

EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT AND GREATER LONDON AUTHORITY
ELECTIONS (MISCELLANEOUS AMENDMENTS) REGULATIONS 2023

2023 No. 1066

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

2. Purpose of the instrument

2.1 This instrument makes amendments to electoral conduct rules to prevent individuals from standing for and holding certain elective offices by virtue of a disqualification order being made under section 30 of the Elections Act 2022 ('the Act').

2.2 This instrument makes provision in relation to local elections and Greater London Assembly and London mayoral elections to enable a Returning Officer to hold a nomination paper invalid if the person submitting that nomination paper is subject to a disqualification order.

2.3 The instrument also amends candidate's consent to nomination forms. The updates to these forms reference the additional disqualification criteria as well as changes to qualification criteria for EU citizens also provided by the Act.

2.4 The instrument also amends the vacancy rules in relation to local authority mayors so that in the event of a disqualification order being made under section 30 of the Act, the vacancy arises on the date determined in accordance with section 31 of the Act.

2.5 The instrument also applies the revised offence of undue influence in section 114A of the Representation of the People Act 1983 (as inserted by section 8 of the Act) to parish polls.

2.6 The instrument also applies provisions in the Elections Act 2022 concerning the use of commonly used names by candidates at parliamentary elections to candidates standing at local government elections and GLA elections.

2.7 The instrument also makes amendments to the rules governing the administration and conduct of local government elections and GLA elections to implement for those polls the changes made by section 6 of, and Schedule 4 to, the Act relating to proxy voting.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is primarily England. Regulation 2 applies to England and Wales.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This statutory instrument makes amendments to the rules for the conduct of elections in order to implement section 6 (limiting the number of electors for whom a proxy can vote), section 8 (undue influence), section 10 (in relation to candidate's commonly used names), section 15 (candidacy and voting rights of EU citizens) and Part 5 (disqualification of offenders for holding elective office etc) of the Act.
- 6.2 Regulation 2 applies the revised offence of undue influence in section 114A of the Representation of the People Act 1983 (as inserted by section 8 of the Act) to parish polls. The instrument maintains the old offence of undue influence in Section 115 of the Representation of the People Act 1983 in relation to polls consequent on a community meeting in Wales.
- 6.3 Regulations 3 to 5 include amendments to the relevant nomination rules such that a Returning Officer can hold a nomination paper invalid (in relation to the relevant election) if the person submitting the nomination paper is subject to a disqualification order under section 30 of the Act. These regulations also replace the candidate consent to nomination forms in the relevant conduct rules with a new form that implements section 15 and Schedule 8 of the Act by referencing updated citizenship criteria in their declaration and includes a declaration that a person is not disqualified by a disqualification order made under section 30 of the Act.
- 6.4 Regulations 3 to 5 also make amendments to the rules for the conduct of local council, parish council and GLA elections to apply the changes in the Act concerning proxy voting and the use of commonly used names by candidates. They also amend the questions asked of a person voting as proxy in a polling station to reflect the limits on the number of people for whom a person can vote as proxy, introduced by section 6 of and Schedule 4 to the Act.
- 6.5 Regulation 6 amends the Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) Regulations 2012 in relation to local authority mayors, so that in the event of a disqualification order being made under section 30 of the Act, the vacancy arises on the date determined in accordance with section 31 of the Act. Schedules 2, 3 and 4 provide for updated nomination papers and consent to nomination forms for parish and principal councils and Greater London Authority elections to implement sections 10, 15 and 30 of the Act. Schedules 2, 3 and 4 also replace poll cards and proxy poll cards used at local, parish and GLA elections in order that those forms include updated information on the number of electors for whom a person may now act as a proxy.
- 6.6 **Commencement and savings:** There is split commencement in relation to these regulations. The changes relating to proxy voting applications come into force on 31st October 2023, and the changes relating to voting by proxy at an election come into force on 31st January 2024. The other provisions of these Regulations come into force on 1st November 2023. Schedule 1 contains transitional and savings provisions. Part 1 includes general saving provision described in paragraphs 6.7 to 6.10 below.
- 6.7 Paragraph 2 makes provision so that the amendment to the power of the Returning Officer to hold a nomination paper invalid does not take effect in relation to which a

notice of election has been issued on or before 31st October 2023. This is to avoid changing the powers of the Returning Officers in the middle of an election for which notice has already been issued prior to commencement of these regulations.

