

**EXPLANATORY MEMORANDUM TO**  
**THE REPRESENTATION OF THE PEOPLE (PROXY VOTE APPLICATIONS)**  
**(CORONAVIRUS) REGULATIONS 2021**

**2021 No. 391**

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 The instrument will amend the rules governing various elections in Great Britain to expand the eligibility to vote by proxy of electors who are unable to attend a polling station due to being required or advised to self-isolate as a result of Covid-19.

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

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

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 The territorial application of this instrument varies between provisions.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales and Scotland, except for regulations 3 and 5 which extend to England and Wales, and regulation 4 which extends to Scotland.
- 4.2 The territorial application of this instrument is England and Wales and Scotland, except for regulations 3 and 5 which apply to England and Wales, and regulation 4 which applies to Scotland.

**5. European Convention on Human Rights**

- 5.1 Chloe Smith MP, the Minister for the Constitution and Devolution has made the following statement regarding Human Rights:

“In my view the provisions of the Representation of the People (England and Wales) (Regulations 2021) are compatible with the Convention rights.”

**6. Legislative Context**

- 6.1 This instrument amends the Representation of the People (England and Wales) Regulations 2001, the Representation of the People (Scotland) Regulations 2001 and the Police and Crime Commissioner Elections Order 2012. The amendments are to the provisions which provide for electors to appoint a proxy to vote for them and will expand the eligibility to apply for a proxy vote up to and including polling day, where electors are affected by Covid-19, or where a person they have already appointed to be their proxy is similarly affected by Covid-19.

- 6.2 Because local government elections have been devolved to Scotland and Wales since the 2001 Regulations referred to above were made, the amendments do not apply to local government elections in Scotland or in Wales. Police and crime commissioner elections are reserved, and therefore the amendments made to the 2012 Order referred to above apply to PCC elections in both England and Wales.

## 7. Policy background

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

- 7.1 The Government confirmed on Friday 5 February that the range of polls scheduled for 6 May 2021, including council and mayoral elections in England and Police and Crime Commissioner (PCC) elections in England and Wales, will go ahead as planned.
- 7.2 The Government has published a clear Delivery Plan for the May elections, setting out how the Government will support local elections teams to deliver effective polls that are Covid-secure for voters and staff. The measures in this SI will contribute to the delivery of these elections successfully and with the right precautions in place.
- 7.3 Under current Regulations, there are strict eligibility criteria and deadlines for applying to vote by proxy. The availability of emergency proxy votes (which are those which can be applied for after the normal deadline and up to 5p.m. on the day of the poll) is limited and would not be suitable to facilitate absent voting during the Covid-19 pandemic. Whilst they can be applied for on medical grounds, those applications are required to go through an attestation process signed off by a medical professional, which would not be appropriate in the context of a pandemic. Under the proposed approach in the S.I., those who have, or may have, coronavirus (for example, are experiencing symptoms) close to polling day would be able to apply for an emergency proxy vote without producing a positive test result and without their application being attested by a medical professional.
- 7.4 Under the current Regulations there are also no emergency proxy voting options available for electors who would be required to follow legal requirements to self-isolate, or have determined they ought to due to exposure to a potentially contagious individual but who are not themselves symptomatic. Under the changes proposed by the S.I., if an elector believes that their particular circumstances would lead to an increased risk of transmission to themselves or others in a range of circumstances such as having been made aware of potential exposure to the virus or otherwise being required to remain at home then they would be eligible to apply for an emergency proxy. If an elector is informed they are in the shielding category they would also be eligible under the provisions in this S.I.
- 7.5 The S.I. would also ensure that where a person already has a proxy appointed, but the proxy is then affected by Covid-19 and is unable to attend the polling station to vote on the elector's behalf, the elector can appoint a new proxy. This applies to both long-term proxy arrangements, and a proxy arrangement which is just for the particular election.
- 7.6 Unlike existing avenues to obtain an emergency proxy, as mentioned above, an application made under the new rules provided by the S.I. would not require medical attestation. There will also be no cut-off date based on when the person began having to self-isolate or learned they had Covid-19. Under current provisions for emergency proxy applications, applicants are not eligible if they were aware of their change in

circumstances and therefore could have applied for a regular proxy vote and this provision will not apply to those affected by Covid-19.

