

**EXPLANATORY MEMORANDUM TO**  
**THE REPRESENTATION OF THE PEOPLE (FRANCHISE AMENDMENT AND**  
**ELIGIBILITY REVIEW) REGULATIONS 2023**

**[2023] 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 purpose of this instrument is to enable the implementation of the changes to the voting rights of citizens of member States of the European Union ('EU citizens') that are made by section 15, together with schedule 8, of the Elections Act 2022 ('EA 2022')
- 2.2 It amends existing secondary legislation (see section 6 below for further details) to enable persons to register to vote under the new eligibility criteria, and to enable Electoral Registration Officers (EROs) to effectively maintain their electoral registers, and to administer polls, going forward. It also provides for a one-off process by which EROs will be obliged to review the eligibility of all already registered EU citizens under the changed eligibility criteria.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument amends the Representation of the People (England and Wales) Regulations 2001, which were made (in part) under section 2(2) of the European Communities Act 1972 (the '2001 regulations'). However, it will not be made using powers under the Retained EU Law (Revocation and Reform) Act. As set out in the preamble to the instrument, procedures under the relevant electoral legislation are being followed. The statutory instrument will be subject to enhanced scrutiny under the EU (Withdrawal) Act 2018.

**4. Extent and Territorial Application**

- 4.1 The extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England only for regulations 5-13 (part 1, Chapter 2), 25 (part 3, Chapter 4), 33 (part 4), and 38 (part 6); and Wales only for regulations 14-23 (part 1, chapter 3), 26, 29, 34, 37 and Schedule A1. Other parts of this instrument apply to both England and Wales.

**5. European Convention on Human Rights**

- 5.1 Baroness Scott of Bybrook, Under Secretary of State, has made the following statement regarding Human Rights:

“In my view the provisions of The Representation of the People (Changes to Registration and Voting Rights of European Union Citizens) Regulations 2023 are compatible with the Convention rights.”

## **6. Legislative Context**

- 6.1 This instrument is made in consequence of section 15, together with schedule 8, of the EA 2022. When commenced, these provisions of the 2022 Act will update the franchise rights of EU citizens to reflect our new relationship with the EU (see section 7.1 for details) Note that these changes will not affect the rights of either Cypriots or Maltese citizens who derive their voting and candidacy rights from the status of those countries being Commonwealth countries; nor will they affect the rights of Irish citizens, whose rights are long-standing and are held independently of Ireland’s status as a member of the EU.
- 6.2 The franchise change will apply to all polls for which responsibility is reserved to the UK Government, those being: local elections in England; Police and Crime Commissioner (‘PCC’) elections in England and Wales; and the polls in England which persons are eligible to vote in as part of the local franchise, e.g. local authority governance referendums, local council tax referendums, neighbourhood planning referendums and parish polls.
- 6.3 The changes which will be implemented in a parallel Statutory Instrument and will also apply to local elections in Northern Ireland and elections to the Northern Ireland Assembly.
- 6.4 They do not impact the local government franchise in either Scotland or Wales, since these are devolved.
- 6.5 By amending the PCC franchise, the EU voting and candidacy rights (‘EUVCR’) provisions in the EA 2022 increase the divergence between the local (devolved) government franchise in Wales and the PCC franchise. Schedule 8 para 6 of the EA 2022 amends sections 51(6C)(a), 52(1C)(a), and 64(1C)(a) of the Police Reform and Social Responsibility Act 2011 to re-state the PCC franchise and candidacy criteria in Wales to ensure that it continues to mirror the local government franchise of EU citizens in England, thereby ensuring a single PCC franchise. This has created a novel situation whereby the eligibility criteria for the newly created groups of electors relates *only* to the right to vote and stand in PCC elections in Wales, not to the right to be registered to vote. The instrument makes specific provisions to accommodate this (see section 7 for further details).
- 6.6 In order to enable the franchise change to be implemented, this instrument amends the following secondary legislation.
- 6.7 Parts 4 to 6 of the instrument amend the Representation of the People (England and Wales) Regulations 2001 (the ‘2001 regulations’); the Neighbourhood Planning (Referendums) Regulations 2012; the Police and Crime Commissioner (PCC) Elections Order 2012 (the ‘2012 order’); and the PCC (Welsh Forms) Order 2021 to make the requisite changes to registration processes and to enable EROs to effectively maintain their registers going forward, and to administer polls under the changed franchise (see section 7 for details).
- 6.8 Parts 2 and 3 of the instruments are ‘stand-alone provisions’ which will be sun-setted once implementation is complete. EROs have a duty, under s. 9A(1) of the Representation of the People Act 1983 (RPA 1983), to ensure that, ‘so far as

