

EXPLANATORY MEMORANDUM TO
THE REPRESENTATION OF THE PEOPLE (ENGLAND AND WALES)
(AMENDMENT) (No 2) REGULATIONS 2006

2006 No. 2910

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Regulations make changes following the Electoral Administration Act 2006 to provisions concerning:

- (a) Anonymous registration,
- (b) The alteration of registers pending elections, determinations by registration officers and objections,
- (c) Replacement of counterfoils on ballot papers with the Corresponding Number List,
- (d) The collection and retention of personal identifiers for postal & proxy voters and the checking process on returned postal votes,
- (e) Proxy applications and attestations,
- (f) The cancellation and retrieval of ballot papers
- (g) Official poll cards,
- (h) The postal voters list, sorting of postal votes face down and the additional requirement for redirection of postal vote applications
- (i) Access and control of election documents, such as the absent voter list, marked electoral register and the unmarked proxy voters list

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

3.1 None

4. Legislative Background

4.1 The Regulations are made under section 201 (20) of the Representation of the People Act 1983 and section 42 (10) of the Electoral Administration Act 2006.

5. Extent

5.1 These Regulations apply to England and Wales

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State, Bridget Prentice, MP has made the following statement regarding Human Rights:

In my view the provisions of the Representation of People (England and Wales) (Amendment) (No 2) Regulations 2006 are compatible with the Convention Rights.

7. Policy background

7.1 The Electoral Administration Bill was introduced in Parliament on 11 October 2005 and received Royal Assent on 11 July 2006. The Electoral Administration Act 2006 aims to make progress on the Government's four principles found at the core of a healthy democracy:

- (i) Improving Access and Engagement
- (ii) Improving Confidence
- (iii) Extending Openness and Transparency in Party Financing
- (iv) Maintaining Professional Delivery of Elections

7.2 In line with the above principles, Secondary Legislation to set out further detail governing certain provisions of the Act and bringing certain sections into law will need to be laid.

PART 2 Registration

Anonymous Registration

7. 3 The regulations contain a number of measures in relation to anonymous registration. Section 10 of the Electoral Administration Act 2006 (The Act) establishes a framework for anonymous registration, allowing a registration officer to create an anonymous entry on the register for those persons whose safety, or that of people they live with, would be at risk if the register contained their name and address. The regulations set out the evidence a person will need to provide (in addition to the prescribed information required for registration as a parliamentary and local government elector) in order to be eligible for anonymous registration and the details regarding the process for applying to register to vote anonymously.

7. 4 The Department for Constitutional Affairs carried out consultation with stakeholders in order to identify the scope of anonymous registration applications. This method of registration is intended to be taken up by people being harassed or stalked (either by a stranger or a known person, such as a violent ex-partner), witnesses in criminal cases and people connected with cases who could be subject to "revenge attacks". A person registered anonymously in the electoral register would not have their name or address printed on published versions of the register (either the full or the edited register). These provisions do not allow for anonymous registration to become a kind of 'ex-directory' system of registration. It is there to protect the inherently public nature of the electoral register, which enable public and parties to inspect the electoral register and to know who is eligible to vote in a given electorate. The Electoral Registration Officer (ERO) will have strict criteria, set in regulations, to determine whether a person is eligible for anonymous registration, whether on the grounds of fears for their own safety or that of associated persons or dependants.

7. 5 A person wishing to register as an anonymous entry must make a declaration and provide evidence in support of their application. The kinds of evidence that will be required for the purposes of the regulation are a court order and an attestation by a qualifying officer.

Objections

7. 6 Section 12 of The Act empowers an ERO to remove an elector's name from his registers if it becomes apparent, after the process of registration has been completed, that the elector should not have been registered. At present, objections to a person's registration can only be raised before the registration takes effect and a registration officer's powers to remove an erroneous or obsolete entry are limited. The clause widens the powers of an ERO to remove a person's entry from the register.

7. 7 The regulations provide the details of how the new objections and deletions scheme will work. They prescribe the process a registration officer must go through on receipt of an objection to an entry on the register and when they choose to conduct a review themselves. The regulations also set out circumstances in which a registration officer may remove an entry without going through a review or objection procedure.

PART 3 Alteration of Registers

Clerical Errors

7. 8 The Act provides for clerical errors in the register to be capable of correction up to and including on the day of the poll. Under previous legislation, the closing date for registering to vote had been around six weeks prior to polling day, with clerical errors only correctable up until five days before the day of poll.

7. 9 The regulations amend the Representation of the People regulations 2001 to prescribe the manner in which a person may make a representation that the register contains a clerical error, the time on polling day after which corrections may not be made, and the manner in which notices of correction are to be made and communicated to the relevant polling station.

