

# ELECTIONS BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Elections Bill as brought from the House of Commons on 18 January 2022 (HL Bill 96).

- These Explanatory Notes have been provided by the Department for Levelling Up, Housing and Communities in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 This Bill makes new provision for and amends existing electoral law to ensure that UK elections remain secure, fair, modern, inclusive and transparent.
- 2 The Bill will allow the Government to meet some of its 2019 manifesto commitments, including to “protect the integrity of our democracy, by introducing identification to vote at polling stations, stopping postal vote harvesting and measures to prevent any foreign interference in elections” and to “make it easier for British expats to vote in Parliamentary elections, and get rid of the arbitrary 15-year limit on their voting rights.”
- 3 The Bill is in seven parts.
- 4 Part 1 introduces new measures to strengthen the integrity of the electoral process, including: a requirement for voters to show an approved form of photographic identification before collecting their ballot paper to vote at a polling station in a UK parliamentary election in Great Britain; and new safeguards for postal and proxy voting relating to the period for which a person may hold a postal vote, the handling and handing in of postal votes by persons other than the voters to whom they are issued, how many electors a proxy voter may act on behalf of, and extending secrecy provisions to postal and proxy voting. It also clarifies and updates the law on the undue influence of electors, and on assistance available to voters with a disability, and changes the voting system for Police and Crime Commissioners in England and Wales and directly-elected mayors in England to the Simple Majority voting system (also known as “First Past the Post”). Part 1 further contains provisions about applications relating to electoral registration, applications to vote by post or proxy, and applications for particular kinds of documents such as electoral identity documents. It also introduces the power to remove signature requirements for post or proxy applications and the power to make provisions about unique reference numbers for elections in Northern Ireland.
- 5 Part 2 removes the 15 year limit on the exercise of voting rights currently placed on British electors living overseas, and makes amendments to the registration process, including how an applicant’s identity and connection to a UK address will be verified. It also lays out the new rules for voting and candidacy eligibility of European Union citizens voting and standing in local elections in Northern Ireland, England, and PCC elections in England and Wales following the UK’s departure from the EU.
- 6 Part 3 amends current provisions for the Parliamentary accountability of the Electoral Commission, by: introducing a new Strategy and Policy Statement to be approved by Parliament; amending the functions and membership of the Speaker’s Committee on the Electoral Commission; and amending the Electoral Commission’s powers to expressly prevent them from bringing criminal prosecutions in England, Wales or Northern Ireland, which is to maintain the current position in which the Electoral Commission does not bring prosecutions.
- 7 Part 4 amends the law about political finance and expenditure in elections, including by clarifying the rules on notional spending, strengthening rules so that all third-party spending is restricted to UK-based entities and eligible Overseas Electors only, and increasing transparency around third-party campaigning. It also introduces a new lower tier of third-party campaigners subject to reduced regulation and joint campaigning rules for political parties and third parties campaigning as part of a plan with a common purpose. It also makes provision for changes to the registration of political parties and prohibiting parties and campaigners from unfairly expanding their spending limits.
- 8 Part 5 introduces a new disqualification order which a court must impose, unless the court considers it unjust to do so, if a person is convicted of an intimidatory criminal offence motivated by hostility towards a candidate, future candidate, campaigner, substitute or

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nominee (in Northern Ireland), or holder of a relevant elective office. The effect of a disqualification order is that the person will be disqualified from standing for, being elected to, and holding any relevant elective office for five years.

- 9 Part 6 introduces a new requirement for digital campaigning material to display a digital imprint, with the name and address of the promoter of the material or any person on behalf of whom the material is being published (and who is not the promoter).
- 10 Part 7 makes miscellaneous and general provision.

## Policy background

### Voter Identification

- 11 Under the present voting procedure rules, voters in England, Scotland and Wales are, at polling stations, asked to confirm (i) if they are the person registered at a particular address on the electoral register and (ii) if they have already voted. This is effectively the only check that takes place related to the identity of electors. The law requires polling clerks to call out the name of electors before they are issued with a ballot paper so objections can be made if the person is identified by someone else present as not being who they claim to be. This is no longer consistently done and, in any event, people present in a polling station are no longer likely to know everyone else in their local area. These measures are therefore outdated and no longer fit for purpose as a means of checking the identity of voters and avoiding personation. Meanwhile, in Northern Ireland voters have been required to produce personal identification before voting in polling stations since 1985, with photographic identification being required since 2003.
- 12 In August 2016, Sir Eric (now Lord) Pickles as the Government's Anti-Corruption Champion published a review into electoral fraud entitled [Securing the Ballot](#) ("the Pickles Report")<sup>1</sup>, issuing a number of recommendations designed to address electoral fraud and to strengthen the integrity and security of voting.
- 13 In the report, Lord Pickles noted that the statutory questions which may be asked of voters under the current legislation were both basic and optional and in practice rarely used in polling stations. The report also points out that people could be 'coached' to commit personation (assuming the identity of another person with the intention to deceive) and could overcome that check. As a result, one of the final recommendations made in the review was for the Government to consider the options for electors to have to produce personal identification before voting at polling stations in Great Britain, and that the Government may wish to pilot different methods of identification.
- 14 This recommendation was supported by and echoed other recommendations advanced by the Electoral Commission in its 2014 report [Electoral fraud in the UK](#)<sup>2</sup>, which concluded that there should be a requirement for electors across Great Britain to present an acceptable form of identification prior to voting at the polling station. In addition, in reports of their observation of the 2010 and 2015 UK Parliamentary General Elections, the Organisation for Security and Co-operation in Europe's (OSCE) Office for Democratic Institutions and Human Rights

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<sup>1</sup> *Securing the Ballot - Report of Sir Eric Pickles' review into electoral fraud*; Sir Eric Pickles, August 2016  
<https://www.gov.uk/government/publications/securing-the-ballot-review-into-electoral-fraud>

<sup>2</sup> *Electoral fraud in the UK Final report and recommendations*; Electoral Commission, January 2014  
[https://www.electoralcommission.org.uk/sites/default/files/pdf\\_file/Electoral-fraud-review-final-report.pdf](https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Electoral-fraud-review-final-report.pdf)

(ODIHR) recommended the introduction of more robust mechanisms for identification of voters, citing the use of voter identification in Northern Ireland as an example.

