

EXPLANATORY MEMORANDUM TO
THE REPRESENTATION OF THE PEOPLE ACT 1983 (AMENDMENT OF
SCHEDULE 6A) REGULATIONS 2024

2024 No. 512

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. Declaration

- 2.1 Simon Hoare, Parliamentary Under Secretary of State for Local Government at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Liz Owen, Deputy Director, Registration and Franchise Division, at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 James Moore at the Department for Levelling Up, Housing and Communities email: CorrespondenceRegistrationandFranchise@levellingup.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 This statutory instrument (SI) adds ‘Denmark’ to the list of countries in the Representation of the People Act 1983 whose citizens, if they are resident in the UK, are eligible (subject to other eligibility requirements, such as age) to be registered to vote as ‘qualifying EU citizens’. This bilateral agreement follows similar Agreements with Spain, Luxembourg, Portugal and Poland.
- 4.2 By adding ‘Denmark’ to that list, this SI will have the effect of allowing Danish citizens who are legally resident in the UK, to register to vote and stand in local polls for which responsibility is reserved or excepted, and Police and Crime Commissioner elections in England and Wales, regardless of when they moved to the UK. Without this SI, from 7 May 2024 Danish citizens would only have been able to participate in reserved or excepted local polls if they had been legally resident in the UK since before EU exit (specifically, since before Implementation Period Completion Date (IPCD) – 31/12/20).

Where does the legislation extend to, and apply?

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

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales and Northern Ireland.

5. Policy Context

What is being done and why?

- 5.1 The Elections Act 2022 changed the rights of EU citizens resident in the UK to vote and stand in local elections and polls in England and Northern Ireland, and in Police and Crime Commissioner elections in England and Wales. Those changes will come into effect on 7 May 2024.
- 5.2 Once EU Voting and Candidacy Rights (EUVCR) measures take effect on 7 May, voting and candidacy rights for reserved or excepted polls will be limited to the following two groups of European Citizens living legally in the UK (with the exception of citizens of Ireland, Cyprus, and Malta, whose rights to participate in polls do not derive from EU citizenship):
- (a) ‘Qualifying EU citizens’: citizens of countries with which the United Kingdom has a Voting and Candidacy Rights (VCR) Treaty. Eligibility for this group is dependent on whether an individual is a citizen of a country with which the UK has a voting and candidacy rights treaty.
 - (b) ‘EU citizens with retained rights’: citizens of EU countries with which the United Kingdom does not have a treaty but who have been legally resident since before 31/12/2020 (i.e. before the United Kingdom left the European Union).
- 5.3 A bilateral VCR treaty was signed between UK and Denmark on 8 February 2024 and was laid before parliament for its approval on Tuesday, 20 February 2024 as required under the ‘Constitutional Reform and Governance Act’ process.
- 5.4 Following its approval by Parliament, this international treaty commits the United Kingdom to make the necessary changes to domestic legislation to recognise Danish citizens as ‘qualifying EU citizens’. FCDO data shows this treaty would benefit approximately up to 10,000 Danes in the UK by 2030.
- 5.5 The treaty will also have equivalent benefits for 4000 UK nationals in Denmark at a given time though the responsibility for making necessary changes falls to the Government of Denmark.
- 5.6 As outlined in 4.1 and 4.2, following the VCR treaty between the UK and Denmark, this instrument adds ‘Denmark’ to the list of countries whose citizens resident in the UK are eligible, subject to other eligibility requirements, to be registered to vote as ‘qualifying EU citizens’. This will ensure that:
- Danish citizens resident in the UK, that are already registered on the electoral register, will remain registered to vote and stand in local polls for which responsibility is reserved or excepted; and
 - Danish citizens resident in the UK, who are not registered on the electoral register, and arrived in the UK since 31 December 2020 will be eligible (subject to other standard eligibility requirements) to register to vote, vote and stand in local polls for which responsibility is reserved or excepted.
- 5.7 The local polls this applies to are: local elections in England and Northern Ireland, Police and Crime Commissioner elections in England and Wales and the polls in England and Northern Ireland which persons are eligible to vote in as part of the local

franchise, e.g. local authority governance referendums, local council tax referendums, neighbourhood planning referendums and parish polls.

- 5.8 The coming-into-force date of this SI – 7 May 2024 - is the same date that the other changes regarding EU citizens Voting Candidacy Rights (EUVCR) take effect. This minimises the confusion which could otherwise be caused if the change was to take effect for Danish citizens at a later date, leading to rules changing for them more than once in short succession. The timing also reduces the burden on the electoral sector, when compared to a later implementation date.

What was the previous policy, how is this different?

- 5.9 Until 7 May 2024, as EU citizens, citizens of Denmark resident in the UK, are automatically entitled under existing UK legislation to vote in local polls in the UK. When the franchise change made by the Elections Act 2022 takes effect on 7 May 2024, EU nationals (with the exception of citizens of Ireland, Cyprus, and Malta) will then only be able to participate in polls for which responsibility is reserved or excepted if they are ‘EU citizens with retained rights’ or ‘Qualifying EU citizens’.
- 5.10 Without this instrument, all Danish citizens would only be able to register to vote or stand in reserved or excepted polls if they meet the criteria to be registered as an ‘EU citizen with retained rights’. Consequently, Danish citizens who have not been legally resident since before 31/12/2020 will lose their right to vote and stand in reserved or excepted polls. This outcome is contrary to the treaty between the UK and Denmark. Therefore, the instrument is essential in order to implement the treaty.
- 5.11 The timing of this instrument to come into force from 7 May, at the same time as EUVCR measures, will minimise the impact of the change for both Danish citizens and the electoral sector. Danish citizens who are already registered to vote will continue to be eligible to vote and stand in local polls in the UK (subject to other standard eligibility requirements) without a break in that entitlement – the same as citizens from the other countries with which the UK has a VCR treaty. Danish citizens who are not registered to vote and arrived in the UK since 31 December 2020 will be eligible to register to vote, vote and stand in local polls in the UK (again subject to other standard eligibility requirements, such as age).