Part 4 Replacement of Counterfoils

Replacement of Counterfoils and Corresponding Number List

7. 10 The Act removes the requirement for ballot papers to be attached to a counterfoil. Instead, electoral officers will need to record ballot papers numbers to be used at a parliamentary election on the corresponding number list. The regulations prescribe the form of corresponding number lists to be used at parliamentary elections for both polling station and postal ballot papers and replaces references to counterfoils attached to ballot papers with references to the corresponding number lists.

7. 11 The corresponding number list will be in two parts. Returning Officers will be required to record all the ballot paper numbers and the corresponding identifying marks of the ballot papers to be issued to postal voters and to be used at a polling station on Part 1 of the list. Electors will be required to sign for their ballot paper against the ballot paper number and their elector number on Part 2 of the corresponding number list.

PART 5 Absent Voting: Personal Identifiers

Personal Identifiers for Absent Voters

7. 12 Following proposals made by noble Lords during the passage of The Act, provisions were inserted to require absent voters to provide personal identifiers to EROs. The Act provides for persons voting by post to provide their signature and date of birth on their postal vote application form and on the postal voting statement that accompanies the ballot paper. These measures aim to improve security for postal voting, and protect against the risk of future incidences of fraud. They are also intended to provide greater evidence for a relevant police authority investigating any allegations or possible incidences of electoral fraud.

7. 13 The regulations set out the process by which personal identifiers are to be collected, and how they will be used to check the validity of returned postal votes. The regulations set out the requirement for providing a signature and date of birth on an absent vote application form. It provides for the minimum dimensions of the box for providing signatures and the format in which dates of birth should be provided (dd/mm/yyyy). It also provides for applications from

electors who wish to be exempt from providing personal identifiers due to disability or an inability to read or write. The regulations provide the EROs when dealing with absent voting applications, with a power to check any signatures or dates of birth previously provided by the applicant to EROs or Returning Officers, or any previously provided by the applicant to the local authority. They also require the EROs to obtain a fresh signature from absent voters every 5 years to ensure signatures are up to date and take account of changes to a person's signature, and to keep a separate record of absent voters' personal identifiers.

7.14 The regulations also set how the identifiers will be used to check the validity of returned postal votes. They set the minimum level of checking of identifiers and provide that at an election on each occasion the postal voters' ballot box is opened not less than 20% of covering envelopes will be set aside by the Returning Officer for checking. All returned postal voting statements must have a date of birth and signature to be deemed to be duly completed and valid. Furthermore, for those statements set aside for checking, the Returning Officer must compare the signature and date of birth on the postal voting statement with those provided by the voter and contained on the personal identifier record created under regulation 35 of these regulations. If they both do not match, the statement will be invalid and so the vote will not be counted. Where a Returning Officer deems that a postal voting statement is invalid he shall mark it "rejected" and agents will be entitled to see the identifiers for the voter to whom the statement was addressed and if they object to the Returning Officer's decision the Returning Officer will mark the postal voting statement "rejection objected to".

PART 6 Absent Voting: Proxy Applications

Attestation of Proxy Votes

7.15 The Act removes the legal incapacity to vote for persons with a mental impairment and allows such persons to apply for a long term proxy vote. The regulations expand the list of health professionals who can attest a proxy vote application for a definite or indefinite period to include health professionals that work directly with persons with mental impairments, so that they do not become disenfranchised through any inability to attend a polling station.

Additional Requirements for certain proxy applications

7.16 The Act removes the provision in electoral law that stipulates that mental health patients detained under civil powers must vote at elections by either post or proxy. In future, such persons will not be prevented by electoral law from voting in person in polling stations.

7.17 The change to the manner of voting for detained mental health patients will mean that such persons will have to make a judgement about whether to apply for a postal or proxy vote or to seek leave from the hospital to attend the polling vote in person. As such, there is a risk that if a patient wishes to vote in person but is refused leave on or shortly before polling day, and has not applied for a postal or proxy vote, then they will not be able to vote at all.

7.18 The regulations intend to mitigate the risk of patients being disenfranchised by extending the "emergency" proxy facility that was introduced for the May 2006 local elections to detained mental health patients who are unable to be absent from the hospital on polling day. Such patients may apply for an "emergency" proxy vote at any time after the deadline for proxy applications (6 days before polling day) and up until 5pm on polling day. The Regulations also allow electors who are unable to vote in person due to a disability that has arisen between the deadline for proxy applications and polling day itself, to appoint a proxy up until 5pm on polling day.