- 15 The Government accepted the recommendation and ran pilot schemes trialling different methods of identification, which took place during local elections in England in May 2018 and 2019. Data from the pilot evaluations in 2018 and 2019 showed that the requirement to show identification increased voter confidence in the elections process. The Conservative Party manifestos of 2017 and 2019 committed to introducing voter identification for voting at polling stations. The Bill delivers this commitment, and on 6 January 2022 the Government published a [policy statement](#)<sup>3</sup> which sets out more detail on the implementation plans for voter identification policy.
- 16 As stated above, Northern Ireland has had the requirement to produce identification in place since 1985. In respect of Northern Ireland the Bill makes some amendments to the voter identification process by requiring the Chief Electoral Officer (who is an independent Crown appointment, and the Returning Officer and Registration Officer for all 18 constituencies in Northern Ireland) to provide every polling station in Northern Ireland with lists containing the dates of birth of all voters allotted to vote at that station. This will facilitate compliance with an existing legal duty on polling station staff in Northern Ireland to check the dates of birth of voters in cases where the apparent age of the voter, compared to the date supplied at registration or on the proxy vote application form, raises a reasonable doubt as to whether the voter is the elector or proxy they represent themselves to be. The Bill also mirrors for Northern Ireland some of the provisions being introduced for Great Britain.

## Online service for applying for an Absent vote

- 17 As it stands, it is not possible for electors to apply for an absent vote (postal and proxy) online. Electors who wish to apply for an absent vote must do so via a paper form, which they must submit to their local Electoral Registration Officer (ERO) by post (although some EROs also accept scanned and emailed paper forms – except in Northern Ireland). This is in contrast to the process by which an individual can apply to register to vote online, using the Register to Vote digital service, which has made registering to vote easier and more convenient.
- 18 The Bill amends existing legislation to provide the appropriate enabling powers to allow detailed provisions to be set out in secondary legislation for an online service through which applications for an absent vote can be made. It will also enable the identity of absent vote applicants in Great Britain to be verified. The identity verification process will apply to paper applications as well as to applications made online.
- 19 In Northern Ireland there is an existing identity verification process in place for paper absent vote applications. The Bill makes provision to allow digital identity verification to be carried out on paper and online applications in any future online service and would allow changes to be made to the existing process to facilitate online applications.
- 20 It is intended that the measures, including the introduction of identity verification in Great Britain, will make the absent vote application process more secure, resilient and efficient for both electors and electoral administrators. Digitising the absent vote application process will also benefit overseas electors who typically vote by post or proxy; and will complement the Bill measures that will remove the current 15 year limit for the registration of overseas electors.

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<sup>3</sup> *Protecting the integrity of our elections: Voter identification at polling stations and the new Voter Card*, The Department for Levelling Up, Housing and Communities, January 2022  
<https://www.gov.uk/government/publications/voter-identification-at-polling-stations-and-the-new-voter-card/protecting-the-integrity-of-our-elections-voter-identification-at-polling-stations-and-the-new-voter-card>

## Postal and Proxy Voting

- 21 The 2016 Pickles Report also considered the current arrangements in relation to postal and proxy voting (collectively called 'absent' or 'remote' voting) at elections.
- 22 The report noted that the existing availability of postal voting on demand in Great Britain encouraged many legitimate electors to use their vote effectively and engage with the democratic process and concluded that it should be allowed to continue. At the same time, it considered how the security of current absent voting arrangements could be strengthened and made a number of recommendations to achieve this.
- 23 This Bill implements recommendations made in the report to improve the integrity and robustness of both postal and proxy voting.
- 24 In particular, under the present system, there is no statutory prohibition on political campaigners handling postal votes belonging to others. The Pickles Report noted that this left scope for the integrity of postal voting to be undermined and recommended that completed postal ballot packs should only be handled by an individual who is a family member or designated carer of the voter. The Bill introduces a ban and a new criminal offence on the handling of a postal ballot paper/voting document that was issued to someone by a political campaigner, and allows a limit to be set (the number to be specified in secondary legislation) on the number of electors on behalf of whom a person may hand in postal votes to a Returning Officer or at a polling station.
- 25 Currently, electors in England, Scotland and Wales may apply for a postal vote either for a particular election, for a specified period of time that may cover a number of polls, or to vote by post on an indefinite basis. Electors who have a postal vote on a long-term basis are currently required to provide a fresh signature every five years to ensure the data held by Electoral Registration Officers is up to date and reduce the risk of postal votes being rejected at polls due to personal identifiers (e.g. a person's signature) no longer matching those originally given. The Pickles Report concluded that removing the ability to hold a postal vote on an indefinite basis, and instead requiring electors to reapply at specified intervals, would provide a more regular basis for review and assessment of the eligibility and veracity of applications and would strengthen the integrity of postal voting. The Bill implements this recommendation, requiring postal voters in Great Britain to re-apply every three years to continue to vote by this method.
- 26 Current rules also allow a person to act as a proxy for up to two electors and an unlimited number of close relatives in any constituency or any electoral area at a local election. Lord Pickles found that these current requirements gave potential for coercion in the appointment of proxies in areas where fraud was already an issue, and recommended limiting to two the number of electors that someone could be appointed to act as a proxy for, regardless of relationship. The Bill introduces a limit of four on the number of electors for whom, regardless of relationship, a person can act as a proxy but specifying that within the four electors, no more than two electors can be domestic electors. Domestic electors are those electors who are neither service electors nor overseas electors.
- 27 Currently, requirements protecting the secrecy of a person's vote are in place for people voting in a polling station. The Pickles Report noted the secrecy of the ballot as fundamental for voters to be able to cast their vote without pressure to vote in a specific way, and recommended that secrecy provisions be extended to those voting by proxy and through a postal vote to prevent undue influence, and assist in the prosecution of cases where the latter may have occurred. In line with this recommendation, the Bill extends secrecy provisions to postal and proxy voting.



