

EXPLANATORY MEMORANDUM TO
THE REPRESENTATION OF THE PEOPLE (ENGLAND AND WALES)
(AMENDMENT) REGULATIONS 2018

2018 No. 312

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty

2. Purpose of the instrument

- 2.1 These Regulations amend the Representation of the People (England and Wales) Regulations 2001 (“the RPR 2001”). These amendments relate to the anonymous registration scheme, and the wider registration system. The changes aim to improve access to the anonymous registration scheme for those whose safety is at risk by appearing on the electoral register, and enhance the wider registration system.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters of interest to the House of Commons

- 3.2 This entire instrument applies only to England and Wales.
- 3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of part of this instrument would not be within the devolved legislative competence of any of the Northern Ireland Assembly as a transferred matter, the Scottish Parliament or the National Assembly for Wales if equivalent provision in relation to the relevant territory were included in an Act of the relevant devolved legislature.

4. Legislative Context

- 4.1 These regulations are part of a package of statutory instruments that ensure the same changes to anonymous registration are introduced across the United Kingdom, and the same changes to the wider registration system are introduced across Great Britain.
- 4.2 The Representation of the People (Northern Ireland) (Amendment) Regulations 2018 will make provision to improve access to the anonymous registration scheme in respect of the registers of Parliamentary, Northern Ireland Assembly, and local government electors in Northern Ireland.
- 4.3 The Representation of the People (Scotland) (Amendment) Regulations 2018 will make provision to improve access to the anonymous registration scheme, and to enhance the wider registration system, in respect of the register of Parliamentary electors in Scotland.
- 4.4 Legislative competence in respect of the local government register in Scotland was devolved to the Scottish Parliament by the Scotland Act 2016. That Act also

transferred to the Scottish Ministers functions exercisable by a Minister of the Crown in respect of the local government register in Scotland, so far as those functions are exercisable within the Scottish Parliament's devolved competence. The relevant provisions of which were commenced in May 2017. The Scottish Ministers are taking forward equivalent changes in respect of the local government register in Scotland, with the intention that the changes come into force at the same time. The UK Government is making these regulations with the agreement of Welsh Government in relation to the local government register in Wales, in advance of the commencement of the relevant elections provisions in the Wales Act 2017. These provisions include the devolution of legislative competence in respect of the registration of local government electors to the National Assembly for Wales.

- 4.5 The anonymous registration scheme is set out in sections 9B and 9C of the Representation of the People Act 1983 and in the RPR 2001. An application for anonymous registration must be accompanied by evidence, the form of which is specified in the RPR 2001. These Regulations amend the evidence which is required under the RPR 2001 to improve access to the scheme.
- 4.6 The wider registration system measures in these Regulations amend the RPR 2001 to improve the registration system in relation to the Parliamentary and local government registers in England and Wales by adding additional warnings on the application form, expanding the sources of information which can be used to delete deceased voters and changing the status of some correspondence from mandatory to discretionary.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

- 6.1 The Minister for the Constitution has made the following statement regarding Human Rights:

"In my view the provisions of the Representation of the People (England and Wales) (Amendment) Regulations 2018 are compatible with the Convention rights."

7. Policy background

Changes to the Anonymous Registration scheme - What is being done and why?

- 7.1 The Representation of the People Act 1983 was amended by section 10 of the Electoral Administration Act 2006 to insert sections 9B and 9C. These sections and regulations 31G to 31J of the RPR 2001 provide for the anonymous registration scheme.
- 7.2 The scheme requires that an application is accompanied by evidence that proves the safety of the applicant, or other named persons in the applicant's household, would be at risk if the register contained the applicant's name or address. As specified in the RPR 2001, the evidence accepted is either one of the court orders or injunctions listed

in regulation 31I, or an attestation by a “qualifying officer”, as defined in regulation 31J.