reasonably practicable, persons who are entitled to be registered in a register are registered in it,' (i.e. a duty to maintain complete and accurate electoral registers). Part 2 of the instrument provides for review processes in relation to both the registration of EU electors in England, and the eligibility of EU citizens registered in Wales to vote in PCC elections, enabling and requiring EROs to review the eligibility of already-registered EU citizens under the new criteria within the time period between the commencement of the franchise change and 31st January 2025.

- 6.9 Related to this, part 3 of the instrument includes provisions to enable EROs to delay the publication of the revised registers from 1st December 2024 to 31st January 2025, for the purpose of providing them with greater flexibility around delivery of the review process (noting that the Welsh Government has committed to legislating in parallel to enable EROs to delay publication of the local (devolved) registers for the same time period). It also contains transitional provisions to accommodate the unlikely possibility of a PCC by-election in Wales during the implementation period.
- 6.10 The EA 2022 also makes changes to candidacy rights of EU citizens. Implementation of changes required to county, district, London borough and combined authority mayoral elections will be implemented together with changes due to other provisions of the EA 2022 in a separate statutory instrument.

## **7. Policy background**

### *What is being done and why?*

- 7.1 At present, European citizens retain the rights to vote and stand that were conferred in consequence of our membership of the EU. Since these were held pursuant to the EU's Freedom of Movement and Voting Rights Directives, no immigration-based eligibility criteria are currently attached to them
- 7.2 The automatic right that European citizens have to vote and stand in local elections in the UK is not one which can continue. There has never been a general right for European nationals to vote in Parliamentary elections - choosing the next UK Government is already rightly restricted to British citizens and those with the closest historic links to our country, and this will not change.
- 7.3 Voting rights did not form part of the Withdrawal Agreement, as such matters are a matter for individual sovereign states. Therefore, the UK undertook to update the franchise for European citizens in the EA 2022, in accordance with the principles set out in the paragraph below.
- 7.4 When commenced, the EUVCR provisions in the EA 2022 will remove the automatic right of individuals to vote and to stand in elections by virtue of being EU citizens. They will, however, ensure continued rights for two groups of EU citizens going forward:
- 7.4.1 'Qualifying EU citizens': citizens of countries with which the UK has a bilateral voting and candidacy rights (VCR) treaty – at the time of writing this encompasses citizens of Poland, Spain, Luxembourg and Portugal who are, under the terms of the treaties, 'legally resident' in the UK. The treaties require that the relevant citizens are granted rights to vote and stand on 'the same grounds' as British citizens. These

treaties also ensure that we are protecting the rights of British citizens in those European countries.

- 7.4.2 ‘Citizens with retained rights’: citizens of EU member states with which the UK does not have a treaty but who have been legally resident since before the UK left the EU on 31/12/2020. The rationale for the creation of this new category of electors was to enable HMG to uphold the commitment to respect the rights of those citizens who made their home in the UK before EU Exit. The creation of this group of electors necessitated the introduction of a novel 'historical residency' criterion into the franchise and registration framework (i.e., *has the person been lawfully resident in the UK since the end of the Implementation Period Completion Date (IPCD) – 31/12/20*)
- 7.5 The franchise change will come into effect five calendar days after the scheduled May polls in 2024, i.e. from 7th May 2024. The gap between the scheduled polls and the franchise change is intended to support transitional measures relating to candidacy. Para 12, Schedule 8, paragraph 12 of the EA 2022, states that an elected office holder may serve out their term. The gap is intended to accommodate scenarios where persons may be ‘elected’ some days after polling day itself - on account of prolonged counts and/or re-counts. Note that any by-elections held on the following Thursday (i.e., e.g. May 9<sup>th</sup> 2024) will be conducted under the new rules as revised by the EUVCR provisions.
- 7.6 This instrument makes the requisite changes to voter registration and electoral administration processes to implement the franchise change. The changes have been designed to align with existing practices and processes as far as possible. The policy intention is to minimise, where possible, additional burden and confusion for electoral administrators and electors alike and ensure parity of treatment between different groups of electors within the registration and franchise framework.