## Undue Influence

- 28 Recent reports have recommended several improvements to the existing corrupt practice of undue influence, which is the electoral offence designed to protect electors from malicious interference and intimidation. The Pickles Report recommended that “a lower test of ‘intimidation’ than the one currently set in the Representation of the People Act 1983 should be introduced” and that “undue influence should retain a reference to spiritual / religious influence.” The Law Commissions’ [Electoral Law: a joint final report](#)<sup>4</sup>(2020) recommended that “undue influence should be restated”. The (previous) Government committed to clarifying the offence of undue influence after 100% of respondents to the [Protecting the Debate](#)<sup>5</sup> consultation (2018) agreed that the law requires greater clarity.
- 29 These recommendations and commitments also reflect some of the conclusions of the Tower Hamlets Election Court, set out in the judgment [Erlam & Ors v Rahman & Anor](#)<sup>6</sup> [2015] EWHC 1215 (QB). Commissioner Richard Mawrey concluded that “undue influence involving the threat of spiritual injury” occurred at the 2014 Tower Hamlets mayoral election, to the extent that the election had to be declared void. He also concluded that section 115 of the Representation of the People Act 1983 (“RPA 1983”) is insufficient to tackle intimidation of electors because it “does not penalise thuggish conduct at polling stations of the sort that occurred in 2014.”
- 30 The main purpose of this Bill measure is to clarify the activities which constitute undue influence in order to make the legislation easier to interpret and enforce. This is achieved by updating section 115 of the RPA 1983 - which originated in the nineteenth century - and using modern terminology. The Bill makes clear that the following activities constitute undue influence, when carried out for the purpose of forcing an elector to vote in a particular way, forcing them not to vote at all, or otherwise interfering with their free exercise of the franchise:
- a. Physical violence;
  - b. Damage or destruction to property;
  - c. Reputational damage;
  - d. Causing financial loss;
  - e. Causing spiritual injury or exerting undue spiritual pressure. ‘Undue spiritual pressure’ refers to a level of improper or inappropriate pressure which goes beyond the free expression of opinions on political or other matters that have implications for the principles of a religion;
  - f. Any other act or omission designed to intimidate a person which is not already covered above;
  - g. Any act or omission designed to deceive a person in relation to the administration of an election.
- 31 Undue influence will also continue to be a corrupt practice. As the RPA 1983 (or other legislation governing the conduct of an election, referendum or recall petition) already sets

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<sup>4</sup> *Electoral Law: A joint final report*, Law Commission and Scotland Law Commission, March 2020  
[https://www.electoralcommission.org.uk/sites/default/files/pdf\\_file/Electoral-fraud-review-final-report.pdf](https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Electoral-fraud-review-final-report.pdf)

<sup>5</sup> *Protecting the Debate: Intimidation, Influence and Information*, May 2019  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/799873/Protecting-the-Debate-Government-Response-2019.05.01.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/799873/Protecting-the-Debate-Government-Response-2019.05.01.pdf)

<sup>6</sup> *Erlam & Ors v Rahman & Anor* [2015] EWHC 1215 (QB), <https://www.bailii.org/ew/cases/EWHC/QB/2015/1215.html>

out, a person who is convicted of the corrupt practice of undue influence is liable to up to one year's imprisonment or a fine or both. This person (or a person who is named personally guilty of the corrupt practice in the report of an election court) is also incapable of being elected to or holding certain elective offices for five years; if the person already holds elective office, they would be forced to vacate that position. This Bill measure also provides that the effects of this five-year incapacity will apply consistently across the UK: this means that if a person is guilty of undue influence in relation to any electoral event in the UK, they will be incapable of being elected to or holding all relevant UK elective offices.

## Accessibility

- 32 Under current electoral law, provisions to support disabled people to vote are limited and very specific. Returning Officers are required to provide a number of items to support voters with sight loss including a large print ballot paper and a device for use by blind and partially sighted people to support them to vote at the polling station. The device has been prescribed in secondary legislation and is commonly known as the Tactile Voting Device ("TVD").
- 33 In September 2017, the Government launched a [Call for Evidence on Access to Elections<sup>7</sup>](#), asking for views on how people with disabilities experience registering to vote and voting itself with a view to considering if current measures were sufficient and to look at accessibility more broadly. In total, 256 responses were received, including from individuals, organisations, charities, NHS Foundation Trusts, sector representative bodies, and local authority teams.
- 34 The evidence received was analysed by the Government in partnership with the Government-chaired Accessibility of Elections Working Group (whose membership includes the Royal Mencap Society, Royal National Institute of Blind People, United Response, NHS, the Association of Electoral Administrators, representatives of the devolved administrations, the Electoral Commission and Scottish Assessors Association). The Government's response, published on 30 August 2018, set out key findings and recommended actions to improve the democratic participation of disabled people.
- 35 A specific action contained in the Call for Evidence considered what improvements could be made to the existing arrangements to support voters with sight loss. The responses received to the Call for Evidence included a view that the TVD was not an effective method of support for a blind or partially sighted person to vote at the polling station and that inclusion of it as a requirement in legislation worked against Returning Officers considering other options.
- 36 Current requirements also limit, to a qualified elector or a close family member aged 18 or over, who can act in the role of 'companion' to assist a disabled person to vote at a polling station. This has been highlighted through the Call for Evidence process as being a barrier to disabled people being able to obtain assistance to participate in elections as it excludes carers who are not entitled to vote in the poll.
- 37 This Bill responds to the Call for Evidence comments and replaces current limited requirements with a broader requirement for Returning Officers to provide such equipment as is reasonable to enable voters with disabilities to cast their vote. It also expands the criteria for who can act in the role of 'companion' by redefining that as someone who is aged 18 or over.

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<sup>7</sup> *Call for Evidence: Access to elections*, September 2017 <https://www.gov.uk/government/consultations/access-to-elections-call-for-evidence>