PART 7 Cancellation of Postal Ballot Papers

Cancellation and retrieval of ballot papers

7.19 The Act provides for the cancellation and removal of ballot papers under any prescribed circumstances. The regulations set out the process for removal of postal ballot papers from the postal ballot box, in the event that they are cancelled. This provision was piloted at the 2004 European Parliamentary and local elections. The Government believes that the ability to cancel and retrieve a postal ballot paper that has been lost will help to prevent possible abuses of the postal vote system. For example, where a voter does not receive their postal vote, they can report this as lost. If that original vote is then received by the RO, and has possibly been completed by someone other than the elector, the Returning Officer can cancel that ballot paper, retrieve it from the postal ballot box, and issue a replacement to the elector.

PART 8 Official Poll Cards

Official Poll Cards

7.20 The regulations substitute a revised form of elector's official poll cards and proxy's official poll card and prescribe new forms for official postal poll card to be sent to electors and their proxies consequential to the changes introduced by the Electoral Administration Act 2006.

PART 9 Postal Voters List

Postal Voters List

7.21 The regulations amend the procedure of issuing and receipt of postal ballot papers. When a postal voter returns a postal vote or a postal proxy vote, the returning officer will be required to mark the relevant list provided that the postal voting statement has also been received. The regulations make minor changes to reflect that the "list of postal proxies" is to be called "proxy postal voters list" and "absent voters list" is to be called "postal voters list".

7.22 The Electoral Commission in their report on Marked Registers published in February 2005 recommended that an elector should be able to check with the Returning Officer whether their postal vote has been received. The regulations clarify that if an elector asks for confirmation of receipt of his postal vote, and the Returning Officer may give that information, after referring to the relevant lists, provided he is satisfied as to the identity of the elector.

Sorting ballot papers face down

7.23 The regulations sets out the procedure for the sorting of returned postal ballot papers once they have been removed from their covering envelopes. Amending the way that postal votes should be sorted at the opening of ballot paper envelopes was a recommendation of the Electoral Commission in response to the Department for Constitutional Affairs' May 2005 Policy Paper. The Commission raised concerns that the current method of sortation could lead to breaches of the secrecy of the ballot, as provided for by Section 66 of the Representation of the People Act 1983. The regulations are intended to ensure that secrecy is maintained by providing that ballot papers are always sorted face down, meaning that election staff and agent of political parties cannot see how an elector has voted.

PART 10 and 11 Access to Absent Voters List and Control of Documents

Access to election documents

7.24 The regulations affect access to election documents such as the absent voter list, marked electoral register and the unmarked proxy voters list. The provisions closely mirror the

framework that governs access to and supply of the full electoral register which in 2002 the Government established. The new arrangements took into account the decision in the *Robertson* case which concerned the supply of the electoral register, where the High Court found that the supply of the register for direct marketing purposes without giving individual electors the opportunity to object was in breach of data protection and human rights.

7. 25 Earlier in 2006, the Government introduced a limited number of changes within the new framework that addressed certain issues that had been raised.

7. 26 However, while arrangements have been put in place regulating access to the electoral register, other election documents that contained similar information, such as the marked electoral register, have not been subject to the same restrictions. The Government therefore included provisions in the Electoral Administration Act that allowed regulations to be made restricting access to other election documents and the purposes for which they may be used.

Processing of information outside the EEA

7. 27 The regulations provide for authorised users of the full electoral register, for example police, credit reference agencies, government departments, to use a data processor from a country outside the EEA where that country is able to ensure an adequate level of protection of personal data. At present an authorised user of the full electoral register is only permitted to process data using a data processor situated within the EEA.

7. 28 This provision was not provided for by The Electoral Administration Act but is being taken forward in order to bring the processing of information from the full register in line with the Data Protection Act 1998 and UK's data protection obligations under EU Directive 95/46/EC. Authorised users will still have to ensure that personal data (such as that in the full electoral register) can only be transferred to a country outside the EEA for processing where that country ensures an adequate level of protection of personal data. The authorised user will need to satisfy themselves before sending data for processing, for example by checking relevant decisions of the European Union Commission, that the country and the processor apply the same controls and restrictions as currently apply to data processed within the EEA.

PART 12 Miscellaneous Amendments

Additional Requirement for postal vote application

7. 29 The regulations provide for the requirement for a reason to be given for a postal vote to be sent to an address other than the address at which the postal voter is registered to apply to new postal vote applicants in addition to long term postal and postal proxy voters. This provision was not provided for in The Act but is in line with Government principles to enhance the security of the postal voting system and it is intended to deter potential fraudulent use of postal votes.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

9.1 Any queries about the content of this memorandum should be addressed to: Nancy Hey at the Department for Constitutional Affairs, e-mail: nancy.hey@dca.gsi.gov.uk

