pensions to be checked against government records for the purpose of confirming the qualifying address an applicant is applying in respect of matches an address held in government records.

7.25 New regulation 26D enables EROs 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 ERO 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.

7.26 New regulation 26E establishes an attestation process for demonstrating connection to a previous residence. This is similar to the existing process for identity attestations. An individual may provide an address attestation for no more than two applicants, but these are not included in the cross-cutting identity attestation limit referred to above. New regulation 26I provides further provision for attestations and clarifies the meaning of the term "qualifying attestor" in the context of address attestations.

7.27 New regulation 26C 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 ERO 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 enables EROs to request a birth certificate, or equivalent, which demonstrates the applicant's connection to that parent or guardian.

7.28 New regulation 26F enables EROs 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 26G 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 26H provides for an

attestation process for those applying in respect of previous registration as a special category elector under new regulations 26F and 26G.

Renewals

7.29 In order to make it easier for OEs to remain registered with a valid absent vote arrangement in place, the EA 2022 established a three-year fixed point renewal process for postal votes, ensuring that an OE's declaration will expire on the third 1st November after their declaration was made.

7.30 This instrument makes requisite changes to the requirements for EROs to notify electors of the need to renew and sets out the process for renewing their entitlement. New regulation 22A of the 2001 Regulations (as inserted by regulation 4(6) of this instrument) requires that EROs send out a renewal reminder after 1 July in the year that the OE's declaration expires and, if no response is received, a second reminder must be sent a reasonable time after. This regulation gives administrators discretion to manage the renewal process as they see fit, balancing it with their other priorities, given the process will happen at the same time as the annual canvass.

7.31 The amendments to regulation 5 of the 2001 Regulations permit EROs to send notices relating to renewal declarations electronically, ensuring forms and documentation can be sent efficiently regardless of where an applicant is based.

7.32 New regulation 22B sets out further requirements for a renewal declaration, on top of those included in the EA 2022. It requires that the renewal declaration include the OE's current address and obliges the Electoral Commission ('EC') to design a renewal declaration form. The amendments to regulation 3 of the 2001 Regulations ensure that OEs can provide new contact details via their renewal declaration. They also provide for the electronic submission of declarations.

7.33 New regulation 22C ensures that renewal declarations be transmitted to the appropriate registration officer, and new regulation 22D requires that the ERO inform the declarant of the outcome of their renewal declaration, whether that be successful or unsuccessful.

7.34 Regulation 25ZA introduces specific provisions for overseas electors who are registered anonymously and requires that an ERO sends a reminder to any OE who is registered anonymously ahead of the expiry of their anonymous registration. Anonymous registrations only last 12 months and, if an OE did not renew their anonymous registration, their registration would be cancelled, regardless of when they last made an overseas declaration.

Absent voting

7.35 Regulation 6 of the instrument makes amendments to Part 4 of the 2001 Regulations (absent voters) to require a registration officer to include, as part of a confirmation sent to a registered overseas elector who has successfully applied to appoint a proxy for a period of time longer than the elector's entitlement to remain registered, a reminder that a fresh signature will be required prior to the end of their entitlement, and providing that the registration officer then requires that fresh signature.

7.36 Regulation 57 of the 2001 Regulations is amended to require that an OE who holds a proxy vote arrangement will need to submit a fresh signature up to every 3 years, in line with their existing registration entitlement. For example, if an OE was registered until 1 November 2026, their proxy vote signature would need to be refreshed by that

date, irrespective of when they applied for that arrangement. This diverges from the proxy signature refresh period for domestic electors, which is every 5 years, but is intended to make it easier for OEs to maintain their registration and absent vote arrangement, by requiring action for both at the same time every 3 years.

7.37 Regulation 60A of the 2001 Regulations is amended to require that appropriate reminders are sent out to overseas voters with proxy vote arrangements, to ensure they are prompted to submit a new signature when required.

Transitional Arrangements

7.38 Schedule 2 to the instrument introduces transitional arrangements for those registered as overseas electors at the point that these measures come into force, and for those with absent vote arrangements already in place. Paragraph 3 ensures that any overseas elector who is not yet on the new three-year renewal cycle but has a proxy vote arrangement in place is informed of their new signature refresh requirements. Paragraph 4 sets out arrangements for overseas electors with indefinite postal signing arrangements in place for recall petitions, requiring that those arrangements are brought to an end at the same time as their existing registration period ends. This is in line with wider changes under the EA 2022 to set a three-year limit for postal voting or signing arrangements, and also to ensure they can move onto the new three-year renewal cycle efficiently.

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

7.39 Part 3 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. Regulation 15 makes minor technical amendments to the 2001 regulations to reflect the new franchise. Regulation 16 amends the Representation of the People (Franchise Amendment and Eligibility Review) Regulations 2023 which implements the changes to the voting rights of EU citizens that are made by the EA 2022. The amendment made by this instrument prevents duplicate notices being sent to review subjects following review of their eligibility to vote. Regulation 17 makes 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 countermanded polls re-run after 7 May 2024.

Amendments relating to absent voting arrangements for Police and Crime Commissioner elections

7.40 The instrument also makes amendments to the Representation of the People (Postal and Proxy Voting etc.) (Amendment) Regulations 2023, laid before Parliament separately, in order to provide clarity that electors in Wales who have a local government election postal or proxy voting arrangement will no longer automatically have the equivalent postal or proxy voting arrangement for a Police and Crime Commissioner (PCC) election, and will therefore need to apply for a separate arrangement for a PCC election. Such applications will be under the new requirements being introduced for absent voting applications by those Regulations.

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 has taken place with the 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.

10.3 Formal consultation with the Information Commissioner's Office has also taken place and has now been completed.

10.4 Changes being made to overseas electors via this instrument only apply to reserved polls, and therefore no specific engagement has taken place with the devolved administrations. There has been consistent engagement between DLUHC and NIO, and changes relating to overseas electors registered in Northern Ireland will be made via a separate instrument.

11. Guidance

11.1 The EC provide detailed guidance for EROs on running electoral registration. The Department will be working closely with the EC in the development of that guidance with a view to it being completed by the end of 2023.

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 DLUHC 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 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 DLUHC 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 Hugh Roberts at the Department of Levelling Up, Housing and Communities can be contacted with any queries regarding the instrument. Email: hugh.roberts@levellingup.gov.uk

15.2 Liz Owen, Deputy Director for the Registration and Franchise Division, at the Department for Levelling Up, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jacob Young, Under Secretary of State, at the Department for Levelling Up, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.