## Simple Majority Voting ('First Past the Post')

- 38 Under current legislation, elections for Police and Crime Commissioners (PCCs) in England and Wales, the Mayor of London, combined authority mayors and local authority mayors in England are held using the Supplementary Vote system where there are more than two candidates. Under this system voters have a first and second preference vote. If a candidate receives more than 50 percent of the first preference votes they are elected. If no candidate reaches a majority at the first stage, all but the two candidates with the most votes are eliminated and the second preference votes of voters whose first preference vote was cast for the eliminated candidates are allocated to the remaining candidates. The candidate with the most (first preference + second preference) votes is elected.
- 39 Under Simple Majority voting, also known as the "First Past the Post" voting system, voters have a single vote and the candidate who wins the most votes is elected. First Past the Post is used to elect Members of Parliament and local councillors in England and also applies in PCC and mayoral elections where there are only two candidates.
- 40 The Conservative Party 2019 Manifesto included the following commitment: "We will continue to support the First Past the Post system of voting, as it allows voters to kick out politicians who don't deliver, both locally and nationally." Similar commitments favouring First Past the Post were included in the 2017 Manifesto: "We will retain the first past the post system of voting for parliamentary elections and extend this system to police and crime commissioner and mayoral elections", and in the 2015 Manifesto: "We will respect the will of the British people, as expressed in the 2011 referendum, and keep First Past the Post for elections to the House of Commons." The 2011 Referendum asked voters whether or not the system for electing Members of Parliament should be changed from First Past the Post to the Alternative Vote; 67.9% of voters voted to retain First Past the Post.
- 41 The Home Secretary set out findings from the first part of the Home Office's two-part Review into the role of PCCs in a Written Ministerial Statement to Parliament on 16 March 2021 ([HCWS849](https://questions-statements.parliament.uk/written-statements/detail/2021-03-16/hcws849))<sup>8</sup>. The Statement included the following commitment: "In line with the Government's manifesto position in favour of First Past the Post, which provides for strong and clear local accountability, and reflects that transferable voting systems were rejected by the British people in the 2011 nationwide referendum, the Home Office will work with the Cabinet Office and the Ministry of Housing, Communities and Local Government to change the voting system for all Combined Authority Mayors, the Mayor of London and PCCs to First Past the Post. This change will require primary legislation, which we will bring forward when Parliamentary time allows." Part One of the Review collated views and evidence from stakeholders across policing, fire and local government as well as voluntary and community organisations. Through polling and focus groups, the Review also took account of public views and opinions.
- 42 The Bill changes the voting system used for electing PCCs, the Mayor of London and combined authority mayors from the Supplementary Vote system to First Past the Post. To ensure consistency in the voting system used for electing all directly-elected mayors in England, and deliver manifesto commitments, the voting system for electing local authority mayors in England is also changed to First Past the Post.

## Overseas Electors

- 43 The Government's 2019 manifesto included a commitment to "make it easier for British expats to vote in Parliamentary elections, and get rid of the arbitrary 15-year limit on their voting rights."

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<sup>8</sup> *Concluding Part One of the Police and Crime Commissioner Review*, Written Ministerial Statement, 16 March 2021 <https://questions-statements.parliament.uk/written-statements/detail/2021-03-16/hcws849>

- 44 The overseas franchise was created by the Representation of the People Act 1985, which first enabled British citizens resident abroad to vote in UK elections. It set a limit of 5 years from the date of last being registered or (in limited circumstances) resident in the UK. This limit was extended in 1989 to 20 years, and then reduced in 2002 to the current limit of 15 years.
- 45 Under the present system, British citizens (including British citizens who were born in Northern Ireland and identify as Irish) who have moved abroad and wish to vote in UK Parliamentary elections can apply to register as an overseas elector in the UK constituency in which they were last registered before leaving the UK, provided they were registered within 15 years of making that application. Also eligible are those who were too young to register to vote when they left the UK, if their parent or guardian was on the electoral register at the place where they were resident in the UK, subject to a 15 year limit, from when the person left the UK.
- 46 This Bill will remove the 15 year limit on expatriates' right to vote in UK Parliamentary elections and enfranchise all British citizens overseas who were previously registered or resident in the UK.
- 47 As under the current system, overseas applicants will be required to prove their identity and have their connection to the relevant previous UK address verified before they can be added to the electoral register. Applicants will be entitled to register in respect of the last UK address at which they were registered, or, if they were never registered, the last UK address at which they were resident.
- 48 The Bill will also extend the registration period for overseas electors from one year to up to three years. Electors will be able to reapply or refresh their absent vote arrangements at the same time as renewing their registration.

## European Citizens Voting and Candidacy Eligibility

- 49 At present, citizens of European Union (EU) Member States resident in England and Northern Ireland are automatically granted voting and candidacy rights in local elections, Northern Ireland Assembly elections and Police and Crime Commissioner (PCC) elections, by virtue of being EU citizens. The rights in respect of local elections were granted as a consequence of the UK's membership of the EU and were given effect by domestic legislation in 1995, following a 1994 Directive of the Council of the European Communities which required Member States to allow EU residents to vote and stand in local elections. The rights granted to European citizens in the United Kingdom were therefore reciprocated so that UK citizens living in all EU Member States were also granted local voting and candidacy rights in the respective countries. Since these rights were granted on the basis of freedom of movement, no immigration-based eligibility criteria are attached to the grant of these rights in UK domestic law.
- 50 The UK left the EU on the 31st January 2020 and the Implementation Period ended at 11pm on 31 December 2020. Now that the UK has left the EU, and with the ending of free movement and introduction of the new points-based immigration system in the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, the basis for an automatic grant of voting and candidacy rights to European citizens no longer exists. Correspondingly, individual EU Member States are now able to set their own rules for local voting rights with reference to resident UK citizens. Some EU Member States allow non-EU third country nationals to vote and stand (subject to minimum residency requirements); others do not.
- 51 The UK Government has sought agreements with EU Member States that will enable UK nationals living in those countries to vote and stand in their local elections in return for local voting and candidacy rights for citizens of these countries living in the UK. Voting and

candidacy rights agreements with Spain, Portugal, Luxembourg and Poland have already been agreed.

- 52 As a result of this Bill, EU citizens who have been living in the UK since before the end of the Implementation Period will retain their local voting and candidacy rights in England and Northern Ireland, provided they hold lawful immigration status, regardless of whether they are citizens of Member States with which the UK has voting and candidacy rights agreements. For EU citizens who arrived in the UK after this point, voting and candidacy rights will rest on the principle of a mutual grant of rights, through agreements with the respective EU Member States.
- 53 The Bill will therefore remove the existing automatic grant of voting and candidacy rights to all EU citizens, and will create two new groups:
- a. The first group, 'EU citizens with retained rights', comprises persons who have been living in the UK or Crown Dependencies since before Implementation Period Completion Day (IPCD) - 31 December 2020 - and hold lawful immigration status.
  - b. The second group, 'qualifying EU citizens', comprises citizens of those countries with which the UK has a voting and candidacy rights agreement. Such persons must also hold lawful immigration status.
- 54 When an individual meets the criteria of both groups, they will be considered as a 'qualifying EU citizen' (i.e. their eligibility for voting and candidacy rights will rest only on minimum immigration requirements - 'any leave to enter or remain') - rather than, additionally, being required to meet the 'historical residency' eligibility criteria for 'EU citizens with retained rights' (e.g. that a person must have been resident in the UK or Crown Dependencies since prior to IPCD).
- 55 These changes will not affect the voting and candidacy rights of Irish citizens, whose rights exist independently of the Republic of Ireland's membership of the EU and long predate the UK's membership. The rights of qualifying Commonwealth citizens will also not be changed by these measures. Citizens of Malta and Cyprus - which are both EU Member States and Commonwealth countries - will retain voting rights as Commonwealth citizens. In the event that Cyprus or Malta entered into a voting and candidacy rights treaty with the UK, Maltese and Cypriot citizens would benefit from the lower threshold for candidacy rights (e.g. any form of leave to remain as applies to 'qualifying EU citizens') whilst retaining all the other voting and candidacy rights granted to them as Commonwealth citizens.
- 56 These changes will apply to all UK elections and referendums which use the local election franchise and are reserved to the UK Government. They will also apply to Police and Crime Commissioner Elections in England and Wales, and to ward elections for Common Councillors in the City of London. This means that the changes will not affect any elections or referendums for which responsibility is devolved.