### ***Explanations***

#### **Changes to the Voter Registration Process**

- 7.7 Part 4 of the instrument makes changes to the existing registration application and determination process. These changes will enable eligible persons to apply to register to vote under the new criteria. Correspondingly, they will enable EROs to determine applicants’ eligibility to register to vote under the new criteria. Additionally, the changes will ensure that persons are provided with accurate information about eligibility criteria, and the application process, at the point of application.
- 7.8 To this end, regulation 32 requires that all persons applying to register to vote in England and Wales under the ‘retained rights’ criteria must indicate, at the point of application, whether they meet the new historical residency criteria (e.g. *have they been lawfully resident since IPCD?*). Since this criterion does not apply to the right to be registered to vote in local government elections in Wales (*only* to the right to vote in PCC elections), regulation 32(b) requires that an explanation, to that effect, is provided on prescribed registration forms in Wales.
- 7.9 Regulation 32 also makes changes to the prescribed contents of the registration application form to ensure that persons will be made aware, at the point of application, of the changed eligibility criteria. Changes are also made to ensure that the ‘retained rights’ cohort is made aware the EROs may request additional information and evidence about *historical* immigration and nationality status, in order to establish the

applicant's eligibility (rather than, as now, simply about *current* immigration and nationality status).

- 7.10 Regulation 33 creates new powers to enable EROs to accept and request such additional information and evidence as may be appropriate where they have doubts as to an applicant's eligibility under the new 'historical residency criteria'. These include documents issued by Home Office, the new e-visas issued under the EU Settlement Scheme, and a self-declared 'statement of eligibility' that may be supported by documentary evidence.
- 7.11 In Wales, the new historical residency criterion is relevant *only* to establishing a person's eligibility to vote in PCC elections (i.e. it does not impact a person's right to be registered). Therefore, regulation 34 creates a replica set of these new powers for EROs in Wales *specifically for the purpose of determining eligibility to vote in PCC elections*.
- 7.12 Where an applicant's current name differs from that on any documents supplied by the applicant for the purpose of supporting their application under the retained rights criteria, regulation 34 also empowers EROs in both England and Wales to request further information and evidence as may be appropriate to confirm the change of the applicant's name.
- 7.13 To enable EROs to effectively maintain their registers going forward, and to administer polls under the changed franchise, regulation 35 creates a new franchise marker (a letter prefixed to electors name on register to indicate what elections they are eligible to vote in and why). The letter 'B' is to be used in Wales where somebody registered as a relevant citizen of the Union is also a qualifying EU citizen or an EU citizen with retained rights (and is thus eligible to vote in PCC elections); and in England where a person is registered as either a 'qualifying EU citizen' or an 'EU citizen with retained rights'.

#### **Applying franchise changes to PCC elections**

- 7.14 Part 5 makes amendments to the Police and Crime Commissioner (PC Elections Order 2012 (the '2012 order') to enable PCC elections to be run under the revised franchise and to enable EROs in Wales to maintain their registers specifically as they relate to the rights of European citizens to vote in PCC elections. To this end, regulation 36 changes the definition of 'register of electors' to reflect the revised franchise. This change applies to both England and Wales.
- 7.15 Regulation 36 also inserts Schedule A1 of the instrument into the 2012 Order to provide review and appeal processes specifically to accommodate the divergence between the PCC franchise and the local (devolved) franchise in Wales. All existing review and appeal processes pertain to the *right to be registered*. This new review process will enable EROs to review a person's eligibility to vote in PCC elections in cases where they are otherwise of the opinion that the individual is entitled to be registered (this mirrors existing review processes available to EROs and is distinct from the one-off review to implement the franchise change). Similarly, the new appeal process will be available to persons who wish to appeal against the decision of an ERO that they are not entitled to vote in PCC elections but are otherwise entitled to be registered on a local government register.
- 7.16 Regulation 36(6) amends PCC proxy forms by way of an amendment to Schedule 2 of the 2012 Order. This change applies to both England and Wales.