- 6.8 Paragraph 3 makes saving provision so that the changes in relation to the nomination forms do not have effect in relation to an election where the date of the poll specified in the notice of election is on or before 1st May 2024. The new forms will apply to elections from and including 2nd May 2024.
- 6.9 Paragraph 4 makes saving provision so that the changes in relation to the candidate's consent to nomination form to implement the amended EU citizen's candidacy rights do not have effect in relation to an election where the date of poll specified in the notice of election is on or before 6th May 2024. The new forms will apply to elections from and including 7th May 2024.
- 6.10 Paragraph 5 makes provision so that the form of candidate's consent to nomination for an election where the date of poll is on or after 2nd May 2024 but on or before 6th May includes on the amendments to implement disqualification orders but not the new EU citizen's candidacy rights. This is to ensure that the amended candidacy rights take effect after the elections to be held on the ordinary day of election in 2024.
- 6.11 Parts 2-4 (paragraphs 6-14) of Schedule 1 make transitional and saving provisions in relation to proxy arrangements to ensure that proxies who were appointed as proxy prior to 31st October 2023 remain subject to the rules on appointment of and voting by proxies that applied at the time of the appointment.

7. Policy background

What is being done and why?

- 7.1 Section 8 of the Act replaces the original offence of undue influence provided in section 115 of the Representation of the People Act 1983 with section 114A, in relation to parliamentary elections across the UK and local elections in England. Schedule 6 of the Act includes provision to make the equivalent amendments for elections to the Northern Ireland Assembly and local elections in Northern Ireland. This is because the original offence had become difficult to interpret, with implications for its application and enforcement, as set out in the Law Commission's Electoral Law reports (2016 and 2020). The amended offence provides a clearer separation between the purpose (as intended by the offender) and the effect of the prohibited activity, and it broadens the scope of the offence to include intimidatory behaviour directed at voters, in line with recommendations following the case of *Erlam & Ors v Rahman & Anor* [2015] EWHC 1215 (QB). For parish polls, section 115 has previously been applied by secondary legislation. It is necessary therefore to ensure via this statutory instrument that these provisions are updated to reflect the new section number and drafting of the offence to ensure that section 114A applies to these elections as intended.
- 7.2 Part 5 of the Act introduced the new electoral sanction, which is a five-year disqualification from standing for or holding a relevant elected office. The disqualification, once commenced, will apply where a person is convicted of an existing criminal offence of an intimidatory nature (specified offences are listed in Schedule 9 to the Act) The order is imposed by the court if it is satisfied the offender, in committing a relevant intimidatory offence towards the victim, was motivated by hostility toward the victim in their capacity as a candidate, future candidate, substitute

or nominee, campaigner, or elected officeholder. This new electoral sanction seeks to protect those who participate in public life and deter acts of intimidation.