## The Electoral Commission

- 57 The Electoral Commission is independent of Government and reports to the UK Parliament through the Speaker's Committee on the Electoral Commission (SCEC) on its yearly estimates and accounts and its Five-Year Plan where related to the Commission's reserved functions. The Electoral Commission has a broad range of functions which are set out in the Political Parties, Elections and Referendums Act 2000 ('PPERA').
- 58 In the Scotland Act 2016 and the Wales Act 2017, areas of electoral law were further devolved. The Electoral Commission now also reports to Senedd Cymru through the Llywydd's Committee, and to the Scottish Parliament through the Scottish Parliamentary Corporate

*These Explanatory Notes relate to the Elections Bill as brought from the House of Commons on 18 January 2022 (HL Bill 96)*



Body, on its yearly estimates and accounts and Five Year Plan where related to the Commission's devolved Welsh and Scottish functions respectively.

- 59 The functions of the Speaker's Committee as a statutory committee are set out in section 2 and other provisions of the PPERA and include: overseeing the appointment of Electoral Commissioners, examining and laying before the House of Commons the Electoral Commission's Estimates and Five Year Plans, and reporting annually to the House of Commons on the exercise of its functions.
- 60 The Bill will make provision for a power to designate a Strategy and Policy Statement, which will be drafted by Government and subject to Parliamentary approval. The Electoral Commission must have regard to it in the exercise of its functions. The regulator will remain independent and will be able to depart from this guidance if it felt that was justified or if it had a conflicting statutory duty to fulfil.
- 61 The Bill will also amend the functions of the Speaker's Committee in order to further enhance the Electoral Commission's accountability to Parliament. The Committee will be granted the power to examine the Electoral Commission's compliance with its duty to have regard to the Strategy and Policy Statement introduced by this Bill.
- 62 Section 2 of the PPERA also sets out the membership of the Speaker's Committee. Two government ministers are ex officio members of the Committee, namely (following the Transfer of Functions (Secretary of State for Levelling Up, Housing and Communities) Order 2021) the Secretary of State for Levelling Up, Housing and Communities and the Minister of the Crown with responsibilities in relation to local government appointed by the Prime Minister.
- 63 Given wider commitments it has not always been possible for the Secretary of State to attend the Speaker's Committee's meetings. In practice, the Minister known as the Minister of State for Levelling Up, the Union and Constitution generally exercises functions relating to elections and the constitution on behalf of the Secretary of State, but has in the past been unable to attend Speaker's Committee meetings as only those members named in the legislation are entitled to be present.
- 64 The Bill will amend the membership of the Speaker's Committee to allow concurrent membership of the Speaker's Committee for the Secretary of State for Levelling Up, Housing and Communities and another Minister of the Crown appointed by the Prime Minister. It will also revoke the Transfer of Functions (Speaker's Committee) Order 2021 and Article 7(1)(b) and (c) of the Transfer of Functions (Secretary of State for Levelling Up, Housing and Communities) Order 2021, which performed a similar purpose and are made redundant by the Bill.
- 65 Under Schedules 19B and 19C to PPERA the Electoral Commission has civil sanctioning and investigatory powers to enforce the rules around reporting spending, donations and loans. If a suspected breach occurs, the Electoral Commission has powers to take action unless the breach involves a criminal offence for which a civil sanction is not available (or for which the Commission considers a civil sanction may not be appropriate), in which case it is handled by the police and prosecuting authority.
- 66 The Electoral Commission has publicly stated in its [Interim Corporate Plan 2020/21-2024/25](#)<sup>9</sup> its intention to develop a prosecutorial capability that would allow it to investigate and bring

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<sup>9</sup> *Interim Corporate Plan 2020/21 – 2024/25*, Electoral Commission, April 2020; <https://www.electoralcommission.org.uk/sites/default/files/2020-04/20200429-none-Electoral%20Commission%20Interim%20Corporate%20Plan.pdf>

suspected offences before the courts. This has never been explicitly agreed by the Government or Parliament.

- 67 Currently, the Crown Prosecution Service (CPS) in England and Wales, and the Public Prosecution Service (PPS) in Northern Ireland, are responsible for bringing prosecutions under electoral law. The Government wants to maintain the existing role of the CPS and PPS in enforcing electoral law by amending the Electoral Commission's powers to expressly prevent it from bringing prosecutions in England, Wales and Northern Ireland. This will not apply in Scotland where there is already a single prosecutorial authority.

