

**EXPLANATORY MEMORANDUM TO**  
**THE REPRESENTATION OF THE PEOPLE (AMENDMENT) (NORTHERN**  
**IRELAND) (EU EXIT) REGULATIONS 2022**

**2022 No. 47**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee for Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 This instrument corrects deficiencies in Northern Ireland electoral law arising as a result of the withdrawal of the United Kingdom from the European Union. The instrument amends the Electoral Law Act (Northern Ireland) 1962 (the “1962 Act”) and Northern Ireland Assembly (Elections) Order 2001 (the “2001 Order”) to ensure that UK passports can continue to be used as voter ID documents at polling stations in Northern Ireland for Northern Ireland Assembly and local elections.

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

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

- 3.1 This instrument was laid for sifting on 15 December 2021. Both the European Statutory Instruments Committee and the Secondary Legislation Scrutiny Committee confirmed on 11 January 2022 that they are content for this instrument to remain subject to the negative procedure.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is Northern Ireland.
- 4.2 The territorial application of this instrument is Northern Ireland.

**5. European Convention on Human Rights**

- 5.1 The Minister of State for Northern Ireland, Conor Burns MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Representation of the People (Amendment) (EU Exit) (Northern Ireland) Regulations 2022 are compatible with the Convention rights.”

**6. Legislative Context**

- 6.1 Rule 34(6) of Schedule 5 to the 1962 Act sets out a list of voter ID that is permitted at local elections in Northern Ireland. The list currently specifies that passports issued by members states of “the European Community” are the only form of passport permitted as voter ID.

- 6.2 Schedule 1 to the 2001 Order applies, with modifications, the list of voter ID permitted at Northern Ireland parliamentary elections (Rule 37(1E) of the Representation of the People Act 1983) to Northern Ireland Assembly elections. Schedule 1 of the 2001 Order modifies Rule 37(1E)(b), which specifies that UK and Irish passports are permitted ID at Northern Ireland parliamentary elections, so that only passports issued by an EU member States are specified as permitted voter ID in Northern Ireland Assembly elections.

## **7. Policy background**

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

- 7.1 ID is required in order to vote at a polling station in Northern Ireland. The legislation which prescribes which forms of ID are acceptable at both Assembly and local elections list includes passports, but only those issued by EU Member states. This included UK issued passports while the UK was a member of the EU.
- 7.2 Following the UK's exit from the EU, it is necessary to add UK passports to the accepted list of electoral ID for them to remain a valid form of ID for voting at polling stations.
- 7.3 There will be no noticeable change for voters as this instrument ensures that UK passports can continue to be used.

### *Explanations*

#### What did any law do before the changes to be made by this instrument?

- 7.4 This is set out in section 7 above.

#### Why is it being changed?

- 7.5 Following the UK's exit from the EU the references to passports issued by an EU member state in the lists of permitted ID for Northern Ireland Assembly and Northern Ireland local elections no longer include passports issued by the Government of the United Kingdom. This needs to be changed so that UK passports can continue to be used in those elections.
- 7.6 Rule 34(6)(b) of the 1962 Act contains an obsolete reference to member States of the "European Community" this reference is no longer appropriate as the European Community was dissolved into the European Union by the Treaty of Lisbon in 2009.

#### What will it now do?

- 7.7 The lists of permitted ID for Northern Ireland Assembly and local elections will include passports issued by both the Governments of the UK and EU member States.
- 7.8 The reference to member States of the "European Community" in Rule 34(6)(b) of the 1962 Act will instead refer to members States of the European Union.

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

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under the powers contained in paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018. In

accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

## **9. Consolidation**

9.1 This instrument does not consolidate any current legislation.

## **10. Consultation outcome**

10.1 The Electoral Commission and the Chief Electoral Officer for Northern Ireland were consulted and both welcomed this legislation.

## **11. Guidance**

11.1 The Electoral Commission provides guidance to candidates and their agents in advance of elections. It is unlikely that specific guidance will be required in this case.

## **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 has not been prepared for this instrument because no, or no significant, impact on the private, voluntary or public sectors is foreseen.

## **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 Electoral Commission will continue to monitor the use of ID at polling stations as part of its scrutiny of electoral practice.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

## **15. Contact**

15.1 Katherine Herrick at the Northern Ireland Office (Telephone 07824866744 or Katherine.herrick@nio.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Holly Clark, Deputy Director for Elections Policy at the Northern Ireland Office, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Conor Burns, Minister of State at the Northern Ireland Office, 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
Appropriate-ness	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 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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
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

## Part 2

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

#### 1. Sifting statement(s)

- 1.1 Conor Burns, Minister of State at the Northern Ireland Office, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Representation of the People (Amendment) (Northern Ireland) (EU Exit) Regulations 2022 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because none of the amendments made in exercise of the powers in section 8(1) of European Union (Withdrawal) 2018 Act are considered to fall within paragraph 1(2) of Schedule 7 of that Act. The amendment made in exercise of paragraph 21 of Schedule 7 to, European Union (Withdrawal) 2018 Act make a technical incidental amendment.

#### 2. Appropriateness statement

- 2.1 Conor Burns, Minister of State at the Northern Ireland Office, as made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Representation of the People (Amendment) (Northern Ireland) (EU Exit) Regulations 2022 does no more than is appropriate”.

- 2.2 This is the case because following the UK’s exit from the European Union these amendments are required to ensure that holders of UK passports are able to continue to use those passports as ID at Northern Ireland Assembly and Northern Ireland local elections.

#### 3. Good reasons

- 3.1 Conor Burns, Minister of State at the Northern Ireland Office has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 These are: to ensure that holders of UK passports are able to continue to use such passports as ID at Northern Ireland Assembly and Northern Ireland local elections following the UK’s exit from the European Union.

**4. Equalities**

4.1 Conor Burns, Minister of State at the Northern Ireland Office, has made the following statement(s):

“The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

**5. Explanations**

5.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.