- 7.17 Regulation 37 amends the Police and Crime Commissioner (Welsh Forms) Order 2021 to reflect the updated changed criteria on the relevant Welsh language forms.

### **Applying franchise changes to Neighbourhood Planning Referendums**

- 7.18 Part 6 amends the Neighbourhood Planning (Referendums) Regulations 2012 to reflect the changed eligibility criteria to enable eligible EU citizens to vote in Business referendums. It also updates existing voting forms to reflect the changed criteria.

### **Review Process in England and Wales**

- 7.19 Parts 2 and 3 establish the process for a one-time review of the eligibility of already registered EU citizens. Part 2 relates to registration on the register of local government electors in England; Part 3 to eligibility to vote in PCC elections in Wales.
- 7.20 When the franchise change comes into effect, EROs will be obliged to identify those registered EU citizens who remain eligible under the new criteria, and to confirm their ongoing rights. They will also be obliged to identify those who are no longer eligible, and to remove them from the electoral register (or, in Wales, confirm their loss of eligibility to vote in PCC elections).
- 7.21 Since a review of registered electors based on a reduction of the franchise is without precedent, this instrument establishes a bespoke process for the task. The registration review process for England, and the equivalent eligibility review process for Wales, is intended to be fair and transparent for review subjects, and to minimise burdens on EROs. As far as possible it has been based on, and benchmarked against, existing practice and processes in relation to electoral registration.
- 7.22 Regulations 5-13 prescribe the registration review process for England; regulations 14-23 the eligibility review process for Wales. The latter broadly replicates the former; however, it incorporates minor modifications to reflect the fact the review process in Wales will be conducted *solely* for the purposes of determining ongoing eligibility to vote in PCC elections (i.e. rather than determining the right to remain registered). Persons found to be ineligible under the new criteria in Wales will *not* be removed from the register. To ensure clear messaging about the effect of the franchise change in Wales, prescribed review communications in Wales will explain that eligibility to vote in PCC elections in Wales is unrelated to eligibility to register and to vote in local government elections in Wales.
- 7.23 The end-to-end review processes will take up to three months to complete. Regulation 5 (England) and 14 (Wales) requires EROs to complete it, as far as is practicably possible, by 31st January 2025; i.e. there will be a nine month 'implementation window' after commencement of the franchise change. The timing is intended to enable EROs to plan and deliver EUVCR changes, alongside other electoral duties, in the way that is best suited to their local contexts.
- 7.24 Regulation 28 enables EROs to delay the publication of the revised register until 31st January 2025. This will enable them, where they deem appropriate, to deliver the review processes and the canvass separately and sequentially and to publish updated revised registers at the end of both processes. The Welsh Government has committed to legislating in parallel to enable EROs to delay publication of the local (devolved) registers for the same time period.