## Political Finance and Notional Expenditure

- 68 The UK has a comprehensive regulatory framework which governs the spending and funding (political finance) of candidates, political parties, third-party campaigners and other campaigners. The political finance proposals in the Bill largely act as an expansion and strengthening of the existing rules outlined in the PPERA and the RPA 1983.
- 69 In 2018, the Electoral Commission published the report [\*Digital Campaigning - increasing transparency for voters\*](#)<sup>10</sup>, recommending the introduction of a requirement for political parties to declare any assets and liabilities above £500 upon registration. This Bill provides an increased level of transparency regarding a political party's financial position prior to registration. A record of assets and liabilities is already a requirement of the duty to keep accounting records under electoral law. Measures in this Bill bring forward this transparency to the point of registration.
- 70 Electoral law allows groups to register as both a political party (who may field candidates) and a third-party campaigner (campaigners that do not field candidates). Through this they can potentially increase their spending limit during a regulated period leading up to an election, as they would receive a separate spending limit for each registration. Groups not on both registers would not have access to this increased spending limit. The Bill will narrow the criteria for registering as a political party, preventing third-party campaigners registering as a political party. As a result of this change, registered political parties will not be able to access third party campaign spending limits. This will maintain the integrity of spending limits by ensuring that campaigners attempting to bypass their spending limits by appearing on both registers cannot do so.
- 71 "Notional expenditure" describes benefits in kind (property, goods, services or facilities) which are supplied free of charge or at a discount to election candidates, political parties and other campaigners which, if paid for, would constitute an election or campaign expense.
- 72 In July 2018, the Supreme Court ruled in the case of [\*R v Mackinlay and others\*](#) [2018] UKSC 42<sup>11</sup> that there is no requirement that the provision of these benefits has to be authorised by the candidate or their election agent. This has led to concerns from across the political spectrum that candidates and their agents could be liable for spending they were unaware of or not involved in, but were seen to have benefitted from. This widespread uncertainty risks a democratic chilling effect by discouraging parties from campaigning in marginal constituencies.
- 73 This Bill clarifies the law so that candidates only need to report benefits in kind which they have actually used, or directed someone else to use, and do not need to fear being responsible

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<sup>10</sup> *Digital campaigning Increasing transparency for voters*, Electoral Commission, June 2018 [https://www.electoralcommission.org.uk/sites/default/files/pdf\\_file/Digital-campaigning-improving-transparency-for-voters.pdf](https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Digital-campaigning-improving-transparency-for-voters.pdf)

<sup>11</sup> *R v Mackinlay and others* [2018] UKSC 42 <https://www.supremecourt.uk/cases/uksc-2018-0091.html>

for benefits in kind of which they had no knowledge. This clarification will also be extended to other campaigners who are subject to notional expenditure controls. Expenditure which promotes an individual candidature would continue to count towards a candidate's own spending limit.

- 74 Currently foreign third-party campaigners can legitimately spend on UK elections under the recognised third-party campaigner registration thresholds, and this activity only becomes illegal once the thresholds are passed. Only UK-based groups/individuals or registered overseas electors are permitted to register with the Electoral Commission as third-party campaigners. This Bill will remove the scope for any legal spending by foreign third-party campaigners underneath the registration threshold but above a £700 'de minimis'. Inclusion of such a provision will balance the desire to prohibit spending by foreign entities without criminalising low-level, potentially inadvertent, breaches which are unlikely to adversely impact an election. This will support the Government's 2019 manifesto commitment to "protect the integrity of our democracy, by introducing [...] measures to prevent any foreign interference in elections". It will also address some of the concerns raised in the 2019 Digital, Culture, Media and Sport (DCMS) Committee report [Disinformation and 'fake news'](#)<sup>12</sup> regarding foreign interference in UK elections.
- 75 In June 2020, the House of Lords, [Report of Session 2019-21: Digital Technology and the Resurrection of Trust](#)<sup>13</sup> recommended the introduction of a secondary registration scheme for third-party campaigners who would otherwise fall below current spending limits. This Bill will require third-party campaigners to give a notification to the Electoral Commission at a lower level of spending than is currently required, effectively creating a two-tier system for registration. This new lower tier will apply when a third-party campaigner intends to spend in excess of £10,000 on controlled expenditure during a regulated period across, or in any constituent part/s of, the UK, but below the existing country specific thresholds for registration, which act as their upper limit. All of these measures only apply to qualifying expenditure (i.e. expenditure that can reasonably be regarded as intended to promote or procure electoral success at any relevant election), not wider, non-electoral, campaigning that groups may undertake. Therefore, the lower tier third-party campaigners will be subject to the minimum of regulation necessary to ensure that they are UK-based or an eligible overseas entity.
- 76 There are existing rules which apply when one or more third parties work on a campaign together before an election, in which case the spending must be reported by all the campaigners in the joint campaign. This is to ensure that third parties cannot avoid their spending limits by registering multiple entities, or benefit from an increased spending limit when working together with another group for the same goal. These rules do not cover scenarios where political parties work with third-party campaigners. This Bill will have the effect of extending similar principles to third-party campaigners and political parties who work together on a joint campaign. Third-party campaigners and political parties who are working together on a joint campaign will both report any associated spending and identify the parties involved in the arrangement. This will ensure that campaigners are not able to bypass their spending limits using coordinated spending.

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<sup>12</sup> *Disinformation and 'fake news': Final Report*, House of Commons Digital, Culture, Media and Sport Committee, February 2019 <https://publications.parliament.uk/pa/cm201719/cmselect/cmcmds/1791/1791.pdf>

<sup>13</sup> *Digital Technology and the Resurrection of Trust*, House of Lords Select Committee on Democracy and Digital Technologies, June 2020 <https://committees.parliament.uk/publications/1634/documents/17731/default/>



## Intimidation: New Electoral Sanction

- 77 In 2017, the independent Committee on Standards in Public Life published the review [Intimidation in public life](#)<sup>14</sup>. This highlighted that candidates and campaigners faced increased intimidation and suggested that “specific electoral sanctions would reflect the seriousness of this threat.”
- 78 In 2019, following the [Protecting the Debate](#)<sup>15</sup> public consultation, the previous Government committed to “applying electoral sanctions to existing offences of intimidatory behaviour.”
- 79 In 2021, the Minister of State for the Constitution and Devolution reiterated the Government’s intention to “legislate to introduce a new electoral sanction of intimidation” in a written ministerial statement ([HCWS833](#))<sup>16</sup>.
- 80 This Bill introduces a new electoral sanction in the form of a disqualification order, which is intended to provide additional protection to those who participate in elections and contribute to the political debate, and deter individuals from carrying out acts of intimidation. The disqualification order can be imposed on a person convicted of a criminal offence motivated by hostility towards a candidate, future candidate, substitute or nominee (in Northern Ireland), campaigner or holder of a relevant elective office. The effect of the new disqualification order is a five-year disqualification from standing for, being elected to or holding certain elective offices.

