

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT MAYORAL AND POLICE AND CRIME
COMMISSIONER ELECTIONS, RECALL PETITIONS
AND REFERENDUMS (BALLOT SECRECY,
CANDIDATES AND UNDUE INFLUENCE)
REGULATIONS 2023

DRAFT REPRESENTATION OF THE PEOPLE
(FRANCHISE AMENDMENT AND ELIGIBILITY
REVIEW) REGULATIONS 2023

DRAFT REPRESENTATION OF THE PEOPLE
(POSTAL AND PROXY VOTING ETC.)
(AMENDMENT) REGULATIONS 2023

DRAFT LOCAL ELECTIONS (NORTHERN
IRELAND) ORDER 2023

DRAFT REPRESENTATION OF THE PEOPLE AND
RECALL PETITION (NORTHERN IRELAND)
(AMENDMENT) REGULATIONS 2023

Tuesday 12 September 2023

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Saturday 16 September 2023

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The Committee consisted of the following Members:

Chair: JAMES GRAY

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| † Butler, Rob (<i>Aylesbury</i>) (Con) | † Lewer, Andrew (<i>Northampton South</i>) (Con) |
| † Crouch, Tracey (<i>Chatham and Aylesford</i>) (Con) | † Maclean, Rachel (<i>Minister of State, Department for Levelling Up, Housing and Communities</i>) |
| † Duguid, David (<i>Banff and Buchan</i>) (Con) | Osamor, Kate (<i>Edmonton</i>) (Lab/Co-op) |
| † Eshalomi, Florence (<i>Vauxhall</i>) (Lab/Co-op) | † Paisley, Ian (<i>North Antrim</i>) (DUP) |
| † Everitt, Ben (<i>Milton Keynes North</i>) (Con) | † Thomas, Derek (<i>St Ives</i>) (Con) |
| Foy, Mary Kelly (<i>City of Durham</i>) (Lab) | † Wakeford, Christian (<i>Bury South</i>) (Lab) |
| † Fuller, Richard (<i>North East Bedfordshire</i>) (Con) | |
| † Hunt, Tom (<i>Ipswich</i>) (Con) | Paul Owen, <i>Committee Clerk</i> |
| † Johnson, Kim (<i>Liverpool, Riverside</i>) (Lab) | |
| † Largan, Robert (<i>High Peak</i>) (Con) | |
| † Lavery, Ian (<i>Wansbeck</i>) (Lab) | † attended the Committee |

Fourth Delegated Legislation Committee

Tuesday 12 September 2023

[JAMES GRAY *in the Chair*]

Draft Mayoral and Police and Crime Commissioner Elections, Recall Petitions and Referendums (Ballot Secrecy, Candidates and Undue Influence) Regulations 2023

9.25 am

The Minister of State, Department for Levelling Up, Housing and Communities (Rachel Maclean): I beg to move,

That the Committee has considered the draft Mayoral and Police and Crime Commissioner Elections, Recall Petitions and Referendums (Ballot Secrecy, Candidates and Undue Influence) Regulations 2023.

The Chair: With this it will be convenient to consider the draft Representation of the People (Franchise Amendment and Eligibility Review) Regulations 2023, the draft Representation of the People (Postal and Proxy Voting etc.) (Amendment) Regulations 2023, the draft Local Elections (Northern Ireland) Order 2023 and the draft Representation of the People and Recall Petition (Northern Ireland) (Amendment) Regulations 2023.

Rachel Maclean: It is a great pleasure to serve under your chairmanship, Sir James.

The Chair: Order. It is very kind of you, but I am not Sir James—perhaps one day; you never know. Unless you know something that I do not, just Mr Gray will be fine.

Rachel Maclean: Thank you for correcting me, Mr Gray. Clearly there is something wrong with the universe; let us hope that it is now listening to my plea. It is a pleasure both to serve under your chairmanship and to bring forward these important regulations.