- 7.25 The review processes established by this instrument require EROs to send at least one communication (up to three communications if the elector does not respond), to every EU elector they review. In order to minimise voter confusion, minimise burdens on EROs, and to perform an educative function going forward, the relevant provisions prescribe each communication's minimum content. Regulation 27 then obliges the Electoral Commission (EC) to design the communications, and to obtain approval from the Secretary of State for Levelling Up, Housing and Communities, in consultation with Welsh Government Ministers where appropriate, before making them available to EROs.
- 7.26 Regulation 6 and 15 enables EROs to conduct a 'data-based review' of already-registered electors using data already available to them as part of their registration duties, for example nationality data (to determine eligibility as a qualifying EU citizen) and registration history (to determine eligibility as a citizen with retained rights.)
- 7.27 Where an ERO is unable to make a determination by way of the data-based review, regulations 7-13 (England) and 16-23 (Wales) require them to conduct a 'correspondence-based review'.
- 7.28 These provisions establish the minimum requirements for the correspondence-based review contact cycle. In the case of non-response, an ERO must send a minimum three written communications, and make at least one attempt to contact the elector in person before they may make a determination as to a person's eligibility under the new criteria.
- 7.29 This is comparable to the legal minimum requirements for the 'invitation to register' reminder cycle, which is triggered when an ERO becomes aware of a person who is not registered but who may be entitled to be so.
- 7.30 The final written communication in the review contact cycle (regulation 8 in England, 17 in Wales) must inform the review subject that, if they do not respond within fourteen days of the date of the notice, the ERO may determine that they are ineligible under the new criteria and that, in that scenario, the review subject will not be entitled to appeal against the decision.
- 7.31 Where an elector has responded to one of the review communications and the ERO requires further information and/or evidence to make a determination, regulation 10 (in England) and 19 (in Wales) enables the ERO to require the review subject to provide such further information and evidence as they deem appropriate in order to make a determination.
- 7.32 Regulations 11 to 13 (20-23 in Wales) provide for three possible outcomes of the review process:
1. Firstly, where the EROs determines that the review subject is entitled to remain registered (or, in Wales, to continue voting in PCC elections), regulation 11(England) and 20 (Wales) requires the ERO to update the elector's franchise marker on the register, and to send them a written communication informing them that the franchise has changed and that the ERO has determined that the elector continues to satisfy the revised criteria.
  2. Secondly, where the ERO determines that the review subject is not eligible under the new criteria – on the basis of information supplied to them by the review subject in the review process – regulation 12 (England) and 21 (Wales) requires

that a communication be sent to the review subject to inform them that the ERO is of the opinion that the review subject does not satisfy the revised eligibility criteria and that, if the review subject does not contact the ERO to request a hearing within fourteen days of the date of the notice, the ERO may determine the review and, in that scenario, the review subject would not be entitled to appeal this decision. This process is broadly analogous to what may happen when an ERO ‘disallows’ a standard registration application.

3. Thirdly, where an ERO determines that the review subject is no longer eligible on the basis of non-response to review communications i.e. the review subject failed to respond to either the communications in the review process, or to a follow-up request for information within the stated time period - regulation 13 (England) and 22 (Wales) requires a communication be sent to the review subject to inform them that the franchise has changed and that the ERO has determined that the elector does not continue to satisfy the revised criteria. In England, this must include a registration form and a pre-paid envelope; the intention is to provide the review subject with a clear opportunity to re-apply to register to vote should they believe they are eligible to do so. No equivalent provision is made in Wales as the elector will still be registered on the local government franchise in Wales.

#### **Other provisions relating to the review process**

- 7.33 There may be instances where review subjects submit fresh applications to register to vote during the review. To minimise the risk of confusion, inconsistent treatment, and additional burden, regulation 6(2) (England) and 15(2) (Wales) enables an ERO to consider information in these re-applications as part of the data-based review where the re-application is received before the start of the correspondence review. Correspondingly, where the re-application is received after the start of the correspondence-based review, regulation 24 (which applies in both England and Wales) requires the ERO to treat the information contained therein as a response to the review process and proceed accordingly.
- 7.34 During the implementation period, EROs will sometimes receive information, either directly from a review subject, or from elsewhere, which is not directly relevant to the questions as to whether the review subject is entitled to remain registered under the new criteria, but which does indicate that the person may no longer be eligible to remain registered on other grounds (e.g. this may include information to indicate that the review subject has moved address, has died, etc.). Therefore, regulation 5(5) enables the ERO in England to use another review process where this would be appropriate (noting that this provision is not applicable to Wales since the franchise change will not impact the right to be registered to vote in Wales).
- 7.35 Specific provision is also made for special category electors. Special category electors are persons - such as armed forces voters, crown servants, persons who have no permanent or fixed address, etc - who do not meet the normal residence qualifications for registration. Such electors are required, by law, to renew their registration declarations annually (five yearly in the case of an armed forces voter) to remain registered. Anonymous electors must make a completely fresh registration application every year. As part of the declaration renewal process, a special category elector must declare that they meet the relevant nationality criteria. After the franchise change, EU citizens who are also special category electors will be required to confirm that they are either a ‘qualifying EU citizen’ or an ‘EU citizen with retained rights’. Regulation 7(2) enables, but does not require, an ERO in England to use the declaration renewal



process in lieu of the review process where a special category elector's registration is due to expire before 31/01/25 (i.e. before the end of EUVCR implementation).