## Digital Imprints

- 81 Under existing electoral law, campaigners are required to use an imprint to identify who they are and on behalf of whom they promote non-digital (i.e. printed) campaign material, such as leaflets and posters. Currently, imprints are required on printed election, referendum and recall petition material and serve to promote transparency about who is campaigning. Requiring an imprint ensures accountability in relation to these materials by making campaigners responsible for their communications and improves voter confidence. The imprint regime also assists the Electoral Commission and the police to enforce spending rules.
- 82 The rise of digital campaigning has resulted in traditional printed leaflets no longer being the dominant form of political communication. Despite the growth in digital political campaigning, imprint requirements have not been extended to digital campaign material. This represents a gap in the law that the Government is addressing through the introduction of a digital imprints regime.
- 83 In 2017, the Committee on Standards in Public Life published a report which recommended electoral law be updated to require an imprint to be included on online campaign material. Following this, the Cabinet Office launched the consultation [Protecting the Debate: Intimidation, Influence and Information](#)<sup>17</sup> in July 2018 which included a proposal to extend the requirement for an imprint to digital material. The feedback to this consultation, published in the

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<sup>14</sup> *Intimidation in Public Life: A Review*, Committee on Standards in Public Life, December 2017 <https://www.gov.uk/government/publications/intimidation-in-public-life-a-review-by-the-committee-on-standards-in-public-life>

<sup>15</sup> *Protecting the Debate: Intimidation, Influence and Information*, May 2019 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/799873/Protecting-the-Debate-Government-Response-2019.05.01.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/799873/Protecting-the-Debate-Government-Response-2019.05.01.pdf)

<sup>16</sup> *Update on tackling intimidation in public life*, Written Ministerial Statement, 9 March 2021 <https://questions-statements.parliament.uk/written-statements/detail/2021-03-09/hcws833>

<sup>17</sup> See note 15 above

Government response, indicated broad support for this proposal and in May 2019 the Government committed to introducing a digital imprints regime. To support the delivery of this commitment, in August 2020, the Government then launched the technical consultation [Transparency in digital campaigning: technical consultation on digital imprints<sup>18</sup>](#), outlining the technical proposals for the regime. The consultation closed in November 2020 and the Government's response was published on 15 June 2021.

- 84 The Bill introduces a new digital imprints regime requiring anyone paying for digital political material to be advertised to explicitly show who they are, and on whose behalf they are promoting the material. Paid material is paid-for advertising, in which costs have been incurred for the promotion or distribution of the material. Conversely, unpaid material is material for which no costs were involved in its promotion or distribution. Certain campaigners (registered political parties, candidates, future candidates, recognised third-party campaigners, referendum campaigners, holders of elected office and recall petition campaigners) will also be required to include an imprint on their unpaid material if it constitutes digital election, referendum or recall petition material.

## Legal background

- 85 The law governing the proceedings of elections and the requirements placed on those running for public office is set out in a large number of statutes. This means that the Bill refers to and amends existing primary and secondary legislation which includes:

- a. *Rules relating to UK Parliamentary Elections and Referendums, and certain local elections:* (RPA 1983; RPA 1985; Representation of the People Act 2000 ('RPA 2000'); PPERA; Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341); Representation of the People (Scotland) Regulations 2001 (S.I. 2001/497); Representation of the People (Northern Ireland) Regulations 2008 (S.I. 2008/1741));
- b. *Rules for Local authority mayoral elections in England and Wales:* (Local Government Act 2000; Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007 (S.I. 2007/1024));
- c. *Rules for Combined authority mayoral elections in England:* (Local Democracy, Economic Development and Construction Act 2009; Combined Authorities (Mayoral Elections) Order 2017 (S.I. 2017/67));
- d. *Rules for elections to the Greater London Authority:* (Greater London Authority Act 1999; Greater London Authority Elections Rules 2007 (S.I. 2007/3541));
- e. *Rules for Police and Crime Commissioner Elections in England and Wales:* (Police Reform and Social Responsibility Act 2011; Police and Crime Commissioner Elections Order 2012 (S.I. 2012/1917));
- f. *Provisions about Scottish Parliamentary Elections and Referendums:* (Scotland Act 1998; Scottish Parliament (Elections etc.) Order 2015 (S.S.I. 2015/425));
- g. *Provisions about Senedd Elections:* (Government of Wales Act 2006; National Assembly for Wales (Representation of the People) Order 2007 (S.I. 2007/236));
- h. *Provisions about Northern Ireland Assembly Elections:* (Northern Ireland Act 1998; Northern Ireland Assembly (Elections) Order 2001 (S.I. 2001/2599));

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- i. *Provisions about Local government elections in Scotland:* (Local Government (Scotland) Act 1973);
  - j. *Franchise and Candidacy Rights for Ward Elections for Common Councillors in the City of London:* (City of London (Various Powers) Act 1957);
  - k. *Provisions about local elections in Northern Ireland:* (Local Government Act (Northern Ireland) 1972; Electoral Law Act (Northern Ireland) 1962; Elected Authorities Act (Northern Ireland) 1989; Local Elections (Northern Ireland) Order 1985);
  - l. *Provisions about the recall of MPs:* (Recall of MPs Act 2015 and the Recall of MPs Act 2015 (Recall Petition) Regulations 2016 (S.I. 2016/295));
  - m. *Provisions about local referendums in England:* (Town and Country Planning Act 1990 (neighbourhood planning referendums); Local Government Finance Act 1992 (council tax referendums));
- 86 The RPA 1983 is the core Act dealing with the voting franchise for UK parliamentary elections and local elections in England, Wales and Scotland, as well as other rules, and the detailed procedure for conducting UK parliamentary elections. This Bill changes requirements in the Act, including in the parliamentary elections conduct rules, for example to introduce a new requirement for voter identification and other supporting measures.
- 87 Current requirements for absent voting at parliamentary elections and local elections in Great Britain are set out in the RPA 2000, while the RPA 1985 sets out current requirements for absent voting at parliamentary elections in Northern Ireland. This Bill makes further amendments to the RPA 1985 and also to the RPA 2000.
- 88 The RPA 1985 sets out the conditions for the franchise for British overseas electors. This Bill makes amendments to the Act, replacing sections 1 and 2.
- 89 EU Citizens were granted the right to vote and stand in local elections in the UK in 1995 (voting and candidacy rights are hereafter referred to as VCR). This was done in accordance with the Council of the European Communities directive No.94/80/EC. The Local Government Elections (Changes to the Franchise and Qualification of Members) Regulations 1995, which were restated for GB in the RPA 2000, enshrined the right of EU citizens to vote in UK local elections. This position is set out for England in the RPA 1983 (as to registration and franchise) and in the Local Government Act 1972 (as to candidacy). The Elected Authorities (Northern Ireland) Act 1989 sets out the franchise for local NI elections and the Northern Ireland Assembly (Elections) Order 2001 provides that Assembly elections use the local franchise. Registration for NI local elections is provided for in the RPA 1983 by virtue of Schedule 1 to the Elected Authorities Act. Candidacy at local NI elections is provided for in the Local Government Act (Northern Ireland) 1972 and in relation to NI Assembly elections by the Northern Ireland Act 1998.
- 90 The Bill also refers to a list of existing criminal offences to which the new disqualification order can apply where such an offence is motivated by hostility towards candidates, holders of relevant elective offices and campaigners. These offences are set out in Schedule 8.
- 91 The PPERA sets out how political parties, third party campaigners and referendums are regulated in the United Kingdom as well as the duties and functions of the Electoral Commission. The Bill makes a number of amendments to PPERA in relation to the registration of political parties and campaign, controlled and notional expenditure.