The Government are committed to protecting the integrity of our democratic process, and we have delivered on that commitment. Last year, Parliament passed the Elections Act 2022, which includes safeguards to prevent individuals from exploiting the absent voting process and stealing votes. Today I am delighted to bring forward five statutory instruments that flow from that Act. I will talk through each instrument in detail, turning first to the draft Representation of the People (Postal and Proxy Voting etc.) (Amendment) Regulations 2023.

The Elections Act introduced a requirement to reapply for a postal vote at least every three years in Great Britain, as a result of which identifiers—in particular, the elector's signature—will also be updated. This will help electors to stay alert about arrangements they have in place, ensure that a person's eligibility to vote by post is reviewed on a regular basis, and reduce the risk of redundant postal ballots being issued. I appreciate that it will mean a change for long-term postal voters, but empowering them to stay informed and in control of-

their vote is a positive step. The measure will help prevent voters from being unduly pressured into having a postal vote and using it under duress. To make the transition as smooth as possible, this statutory instrument allows existing long-term postal voters' arrangements in Great Britain to continue until 31 January 2026, giving them more time to make a fresh application under the new system. Electoral registration officers will be required to make those whose postal vote is due to expire aware in advance and outline the new application process.

The instrument also introduces a limit to the number of electors for whom a person may act as a proxy. That limit is four, of which no more than two can be domestic electors—that is, an elector who is not registered as an overseas or service voter. The regulations will update all relevant prescribed forms to make sure the new limits are set out. Two of the instruments that I will turn to shortly will implement this limit in Northern Ireland. There is a concern that under existing arrangements, electors can be coerced into appointing a proxy to control how they vote. The new arrangements will ensure that the scope for fraud is reduced by limiting the number of electors that a person may act as a proxy for.

Ian Lavery (Wansbeck) (Lab): Will the Minister clarify a point? Is there any Government evidence to prove that there has been interference with proxy and postal voters? It seems to me that the change to the legislation is based on something. Is there any tangible evidence?

Rachel Maclean: That is a valid question. The hon. Gentleman will recall that there have been multiple parliamentary debates in both Chambers on the principles of the Elections Act. That Act was passed by both Houses and we are now implementing these detailed proposals. I refer him to those debates for much more information than I am able to provide in this narrowly focused Committee.

The regulations also introduce an identity check at the point of application or reapplication for a postal or proxy vote, mirroring similar checks that are already in place in Northern Ireland. The elector will be required to provide their national insurance number, which will be checked against Department for Work and Pensions data. Where the elector cannot provide that information, they will need to give a reason as part of the application. Where an individual does not have a national insurance number, the electoral registration officer may request other specified documentary evidence or an attestation to demonstrate their identity.

In addition, we are committed to ensuring that our elections are modern and accessible by creating a new digital route for electors in Great Britain to apply online to vote by post or by proxy. The new digital system will remove the reliance on cumbersome paper-based processes and will operate similarly to the register to vote service, passing absent vote applications on to the relevant electoral registration officers for processing. The revisions of postal and proxy rules will apply to all elections reserved to the UK Government in Great Britain, as will the online application service.

Ian Paisley (North Antrim) (DUP): We already have this digital process in Northern Ireland, as the Minister knows. It is very good, but there is an issue; when

someone loses their digital number, it is not like resetting a lost password on a computer—the person actually has to make contact with the Electoral Office for Northern Ireland and it can take days before that digital number is returned to them. Is there any way of speeding up that process or enabling instantaneous access to a digital number, given that if it is the day before the election, that person essentially loses their vote?

Rachel Maclean: I thank hon. Gentleman for raising that very relevant point. Of course, all of us in this place are deeply concerned with those practicalities of voting. We have all been knocking on doors and have all experienced glitches in systems, which is why we are making improvements. I am sure that he will be aware that I am not normally the Minister leading on this policy area. I am standing in for the Under-Secretary of State for Levelling Up, Housing and Communities, my hon. Friend the Member for Bishop Auckland (Dehenna Davison), who is unfortunately not well today, but I am happy to pass that request to her to see whether she can continue to work with him and the devolved Administration to tackle some of the problems that he has rightly raised.