- 7.3 When the scheme was introduced it was envisaged that those looking to register anonymously would include victims or witnesses of certain types of crime with an immediate risk to their safety. This was balanced with the public nature of the electoral roll as a key aspect of our democracy and transparency around voting. Consequently, the threshold of evidence required for an application to anonymous registration was set quite high.
- 7.4 During the summer of 2016, the Government received representations that the anonymous registration scheme was not sufficiently accessible to some who are entitled to use it, as they are currently unable to produce the evidence required under regulations 31I or 31J of the RPR 2001. This includes survivors of domestic abuse whose safety can become at risk of their abuser if their details are contained in the electoral register. However, the changes will increase accessibility of anonymous registration for all electors, not just domestic abuse survivors, particularly through the reduction in bureaucracy.
- 7.5 Regulations 9 to 11 of these Regulations both increase the accessibility of the anonymous registration scheme for those who genuinely need to use it, while continuing to respect the integrity of the electoral register through the provision of appropriate evidence. These changes extend the type of evidence accepted as proof that an individual’s safety would be at risk if they appeared on the electoral register.
- 7.6 The first type of change relates to those who are qualifying officers able to provide attestations. In regulation 31I of the RPR 2001, the seniority required for a police attestation is lowered from superintendent to inspector. As domestic abuse leads in their local areas, inspectors are frequently in contact with survivors and well qualified to assess the level of risk to an individual's safety. The level of inspector is suitably senior that the officer is highly trained and able to attest fully understanding the responsibility they are being given. Electoral Registration Officers are able to check their credentials on the relevant databases.
- 7.7 In regulation 31I of the RPR 2001 the list of qualifying officers that can act as attestors is expanded to include medical and healthcare professionals registered with the General Medical Council (GMC) or Nursing and Midwifery Council (NMC). The nature of work conducted by medical and healthcare professionals means they are frequently in contact with survivors of domestic abuse and well qualified to assess the level of risk to an individual's safety. As registered practitioners they meet UK professional standards and Electoral Registration Officers are able to check their credentials on the relevant databases.
- 7.8 In regulation 31I of the RPR 2001, refuge managers are included in the list of qualifying officers able to act as attestors. This will ensure that all individuals who are resident in a refuge have easy access to an individual who can attest to their safety being at risk. Refuge managers are specialists in their field and well placed to attest whether an individual's safety is at risk. As they are in direct and sustained contact with domestic abuse survivors, they are approachable for those looking to use the scheme, therefore helping to increase the accessibility. In practice, an attestation from a refuge manager should show the name of the refuge, the local authority, and the broad geographical region it covers. The Electoral Registration Officer can then confirm that the refuge is registered on the ‘Routes to Support’ directory, a UK-wide

online database of domestic abuse services. Guidance will also encourage refuge managers to include direct contact details so the Electoral Registration Officer can contact them if required. The government will also work with the Electoral Commission to encourage specialist domestic abuse support organisations and the electoral administrators to form links with services within the local authority area.

- 7.9 Finally, in Regulation 31I of the RPR 2001, the list of court orders accepted as evidence is expanded to include Domestic Violence Protections Orders (made under the Crime and Security Act 2010 or the Justice Act (Northern Ireland) 2015) and Female Genital Mutilation Orders (made under the Female Genital Mutilation Act 2003). This updates the evidentiary requirements to reflect that new and relevant orders have been added to the statute book since the design of the anonymous registration scheme. It also ensures it covers a broad range of situations of violence against women and girls.