- 7.36 In Wales, the equivalent provision (regulation 16(2)) is limited to anonymous electors. This is because, in Wales, declaration renewals will not require electors to confirm their eligibility under the new criteria because the franchise change does not impact the right to be registered to vote in Wales. Any anonymous electors whose registration expires, however, *will* be required to confirm their eligibility under the new criteria since they are required to make a completely fresh application to register annually.
- 7.37 Given the inherent difficulties with making visits to a special category elector's address, where an ERO does review them using the prescribed review process, the requirement to make a personal contact attempt is disapplied (regulation 9(1)(b) in England, and 18(1)(b) in Wales).

#### **Requirement for EROs to report on operation of review process (regulations 25 & 26)**

- 7.38 To ensure transparency with regard to the implementation of the franchise change, regulation 25 (England) and 26 (Wales) requires EROs to report on the operation of the review process by reporting certain anonymised data to the Electoral Commission (EC) as soon as is practically possible after 31<sup>st</sup> January 2025 (including, for example, the number of people who were reviewed, the number of people deemed to be ineligible on the basis of non-response, etc.) The Secretary of State for Levelling Up, Housing and Communities will use existing powers to require the EC to prepare a report on EUVCR implementation and present it to Parliament.

#### **Transitional Provision in event of PCC by-election in Wales before review process is complete (regulation 29)**

- 7.39 Regulation 29 is a transitional provision which would apply in the event of a PCC by-election in Wales before the eligibility review process has been completed. In Wales, EU citizens who were subject to eligibility review and found eligible under the new criteria will be enabled to vote in PCC elections by change of the franchise marker on the register; those found to be ineligible will remain on the register with their franchise marker unchanged (i.e., their entry will remain marked to identify them as a "relevant citizen of the Union"). In the event of a PCC by-election in Wales, regulation 29 provides that an unreviewed relevant citizen of the Union in Wales will be eligible to vote in such a poll until a determination is made regarding their eligibility. This will ensure a consistent approach across England and Wales. (In England, all EU citizens subject to review and found eligible will remain on the register; those found ineligible will be removed. Until such time as a person is removed from the register, they will retain the right to vote in local and PCC elections.

### **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union.
- 8.2 EU Citizens were granted the right to vote and stand in local elections in the UK in 1995. This was done in accordance with the Council of the European Communities directive No.94/80/EC (the voting rights directive), which set out 'arrangements whereby citizens of the Union residing in a member state of which they are not nationals may exercise the right to vote and to stand as a candidate there in municipal

elections.’ The Local Government Elections (Changes to the Franchise and Qualification of Members) Regulations 1995 enshrined the right of EU citizens to vote in UK local elections, and this was restated for Great Britain in the Representation of the People Act 2000. This position is set out for England in the Representation of the People Act 1983 (as to registration and franchise) and in the Local Government Act 1972 (as to candidacy). These rights were reciprocated for British citizens living in EU member states.

- 8.3 The UK is no longer covered by the EU voting rights directive. Nor was the matter included in the EU Exit negotiations since voting rights for third country nationals are generally for sovereign states to determine. The UK currently has bilateral treaties with Poland, Spain, Luxembourg and Portugal. These treaties are captured by s.20 of the CRAG Act 2010 and, as such, are not relevant to the EU (Future Relationship) Act 2022.

## **9. Consolidation**

- 9.1 This instrument does not consolidate existing legislation. There are no plans to consolidate the legislation.

## **10. Consultation outcome**

- 10.1 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 and t relevant interest groups.
- 10.2 Welsh Government officials have been consulted on the development of this policy. Further, the Minister with responsibility for elections has written to the Welsh Government Counsel General and Minister for the Constitution to advise of them of the key changes in this respect, and to highlight the obligation upon the Secretary of State for Levelling Up, Housing and Communities to consult with Welsh Government Ministers before approving the prescribed new forms and communications to be used in Wales.
- 10.3 Section 7(1), (2)(e), and (hc) of the Political Parties, Elections and Referendums Act 2000 and paragraph 16(5) of Schedule 4B to the Town and Country Planning Act 1990 require the Secretary of State to consult with the EC. The statutory consultation with the Electoral Commission began on 9<sup>th</sup> March 2023 and ended on 5<sup>th</sup> May 2023. They did not recommend any substantial changes to the policy.