The proxy voting rules will also apply in Northern Ireland and the digital service will be introduced in Northern Ireland at a later time. Two of the instruments that I bring before the Committee—the draft Local Elections (Northern Ireland) Order 2023 and the draft Representation of the People and Recall Petition (Northern Ireland) (Amendment) Regulations 2023—make provisions that are specific to Northern Ireland elections. It is necessary to split the provisions into two instruments, as Northern Ireland local elections changes must be made by a separate Order in Council. In addition to implementing the proxy voting limit to a maximum of four people, and a number of smaller measures to ensure consistency across elections and recall petitions, the two statutory instruments relating to Northern Ireland also make two Northern Ireland specific changes.

The Elections Act places a duty on the chief electoral officer to provide dates of birth lists to polling stations in Northern Ireland for the purposes of checking a voter's or proxy's exact date of birth in specific circumstances. These instruments ensure the protection of the sensitive personal information that the lists contain, so that only the police and the courts may access them. In a further Northern Ireland specific measure, the existing provisions allowing retention of entries on the Northern Ireland register following a canvass is being extended. This will avoid a cliff-edge loss of electors from the register. Data checking has given the chief electoral officer a high degree of confidence that the voters concerned are entitled to remain on the register, and the Electoral Commission is supportive of extending the period of retention.

I turn to the EU voting and candidacy rights instrument, the draft Representation of the People (Franchise Amendment and Eligibility Review) Regulations 2023. The Elections Act amended the franchise to reflect the UK's new relationship with the EU and protect the rights of UK citizens living in EU countries, and this moved us to the principle of a mutual granting of rights through agreements with individual EU member states. Qualifying EU citizens from EU member states that have bilateral agreements with the UK will have the right to vote and stand in relevant elections.

We also preserve the existing rights of all EU citizens who choose to make the UK their home prior to the end of the implementation period. As such, EU citizens with retained rights will continue to have the right to vote and stand. *[Interruption.]* I would like to add for the record that it is good to welcome the shadow Minister, the hon. Member for Vauxhall to her place. I know she has missed my opening remarks, but she can refer to *Hansard* to see what has been read into the record. The long-standing voting rights of Irish citizens remain unchanged. Likewise, the voting rights of Maltese and Cypriot citizens, as Commonwealth citizens, are not affected by these changes.

On ongoing registration, this instrument provides for a new registration process for EU citizens, which includes clear information about the new eligibility criteria for electors. Persons applying under the retained rights criteria will have to make a legal declaration that they have been legally resident in the UK since the end of the implementation period. Registration officers will be able to accept that declaration as sufficient evidence of eligibility, or if they deem it necessary, they will be able to require further information and evidence from the individual to make a determination.

Electoral registration officers have a legal duty to ensure that the electoral register remains accurate, so the instrument requires them to conduct a one-time review to determine the eligibility of all registered EU citizens. The bespoke eligibility review process is designed to be fair and transparent for review subjects, and to minimise burdens on registration officers. As far as possible, it has been based on, and benchmarked against, existing practice and processes.

Initially, registration officers will use data already available to them to confirm an elector's continued eligibility without the need for an elector to take any action. Where a registration officer is unable to confirm eligibility using existing data, the instrument requires them to contact the elector to request the information necessary to determine eligibility. In the event of no response, a registration officer must make at least three attempts to contact the elector in writing and at least one attempt to contact the elector in person before they may determine them to be ineligible. All those reviewed will be notified of the franchise change and the review outcome, with the contents of all review communications prescribed for consistency.

Where a person is deemed ineligible and removed from the register on the basis of non-response, they will be invited to reapply if they believe they are eligible to do so. We anticipate that the end-to-end review process will take up to three months to complete. Registration officers will have a nine-month implementation window, from 7 May 2024 to 31 January 2025, to undertake the one-time review. The SI requires registration officers to report on the operation of the review process to the Electoral Commission upon completion.

The instrument will apply only to polls that are reserved to the UK Government. That includes UK parliamentary elections, all local elections in England, and police and crime commissioner elections in England and Wales. A separate instrument will apply the franchise changes to Northern Ireland elections, and that was laid in the House on 4 September.