Changes to the wider registration system - What is being done and why

- 7.10 The initial drive for the wider registration system changes came from an ongoing consultation which aims to improve the voter registration system. From this, it was determined that five measures could be implemented to achieve this goal.
- 7.11 The first two measures are provided in regulation 3 of these Regulations. This regulation requires the Electoral Commission to include two additional statements on the paper application form to register to vote, which it is required to design under regulation 26 of the RPR 2001. The exact wording of these statements will be for the Electoral Commission to determine as part of their design of the form, but wording must follow that which is prescribed by this change. Regulation 3(a) of these Regulations requires that the paper application form includes a statement that persons who are not qualifying Commonwealth citizens, citizens of the Republic of Ireland or relevant citizens of the Union are not eligible to register to vote, and that registration officers may request checks against government records or seek further evidence in respect of an applicant's nationality. Regulation 26(3) of the RPR 2001 already requires that 'the application form must contain a statement that persons without lawful immigration status are ineligible to register to vote, and that registration officer may request checks in relation to an applicant's immigration status against Home Office records'. This additional warning expands on this to specifically include warnings in relation to the provision of nationality information and to act as a fraud deterrent.
- 7.12 Regulation 3(b) of these Regulations requires that the application form to register to vote includes a statement that where an applicant has ceased to reside at an address within 12 months of the date of their application, they must provide that previous address, and any other mandatory information required on the application form, and that not doing so may delay the registration process. The inclusion of this statement will raise the applicant's awareness that they must provide all mandatory information required, including their previous address if they have ceased to reside there in the previous 12 months, and informs them of the consequences of not doing so. This change does not add a facility to provide a reason for not stating a previous address, as recommended in Sir Eric Pickles's report on electoral fraud. This is because it was felt, having consulted administrators, that inclusion of such a facility could cause applicants to think the supply of their previous address is voluntary. These regulations do not change the existing mandatory information required for an application,

including the requirement to provide an address at which the applicant has ceased to reside within the previous 12 months of the date of their application.

- 7.13 These Regulations also amend the attestation requirement in regulation 26B of the RPR 2001. This change updates the RPR 2001 so this provision is consistent with the equivalent provision in the Representation of the People (Scotland) Regulations 2001 (S.I. 2001/497).
- 7.14 Regulations 5 and 8 of these Regulations expand the sources of information which on their own can lead to the removal of an entry from the register as a result of the death of an elector. Currently, in some limited circumstances the registration officer can find themselves unable to remove an entry in the register as they have not received a death certificate or notification from a Registrar, but have been informed of a deceased elector through another source of information. Currently the registration officer requires a second source of evidence before they can remove the entry from the register, and in these highly sensitive circumstances, the registration officer will often choose not to write to the deceased elector's relatives. This makes it very difficult for the registration officer to remove the entry from the register and take every step to maintain the accuracy of the electoral register. This amendment will allow the registration officer to use additional single sources of information, where a death certificate or notification from a Registrar is not available, to determine whether an elector's entry should be removed from the register. Additional sources could be information from other council services, such as a Council Tax death notice, information from a relative or a care home professional, or information received as part of the annual canvass of households. Detailed consideration has been given to whether this could increase the risk of fraud as part of the registration system but the risk is considered to be very minimal due to registration officers being required to seek notification from a Registrar or from the death certificate before relying on the new additional sources of information. In addition, the registration officer must be satisfied that the information they have received allows them to determine that the elector has died and should be removed from the register. Where they have any concerns they remain able to seek additional sources of information to support their decision.
- 7.15 The changes made by regulations 6, 7 and 12 of these Regulations rationalise, where appropriate, the correspondence sent by the registration officers to electors. Regulations 6 and 7 amend the notices which registration officers must send when they conduct a review of an elector's entry on the register. The amendments require additional information to be included in a notification to an elector that a review is being undertaken. They also allow for the sending of a notification of the outcome of a review to be discretionary where the registration officer has not received any response to a notice from the subject of that review.
- 7.16 Regulation 12 of these Regulations changes regulation 93A of the RPR 2001 to allow the registration officer discretion as to whether to send confirmation that the elector has been included in or omitted from the edited register, following a request from the elector to be included in or omitted from the edited register. There is no added benefit to the elector of this letter and anecdotal evidence suggests that it causes confusion. This change also brings the registration system into line with other public services which receive instructions from citizens.