## **11. Guidance**

- 11.1 The EC provide detailed guidance for EROs on running electoral registration. We 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 being produced and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website when the instrument is laid in Parliament

### **13. Regulating small business**

13.1 The legislation does not apply to] activities that are undertaken by small businesses.

### **14. Monitoring & review**

14.1 Para 7.35 sets out the plans by which the implementation of this legislation will be reviewed.

14.2 Section 62 of the EA 2022 commits the Government to review the operation of that Act within five years of the Act being passed. We envisage that the data that will be collected as part of this initial review exercise will also be used in that review.

### **15. Contact**

15.1 Elizabeth Homans at the Department for Levelling Up, Communities and Local Government can be contacted with any queries regarding the instrument. Email: [Elizabeth.homans@levellingup.gov.uk](mailto:Elizabeth.homans@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 Baroness Scott of Bybrook, Under Secretary of State, at the Department for Levelling Up, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

# Annex

## Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

### Part 1A

#### Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.  State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain in the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

## Part 1B

### Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

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## Part 2

### Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

#### 1. Scrutiny statement where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972

- 1.1 Baroness Scott of Bybrook has made the following statement regarding this instrument:

“I have taken the following steps to make the draft instrument published in accordance with paragraph 14(2) of Schedule 8 to the European Union (Withdrawal) Act 2018 available to each House of Parliament: Copies of the draft instrument were published on the gov.uk website. Copies of the draft instrument were also deposited in the libraries of both Houses of Parliament for comment and for any recommendations. A draft of the instrument will be laid under the draft affirmative procedure not before a period of 28 days from the date of publication.”

#### 2. Explanations where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972

- 2.1 Baroness Scott of Bybrook has made the following statement regarding regulations made under the European Communities Act 1972:

“In my opinion there are good reasons for this instrument to amend the Representation of the People (England and Wales) Regulations 2001 (“the 2001 Regulations”) made (in part) under section 2(2) of the European Communities Act 1972. This is because, as outlined below, the amendment to be made to regulation 42 of the 2001 Regulations, which was made in part under section 2(2) of the 1972 Act, is necessary to ensure that the changes in relation to the voting rights of European Union citizens in England and Wales are applied consistently in respect of all relevant polls in both countries.”

- 2.2 The 2001 Regulations were originally made in reliance upon, amongst other powers, the power in section 2(2) of the European Communities Act 1972 so far as relating “*to measures relating to the rights of citizens of the Union to vote at ... local government elections*” in England and Wales (see sub-paragraph (f) of the paragraph in Schedule 1 to the 2001 Regulations). The relevant amendment for the purposes of paragraphs 14 and 15 of Schedule 8 to the European Union (Withdrawal) Act 2018 is the amendment to regulation 42 of the 2001 Regulations, so far as that amendment relates to the voting rights of European Union citizens in local polls in England and in Police and Crime Commissioner elections in both England and Wales.

- 2.3 Regulation 42 of the 2001 Regulations, which relates to the marking of names in combined electoral registers, is being amended to reflect the change in the rights of European Union citizens to register on the local government register in England, and the change in the eligibility of European Union citizens to vote in Police and Crime Commissioner elections in Wales.

- 2.4 Prior to amendment regulation 42 provided for a relevant citizen of the Union to be marked “G” in both England and Wales to indicate that they were registered on the local government register and were therefore eligible to vote in local and PCC

elections in both countries. Regulation 35 of the draft instrument amends regulation 42 so that the term “relevant citizen of the Union” is relevant only to the (devolved) register of local government electors in Wales, and so that a new marker (“B”) is added to indicate that a qualifying EU citizen or EU citizen with retained rights (as those terms are defined in the Elections Act 2022) is registered on the relevant local government register and is eligible to vote in all relevant polls.

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