6. Legislative and Legal Context

How has the law changed?

- 6.1 This instrument will amend the Representation of the People Act 1983, to add ‘Denmark’ into Schedule 6A.
- 6.2 This instrument gives effect to the VCR treaty (AGREEMENT BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE KINGDOM OF DENMARK ON THE PARTICIPATION IN CERTAIN ELECTIONS OF NATIONALS OF EACH COUNTRY RESIDENT IN THE TERRITORY OF THE OTHER) signed between the United Kingdom and the Kingdom of Denmark on 8 February 2024.
- 6.3 This instrument will allow Danish citizens resident in the UK, to register to vote and stand in local polls in England and Northern Ireland, and Police and Crime Commissioner elections in Wales, on the basis of being ‘Qualifying EU citizens’.

Why was this approach taken to change the law?

- 6.4 Section 203A(2) of the Elections Act 2022, provided the Secretary of State with a duty to make regulations adding an EU member state with which the United Kingdom intends to enter and ratify a VCR Treaty, to the list in Schedule 6A of the Representation of the People Act 1983.
- 6.5 This is the only possible approach to make the necessary changes and there are no alternatives.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 The Welsh Government was consulted and were content with the approach of the Treaty. The UK Government shared the relevant draft text in advance of signature. A draft of this instrument was shared with the Welsh Government, as this instrument will enable Danish citizens living in the UK, to vote in PCC elections in Wales.
- 7.2 The Scottish Government was consulted and were content with the approach of the Treaty. The UK Government shared the relevant draft text in advance of signature. A draft of this instrument was shared with the Scottish Government in order to assist the Scottish Government in making an equivalent SI to ensure their legislation is compliant with the treaty.
- 7.3 The City of London was consulted and were content with the approach of the Treaty.
- 7.4 The Crown Dependencies were consulted on and are content with the approach of the Treaty.
- 7.5 The Overseas Territories were consulted on the Treaty.
- 7.6 While there is no statutory requirement to consult the Electoral Commission (EC) on this instrument, the EC was consulted on the approach of Treaty. The EC agreed that the Treaty would benefit both citizens of Denmark living and registered to vote in the UK and electoral administrators with responsibility for maintain their local registers.
- 7.7 The Association of Electoral Administrators (AEA) was consulted on the Treaty, and they agreed that the Treaty would benefit both citizens of Denmark living and registered to vote in the UK and electoral administrators with responsibility for maintain their local registers.
- 7.8 Additionally, as required by legislation, DLUHC will follow existing requirements – that as soon as reasonably practicable after this SI is made – to inform:
- (c) registration officers in England,
 - (d) registration officers for elections of police and crime commissioners for police areas in Wales,
 - (e) the Chief Electoral Officer for Northern Ireland, and
 - (f) the Electoral Commission.

8. Applicable Guidance

- 8.1 The EC provide detailed guidance for EROs on running electoral registration. DLUHC has worked closely with the EC in the development of that guidance with it expected to be completed and published before implementation from 7 May 2024.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact on business, charities or voluntary bodies. There is no, or no significant, impact on the public sector and any additional administrative burden on Electoral Registration Officers (EROs) will be funded by New Burdens Funding.
- 9.2 A full Impact Assessment was carried out for both the primary legislation – the Elections Act 2022 - and secondary legislation - The Representation of the People (Franchise Amendment and Eligibility Review) Regulations 2023 - to which this SI relates. These are published on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

- 9.3 There is no, or no significant, impact on business, charities or voluntary bodies.
- 9.4 The legislation does not impact small or micro businesses.
- 9.5 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring this legislation is to follow the requirements set out in Section 62 of the Elections Act 2022. Clause 62 states that the Secretary of State must, within five years, prepare and publish a report on the operation of this Act and lay a copy before Parliament.
- 10.2 The instrument does not include a statutory review clause.
- 10.3 The impact of this measure will be monitored as part of reforms to the Electoral System under the Electoral Integrity Programme, following the Elections Act 2022.
- 10.4 Additionally, to ensure transparency with regard to the implementation of the franchise change, related legislation (the Representation of the People (Franchise Amendment and Eligibility Review) Regulations 2023) requires EROs in England and Wales to report on the operation of certain processes as set out in that legislation by reporting certain anonymised data to the Electoral Commission (EC). The Secretary of State for Levelling Up, Housing and Communities will use existing powers to require the EC to prepare a report on EUVCR implementation and present it to Parliament.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 None.

12. European Convention on Human Rights

- 12.1 The Parliamentary Under Secretary of State for Local Government has made the following statement regarding Human Rights:

“In my view the provisions of the Representation of the People Act 1983 (Amendment of Schedule 6A) Regulations 2024 are compatible with the Convention rights.”

13. The Relevant European Union Acts

This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”). It does however relate to the withdrawal of the United Kingdom from the European Union because previous EU citizens voting rights were granted as a consequence of the UK’s membership of the UK. Parliament has already resolved by way of the Elections Act 2022 that the automatic right of European citizens have to vote and stand in local polls in the UK was not one which could continue.