Consolidation

7.17 There are no plans to consolidate the RPR 2001.

8. Consultation outcome

- 8.1 For the anonymous registration changes a policy statement was published in March 2017 for public comment. The policy statement can be viewed here (<https://www.gov.uk/government/news/government-commits-to-helping-survivors-of-domestic-abuse>). The Government received 12 formal responses to this consultation from a range of organisations including: representative bodies for medical professionals, domestic violence and abuse support organisations, electoral administrators and their representative bodies and local authorities. All responses were supportive of the changes suggested. The response to the feedback received on the policy statement is available here (<https://www.gov.uk/government/publications/a-democracy-that-works-for-everyone-survivors-of-domestic-abuse-response-to-policy-statement>).
- 8.2 The drafted anonymous registration regulations have also undergone formal consultation by the Cabinet Office in respect of these Regulations and the Scotland Office in respect of the Representation of the People (Scotland) (Amendment) Regulations 2018 with the Electoral Commission who were supportive of the changes and raised only a few concerns. The Electoral Commission had concerns about how widely the definition of a refuge manager may apply, and whether it could be interpreted to include all workers employed at a refuge, rather than just the ‘manager’. Their concerns were addressed through a tightening of this definition.
- 8.3 For the changes to the wider registration system, informal consultation was carried out in the summer of 2017 and formal consultation by the Cabinet Office in respect of these Regulations and the Scotland Office in respect of the Representation of the People (Scotland) (Amendment) Regulations 2018 commenced on 2nd October 2017. The result was positive with the Association of Electoral Administrators providing only minor drafting comments, which were considered in finalising the Regulations. The Electoral Commission were generally supportive but made some comments on the proposed changes to the regulations.
- 8.4 In response the changes proposed through regulation 3(a), the Electoral Commission were supportive of the measure but asked whether the change should also require the form to explicitly state the details of the offence in question and the penalties. In response, the Government highlighted that Regulation 26(3)(c) of the RPR 2001 already requires that the paper application form include a statement that it is an offence to provide false information to a registration officer together with a statement of the maximum penalty for that offence.
- 8.5 With regards to the changes in regulation 3(b) of these Regulations, the Electoral Commission expressed a need for clarity in what a registration officer should do if the elector did not provide the mandatory information. The Commission also questioned what would happen in the case of an elector moving back from overseas when they have not had a previous UK address in the last 12 months. In response the Government highlighted the existing requirements for an application for registration under regulation 26(1) of the RPR 2001, includes a requirement to provide an address at which the applicant has ceased to reside within the last 12 months. This will be unchanged by these instruments. The additional statement seeks to draw the applicant’s attention, on the application form, that not providing their previous

address (along with any other mandatory information) may delay the registration process. Registration officers will continue to proceed as they currently do where any mandatory information has not been provided as part of an application and in line with the Commission's guidance that deals with this situation specifically.¹ In addition, the RPR 2001 already state that, where an address the applicant has ceased to reside at in the previous 12 months is not in the United Kingdom, an indication must be provided of whether the person was registered in pursuance of an overseas elector's declaration during this period.