I turn to the draft Mayoral and Police and Crime Commissioner Elections, Recall Petitions and Referendums (Ballot Secrecy, Candidates and Undue Influence)

[Rachel Maclean]

Regulations 2023. This instrument is largely technical in nature and updates the relevant electoral conduct rules to implement measures in the Elections Act 2022 and the Ballot Secrecy Act 2023.

The Elections Act updated the existing offence of undue influence for reserved elections and referendums, including UK parliamentary and local government elections, and all elections in Northern Ireland. The revised offence better protects voters from improper influences to vote in a particular way, or to not vote at all. It also provides clearer legal drafting to assist authorities in enforcing the offence. The purpose of the regulations is to apply the updated offence to police and crime commissioner elections, recall petitions, local authority referendums and neighbourhood planning referendums.

Political intimidation and abuse have no place in our society, which is why part 5 of the Elections Act introduced a new disqualification order aimed at offenders who intimidate those who participate in public life. The order introduces a five-year ban on standing for or holding public office. The Elections Act also extended the powers of returning officers to hold a nomination paper invalid where a candidate is disqualified under the new order, and requires candidates to declare that they are not disqualified under the order. The changes applied to Northern Ireland, local and UK parliamentary elections.

The Act also amended the relevant vacancy rules, including for UK parliamentary elections, to reflect the timing of vacancies occurring as a result of the new order and to ensure that those disqualified vacate office. The SI replicates the changes for nomination for police and crime commissioner elections as well as local and combined authority mayoral elections, and updates the vacancy rules for combined authority mayors.

In addition, the Elections Act introduced a new measure to permit greater flexibility in the use of commonly used names by candidates on nomination and ballot papers. The change means that candidates can use their middle name as a commonly used name and amends the existing rules for UK parliamentary elections, elections to the Northern Ireland Assembly and local elections in Northern Ireland. The instrument makes the same change to the conduct rules for local and combined authority mayoral elections in England, and police and crime commissioner elections in England and Wales. It also amends the nomination paper completed by candidates at those polls to reflect the new provisions.

I now turn to the provisions concerning the Ballot Secrecy Act 2023; I pay tribute to my hon. Friend the Member for Peterborough (Paul Bristow)—I had thought he was behind me, but in fact he is not in the room—for his work on this important new measure. The 2023 Act introduced two new offences: the first, for a person to be with another person at a polling booth; and the second, for a person to be near a polling booth while another person is at that booth—with the intention, in both cases, of influencing that other person to vote in a particular way or to refrain from voting. The Act, which applies to UK parliamentary elections and local elections in England, as well as elections in Northern Ireland, aims to provide polling station staff with a firmer basis on which to challenge suspected inappropriate behaviour in polling stations.

The provisions complete the implementation of the Act by extending the new offence to police and crime commissioner elections in England and Wales, MP recall petitions across the UK, and local government, council tax and neighbourhood planning referendums in England. I hope that, in setting out the details of these three statutory instruments, I have enabled the Committee to appreciate their careful and considered design. I commend them to the Committee.

9.40 am

Florence Eshalomi (Vauxhall) (Lab/Co-op): I apologise for my lateness, Mr Gray; as a London MP, I will be contacting the Mayor of London about Transport for London services. I also apologise to the Minister for having missed part of her introduction, but I thank her for it.

For the sake of brevity, I shall speak to all the regulations together. We do not seek to refight the battles that took place over aspects of the regulations during the passage of the Elections Act 2022. However, as the new shadow Minister, I put on the record that I share the concerns outlined by my predecessors during those debates—particularly the ones about time limiting absentee voting methods and the confusion that those may cause voters who rely on an absentee ballot to cast their vote.

The Minister will be pleased to note, though, that we welcome the first set of regulations. I share her concerns. Undue influence or any practice involving intimidation have no place in our voting system. If we want to call our elections free and fair, we must act proactively and clearly to stop those who seek to unfairly influence how others vote. It is right that we update the definition of “undue influence” to accommodate a modern understanding of the phrase in the statute book. The current law was brought into force 40 years ago, and 100% of the respondents to the White Paper “Protecting the Debate” agreed that a clearer definition should be adopted.