- 7.3 To ensure that the disqualification order is enforceable, it is necessary to amend the nomination rules to prevent a disqualified individual from standing for election. This instrument extends the powers of Returning Officers to hold a nomination paper invalid where a candidate is disqualified under the new order in relation to local elections and Greater London Authority and London mayoral elections. In addition, it updates candidate's consent to nomination forms to require candidates to declare they are not disqualified under the order in relation to parish, principal councils and Greater London Authority elections.
- 7.4 The vacancy rules in relation to local authority mayors also require amending to ensure that where an office-holder is disqualified as a result of the disqualification order, their office is vacated on the date determined in accordance with the procedure set out in section 31 of the Act.
- 7.5 This instrument also implements changes that mirror section 10 of the Act, which permits greater flexibility in the commonly used names a candidate can put on their nominations paper (and that will also be shown on the ballot paper). The legislation was previously unclear whether a candidate could use a commonly used name which included part of their legal name, and the Act provided clarity that a commonly used name can be a name which is different to their legal forename or surname or which uses their legal forename or surname in a different way. The provisions in the Act amended the existing rules for UK Parliamentary elections, elections to the Northern Ireland Assembly, and local elections in Northern Ireland. This instrument makes the same change to the conduct rules for local government and GLA elections, and also amends the nomination paper completed by candidates at these polls to reflect the new provisions concerning the use of commonly used names.
- 7.6 When commenced, section 15 and Schedule 8 of the Act will remove the automatic right of EU citizens to vote and to stand in elections. EU citizens will be qualified if they meet the following criteria: Qualifying EU citizens (citizens of an EU country with which the UK has a bilateral voting and candidacy rights agreement and who are 'legally resident' in the UK) and EU citizens with retained rights (citizens of all other EU member states who have retained lawful immigration status since the UK left the EU). This instrument implements amendments required to relevant election processes (consent to nomination forms) for candidacy that reflect this change.
- 7.7 The Act also includes a measure to strengthen the integrity of proxy voting. The measure implements a recommendation made in Sir Eric (now Lord) Pickles' report on electoral fraud, entitled *Securing the Ballot* ("the Pickles Report"), which was published in August 2016. The Act limits the number of electors for whom an individual may act as a proxy to four, of which no more than two can be 'domestic' electors (domestic electors are not overseas or service electors).
- 7.8 Currently, a person may act as a proxy for two electors and an unlimited number of close family members. These existing arrangements have prompted concerns that they can give rise to situations where someone is coerced into appointing a proxy who could then effectively steal their vote. The new limit on the number of proxies a person may hold (for up to four overseas electors or service voters) is also designed to support overseas electors and service voters in identifying a proxy to vote on their behalf at elections.

- 7.9 The Act made changes to the questions that may be put to proxies when voting in a polling station at parliamentary elections to ensure that the new limit is observed. This instrument replicates these new questions for voting by proxy in local, parish and GLA elections.
- 7.10 The instrument replaces certain prescribed forms used at local, parish and GLA elections in order that those forms include updated information on the number of electors a person may now act as a proxy for.
- 7.11 Under the instrument, the changes to the questions and forms under the proxy voting measure come into force on 31st January 2024. The instrument includes transitional provisions which make the necessary changes to the questions to persons voting as a proxy and the information on poll cards to reflect that that the existing proxy voting requirements will still be applicable at polls held before 31st January 2024, and those already underway on 31st January 2024, in relation to proxies appointed under the rules in place prior to 31st October 2023 who are voting in these polls.

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 because the instrument updates candidate's consent to nomination forms to reflect the new candidacy rights of EU citizens as amended by section 15 of and Schedule 8 to the Act.

9. Consolidation

- 9.1 This instrument does not consolidate any current legislation.

10. Consultation outcome

- 10.1 The Department for Levelling Up, Housing, and Communities consulted the Electoral Commission on this instrument. The Commission had no substantive comments on the draft regulations.

11. Guidance

- 11.1 The Electoral Commission provide regular guidance for candidates, voters, and returning officers. The Commission plan to update the relevant guidance to reflect the changes made by this 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 A full Impact Assessment has not been prepared for this instrument because no, or no significant impact on the business, charities, voluntary bodies, 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 There are no plans to monitor or review the instrument.
- 14.2 Section 62 of the Elections Act 2022 commits the Government to review the operation of that Act within five years of the Act being passed. Any findings from the review of the provisions in that Act, which are reflected in this order, may be considered at that time.

15. Contact

- 15.1 Cameron Hooley at the Department for Levelling Up, Housing and Communities email: cameron.hooley@levellingup.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Becca Crosier, Deputy Director for the Elections Division, at Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lee Rowley as the Parliamentary Under Secretary of State at the Department for Levelling Up, Housing and Communities, can confirm that this Explanatory Memorandum meets the required standard.