- 8.6 With respect to both of these measures, the Electoral Commission asked whether it would be better to make the changes through the Commission's power to specify the design of the paper forms, rather than specifying the requirement in secondary legislation. In response to this, the Government noted that the Electoral Commission is required to design a paper application form which meets the requirements set out in Regulation 26 of the RPR 2001. Regulation 26(3) requires that certain statements be included on the form, and these two further statements would be added to the list on the same basis.
- 8.7 In response to the proposed changes to regulation 31C of the RPR 2001, the Electoral Commission recommended that consideration should be given to giving registration officers the option of requesting that a deceased electors relatives confirm in writing information provided by phone or in person before it is actioned. In response, the Government noted that it remains the registration officer's responsibility to satisfy themselves that the information they have received is accurate before determining, on a case by case basis, whether to remove a deceased elector from the register. Supporting this change with guidance from the Electoral Commission will assist registration officers in carrying out this responsibility. The Electoral Commission also expressed concerns surrounding consistency of the use of information provided on the annual canvass form. The Government responded that, while this change will allow information from a canvass form that an elector has died to be used differently to other information provided on the form, in these highly sensitive circumstances where an elector has died, the registration system should take every step possible to minimise distress to the deceased's relatives whilst maintaining an accurate register. In the small number of circumstances where this provision is needed, it is appropriate that a registration officer should be able to draw from the widest source of information possible, with the necessary safeguard that this should be considered only when it has not been possible to secure a death certificate or information from the registrar. This is what citizens would expect and is appropriate to this specific circumstance where sensitivity is vital.
- 8.8 In response to the proposed changes which aim to rationalise correspondence, the Electoral Commission stated that as long as the elector under review is advised of the outcome of that review process, their right to appeal and is given the date they will be removed from the register, they do not see why a further letter confirming the deletion would be necessary. In response the Government highlighted that the amendments require that additional information be included in the notice that a review is being undertaken to inform the subject of a review that the registration officer can determine the review and remove their entry from the register after 14 days if the elector does not require that the review be heard, and that in this situation there would be no right

¹http://www.electoralcommission.org.uk/_data/assets/pdf_file/0011/162578/Part-4-Maintaining-the-register-throughout-the-year.pdf - Paras 4.3 and 4.14-4.19.

of appeal. If the subject of a review does not require a review to be heard within 14 days the sending of a notification of the outcome of the review by the registration officer will be discretionary. However, if the subject of a review requires that it be heard, the registration officer must continue to send a notification of the outcome of the review informing the subject of any right of appeal, the time within which an appeal has to be given and any other information about the appeal which the registration officer considers necessary.

- 8.9 In response to the proposed change to the acknowledgement of changing the opt out/in status the Electoral Commission raised concerns that electors would expect confirmation of the change. The Government responded to this by highlighting that where an elector requests their open register preference is changed, this is an instruction to the registration officer who must act accordingly, there is no determination made. This is consistent to similar approaches in other services, for example where a citizen surrenders their driving license they notify the Driver and Vehicle Licensing Agency but will not receive a confirmation of their licence's revocation. This change would not preclude registration officers from being able to send an acknowledgement in writing where it is deemed appropriate and this could be supported by guidance.

9. Guidance

- 9.1 The Electoral Commission are responsible for producing guidance to electoral administrators and attestors for these changes. The Cabinet Office are working closely with the Electoral Commission to ensure the guidance is produced in collaboration with the representative bodies of the attestors. The guidance on anonymous registration measures will be published ahead of the May 2018 local elections in England. The Electoral Commission will also publish guidance ahead of the implementation of the wider registration changes.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is monetary with registration officers having to process more attestations, court orders and injunctions. Officers will also have to produce more anonymous registration poll cards which are more costly to produce than standard poll cards. There is also a small cost for attestors as professionals who haven't previously been able to attest, may now spend a small proportion of their working time doing so.
- 10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The changes to the anonymous registration scheme delivered through these Regulations are intended to make the scheme more accessible to those escaping domestic violence. Success will be shown by an increase in the number of anonymous entries on the electoral register and positive feedback from electoral administrators and Women's Aid.

12.2 The changes to the wider registration system aim to make the process of electoral administration more efficient. Success of these measures will be shown through positive feedback from Electoral Administrators and representative organisations including the Association of Electoral Administrators. For Regulation 3(b) success will be measurable through looking at the change in the number of application forms submitted without mandatory previous address information.

13. Contact

13.1 For the Anonymous Registration sections, contact Matthew Nicholas in Elections Division, Constitution Group at the Cabinet Office

Telephone: 0207 2718729 or email: matthew1.nicholas@cabinetoffice.gov.uk can answer any queries.

13.2 For the changes to the wider registration system sections, contact Scott Richards in Modern Registration Division, Constitution Group at the Cabinet Office

Telephone: 0207 2713867 or email: scott.richards@cabinetoffice.gov.uk can answer any queries.