In addition, we welcome provisions to ensure that disqualification orders are effectively enforced and that those served with them cannot stand in relevant elections. We also support the implementation of the Ballot Secrecy Act to the elections in this regulation. Alongside that, we welcome clarity on whether a commonly used name can be used on nomination papers. We understand the need to update the law to comply with section 15 and schedule 8 of the Elections Act on EU citizens’ voting rights. Those provisions are, of course, brought into force by the second statutory instrument laid before us today, which would amend our franchise in line with our exit from the EU and the lack of voting rights as part of the withdrawal agreement.

As a principle, Labour believes that people who contribute to society, work hard and pay their taxes should have some sort of say in decisions being made for their community. This is about not just who can vote, but devolving power to communities so that they have a say over local decisions. Current rights give EU citizens the power to vote and stand in local elections, regardless of immigration-based eligibility criteria. However, we do recognise that the status quo around decision making cannot continue following our departure from the EU, and we will not oppose the regulation today.

Finally, the third statutory instrument would bring in changes regarding postal and proxy voting, otherwise known as absentee voting. As I previously stated, we have issues regarding the implementation of a three-year time limit on postal voting, which this instrument helps to bring into force, as set out in the Representation of the People (England and Wales) Regulations 2001. I note that the Minister has stated some timelines, but I think it is fair to say there will likely be some confusion for many who are accustomed to the current voting system, and that the unexpected lapse could inadvertently result in them becoming disenfranchised. I understand that the regulations will bring in a requirement to notify the absentee voter about the expiry of a postal vote and when it will come to an end, but that may not be enough. The Minister mentioned some dates—May 2024, to 2025. Will she also clarify how the work will be carried out? I fear that the changes could be easy for people to miss.

The changes will place an increased workload on election workers, who do a fantastic job up and down the country, making sure that our elections are run smoothly. The Association of Electoral Administrators is already struggling due to the litany of recent changes combined with the staffing crisis, and there are concerns that these new requirements could make the situation even worse. I urge the Government to think carefully about those concerns and to ensure that our elections continue to run smoothly.

As called for in Labour's new clause 16, tabled during Committee stage of the Elections Bill, we welcome the modernisation of the absentee voting system via a new online digital system, as this will help to increase the accessibility of postal and proxy voting, enfranchising people across the country by providing easier access to the absentee voting system. However, the devil will be in the detail when it comes to the implementation of the new online system. Will the Minister briefly update us on its progress and inform the Committee when it will be ready to launch?

The final two amendments relating to Northern Ireland are uncontroversial implementations of the Elections Act 2022, and we do not seek to oppose them.

9.46 am

Ian Paisley: Protecting the democratic framework of our country is essential, so these are welcome measures. I am delighted that the both the Government and the Opposition recognise the importance of tightening up the regulations to protect the integrity of the electoral system.

I notice that there is a reliance on data protection in the Northern Ireland measures. Obviously, that has been brought to the fore in recent weeks by the massive data leaks that we have had in Northern Ireland. I am sure it will come as a shock to the Committee that the advice being given to police officers in Northern Ireland and to general staff who work in police offices includes that the best way to protect their identity is to remove themselves from the electoral register. That is appalling. We have to do some work to ensure that people know that they can register to vote and have their name removed from the publication of the register so that they are protected. Advising people that they should remove themselves totally from the electoral register is really worrying in this day and age. They should not be

encouraged to do that; they should be encouraged to stay on the electoral register and exercise their democratic franchise as they so choose.

At the last general election—I made this point to the Minister earlier—thousands of people were denied a vote because of problems with digital registration, and that needs to be sorted out. It is not an avalanche of a problem, but we have identified where the problem rests and it should be fixed. We have made representations to the Electoral Office of Northern Ireland about the confusion and lack of awareness caused by the digital registration number process, and have made representations to the commission and to that office regarding the high numbers of those refused postal applications due to missing DRNs or digital registration numbers for the past couple of elections. People lose passwords; it is a natural thing. Maybe they are only voting once every five years, and do not realise how important it is to protect and keep that DRN safe for future elections. We have asked the Electoral Commission to make that number more readily and easily available to a registered person if they do happen to lose it, as losing that number should not be allowed to stand in the way of them exercising their democratic right.