- 7.7 The temporary expansion of the eligibility to apply for a proxy vote late in the day is considered appropriate in the current context of the pandemic. These applicants will be registered voters who are already eligible to vote, and the intention is to ensure that they can continue to exercise their vote without putting themselves or others at risk where they, or a person already appointed as their proxy, are affected by Covid-19 at a time when other absent vote routes (such as postal votes) are not available. Deadlines for all applications in relation to this S.I. would be 17:00 on polling day.
- 7.8 Separately, the S.I. will also provide clarity on replacing a person appointed as a proxy under a long-term proxy voting arrangement. Currently, primary legislation outlines the ability for someone to replace their long-term proxy without having to complete an entirely new evidenced application. However, one aspect of the current Regulations seems to imply that should an elector need to change the person who is appointed to be their proxy, the only way to do this is to complete an entirely new evidenced application. The S.I. will amend that aspect, which will overall make clear that an elector can appoint a different person to be their proxy without having to re-provide evidence on their own circumstances. For example, an elector who is disabled and has had their application to vote by proxy indefinitely, or for a particular period of time, attested by a medical professional already wouldn't need to get their application attested again simply to replace the person acting as their proxy.
- 7.9 The key aim of the SI is to ensure that electors who have to self-isolate for a period which would prevent them from attending a polling station still have a route to enable them to vote at the poll. Though the criteria for applying for an emergency proxy vote are fairly broad, these are proportional to the need to ensure that electors are able to cast their vote safely.
- 7.10 Most provisions in the S.I. would be subject to a sunset clause which means the amendments will cease to apply at the end of 28th February 2022, except for elections where the notice of election has already been published on or before that date but the poll takes place after that date. In particular, this means that they will not apply for the local elections scheduled to take place in May 2022, when the normal rules (pre-amendment) will apply. These are effectively emergency measures for the May 2021 elections and any subsequent by-elections during the pandemic. The sunset provision does not apply, however, to the clarifying amendments made by regulations 3(1) and (2)(a) to (c) and 4(1) and (2)(a) to (c), as those are unrelated to the pandemic.
- 7.11 Consideration has been given to any potential for an increase in electoral fraud as a result of wider eligibility for proxy voting when developing this policy. Providing false information to an Electoral Registration Officer in order to obtain an absent vote is already an offence. Furthermore, those electors who are granted emergency proxies would be included in the absent voting lists and these lists are available to candidates and agents upon request for the express purposes of ensuring scrutiny and integrity.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

9.1 There are no plans to consolidate the instruments being amended at this time.

## **10. Consultation outcome**

10.1 The Electoral Commission (EC) has been consulted in accordance with section 7(1), (2)(e) and (hc) of the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”).

10.2 The EC broadly agreed with the changes made by the SI. The EC suggested that provisions should be included to enable those with long-term proxy arrangements whose proxy was subsequently affected by Covid to appoint a new proxy. That suggestion was adopted.

## **11. Guidance**

11.1 The EC is able to provide guidance under section 10 of the 2000 Act and is expected to provide guidance to electoral administrators and electors about the changes set out in the instrument.

## **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 An Impact Assessment has not been prepared for this instrument because the legislation does not apply to activities that are undertaken by small businesses.

## **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 has a duty under section 6 of the 2000 Act to keep under review general matters that relate to elections and are able to submit a report to the Secretary of State. The Government will consider any recommendations made.

14.2 This instrument does not include a statutory review clause. However, the amendments which related to the pandemic expire at the end of the 28th February 2022, except in respect of elections for which a notice of election has already been given on or before that date, but the poll takes place afterwards, so that the previous rules return for the May 2022 elections.

## **15. Contact**

15.1 Christopher Riding at the Cabinet Office Telephone: 07702 816472 or email [christopher.riding@cabinetoffice.gov.uk](mailto:christopher.riding@cabinetoffice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Becca Crosier Deputy Director for Elections at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chloe Smith MP, Minister for the Constitution and Devolution at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.