Generally, we welcome the tightening up of the regulations. I am sorry that there is nothing in them regarding an electoral identity card. I know that parties here oppose that, but it was imposed in Northern Ireland by the last Labour Government, and it is an excellent system. Having an electoral identity card allows people immediate access to their vote and parties here should genuinely consider such provision at a future time.

9.49 am

Rachel Maclean: It is a pleasure to respond to the shadow Minister, the hon. Member for Vauxhall, and the hon. Member for North Antrim. I thank the shadow Minister for her constructive remarks, and for her general support for our shared aim of ensuring that our elections are free and fair and that we protect them from abuse by anyone who wants to disrupt them—surely a vital task in this day and age.

The shadow Minister asked some detailed questions about the portal for the online voter application system. I assure her that we have worked closely with everybody involved in getting that up and running, but she is right to say that we need to be concerned about and get right the practical impacts. The digital service will go live when the regulations come into force. It is currently undergoing significant testing before it goes live, as we need to learn lessons from the process and ensure that it is fit for purpose. I set out in my earlier remarks how existing postal voters will transition to the new arrangements. The objective is to make applying for an absent vote more efficient for both electors and administrators; there is no difference in the principle of applying to register to vote, which we all agree and accept has been an established feature of our democracy for a long time.

It is important that the message goes out from this place that the measures will not—and there is no evidence that they will—disadvantage anybody who wishes to take part in our democracy. The provisions have been agreed on by both Houses and it is important that we send that message again today. We believe that these

[Rachel Maclean]

processes will bring time-saving benefits to administrators, and that may bring a welcome reduction in costs for those services. We anticipate that administrators will be required to process fewer paper forms as a result of the availability of the online application route. I assure the shadow Minister that grant funding was provided to local authorities in August to initiate the implementation phase of the policies, and further grant funding will be provided in April 2024 ahead of the May 2024 elections. Although we do not think the funding will be insufficient, but if it is—for example, if application volumes are higher than anticipated—local authorities will be able to apply for further funding via a justification-led bid process later in 2024.

I commend the instruments to the Committee and thank Members for their consideration of them.

Question put and agreed to.

DRAFT REPRESENTATION OF THE PEOPLE (FRANCHISE AMENDMENT AND ELIGIBILITY REVIEW) REGULATIONS 2023

Resolved,

That the Committee has considered the draft Representation of the People (Franchise Amendment and Eligibility Review) Regulations 2023.—(Rachel Maclean.)

DRAFT REPRESENTATION OF THE PEOPLE (POSTAL AND PROXY VOTING ETC.) (AMENDMENT) REGULATIONS 2023

Motion made, and Question put,

That the Committee has considered the draft Representation of the People (Postal and Proxy Voting etc.) (Amendment) Regulations 2023.—(Rachel Maclean.)

The Committee divided: Ayes 10, Noes 4.

Division No. 1]

AYES

Butler, Rob	Largan, Robert
Crouch, Tracey	Lewer, Andrew
Everitt, Ben	Maclean, Rachel
Fuller, Richard	Paisley, Ian
Hunt, Tom	Thomas, Derek

NOES

Eshalomi, Florence	Lavery, Ian
Johnson, Kim	Wakeford, Christian

Question accordingly agreed to.

DRAFT LOCAL ELECTIONS (NORTHERN IRELAND) ORDER 2023

Resolved,

That the Committee has considered the draft Local Elections (Northern Ireland) Order 2023.—(Rachel Maclean.)

DRAFT REPRESENTATION OF THE PEOPLE AND RECALL PETITION (NORTHERN IRELAND) (AMENDMENT) REGULATIONS 2023

Resolved,

That the Committee has considered the draft Representation of the People and Recall Petition (Northern Ireland) (Amendment) Regulations 2023.—(Rachel Maclean.)

9.56 am

Committee rose.