## Territorial Extent and Application

- 92 Clause 63 sets out the territorial extent of the Bill, that is the jurisdictions which the Bill forms part of the law of.
- 93 The provisions of Part 1 largely have UK extent, except:
- a. some of the amendments to the RPA 1983 made by clause 1 and Schedule 1 regarding voter identification extend to England and Wales and Scotland only, and some extend to Northern Ireland only. Additionally, paragraphs 34, 36 and 38 of that Schedule extend existing provisions which currently extend to Northern Ireland only so that they extend to the whole of the UK;
  - b. provisions about the limit on the period for which a postal vote can be held (in clause 3 and Schedule 3) do not extend to Northern Ireland;
  - c. provisions about limits on proxy voting (in clause 6 and Schedule 4) have separate transitional arrangements which extend to England and Wales and Scotland or to Northern Ireland only respectively;
  - d. further transitional arrangements about proxy voting in respect of local elections in Northern Ireland and Northern Ireland Assembly elections extend to Northern Ireland only.
- 94 Amendments, repeals and revocations made by the rest of the Bill generally have the same extent as the provision amended, repealed or revoked, except for amendments made to the RPA 1983 by paragraph 1 of Schedule 8 relating to voting and candidacy rights of EU citizens. Additionally, clause 63(5) applies section 384(1) and (2) of the Armed Forces Act 2006 to the amendments made to that Act by paragraph 10 of Schedule 10. Section 384(1) allows the provisions of the Armed Forces Act 2006 to be extended to any of the Channel Islands. Section 384(2) extends the provisions of the Armed Forces Act 2006 to the Isle of Man and the British overseas territories other than Gibraltar.
- 95 Generally, the provisions of the Bill apply to the same areas of the UK as the areas to which they extend. The provisions of Part 1 apply for the purposes of UK Parliamentary elections in those areas. The postal and proxy voting and accessibility provisions in Part 1 also apply for the purposes of local government elections in England. Clause 8 (on undue influence) also applies to local government elections across the UK. The provisions in clause 10 and Schedule 6 apply for the purposes of local elections and Assembly elections in Northern Ireland. The provision at clause 11 on the simple majority system for certain offices applies in England and Wales for Police and Crime Commissioners, and in England only for the Mayor of London, combined authority mayors and local authority mayors.
- 96 Schedule 2, which amends Schedule 2 to the Representation of the People Act 1983, contains provisions about applications relating to electoral registration, applications to vote by post or proxy, and applications for particular kinds of documents such as electoral identity documents (contained in Schedule 2). These provisions generally apply in relation to UK Parliamentary elections, local government elections in England and elections in Northern Ireland only.
- 97 In Part 2, the overseas elector provisions apply for the purposes of UK Parliamentary elections. The provisions on voting and candidacy rights of EU citizens apply for the purposes of local government and other local elections in England, police and crime commissioner elections in England and Wales, ward elections for common councillors in the City of London, and local elections and Assembly elections in Northern Ireland.

98 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned.

99 The following provisions relate to matters within the legislative competence of the Scottish Parliament:

- a. **Undue influence** (clause 8 and Schedule 5) insofar as it relates to the conduct of local government elections in Scotland, and incapacities relating to being elected to or holding local government elective offices in Scotland.
- b. **The introduction of a Strategy and Policy Statement** (clause 14) that the Electoral Commission will be required to have regard to in the discharge of the Commission's devolved Scottish functions.
- c. **Notional expenditure** (clauses 18-20) in relation to the application of the rules on campaign expenditure at devolved elections.
- d. **Political finance** (clauses 21-27) in relation to the registration/notification of third parties for elections devolved to the Scottish Parliament and in relation to campaign expenditure for both political parties and third party campaigners for standalone devolved elections.
- e. **The new intimidation disqualification order** (clauses 28 - 36 and Schedule 10) insofar as it relates to the qualifications for nomination as a candidate for election to, or holding the office of a member of, the Scottish Parliament or a local government elective office in Scotland.

100 The following provisions relate to matters within the legislative competence of Senedd Cymru:

- a. **Undue influence** (clause 8 and Schedule 5) insofar as it relates to the conduct of local government elections in Wales, and incapacities relating to being elected to or holding the office of a member of Senedd Cymru or local government elective offices in Wales.
- b. **The introduction of a Strategy and Policy Statement** (clause 14) that the Electoral Commission will be required to have regard to in the discharge of the Commission's devolved Welsh functions.
- c. **Notional expenditure** (clauses 18-20) in relation to the application of the rules on campaign expenditure at devolved elections.
- d. **Political finance** (clauses 21-27) in relation to the registration/notification of third parties for elections devolved to the Scottish Parliament and in relation to campaign expenditure for both political parties and third-party campaigners for standalone devolved elections.

101 Chloe Smith MP, as the then-Minister for the Constitution and Devolution, wrote to the Scottish and Welsh Governments seeking legislative consent from the Scottish Parliament and Senedd Cymru in relation to these provisions. Subsequently, both the Scottish and Welsh Governments requested to be removed from all aspects which relate to devolved matters. We are currently in the process of evaluating the implications of carving out Scotland and Wales from the devolved measures in the Bill.

102 See the table at Annex A for a summary of the position regarding territorial extent and application in the UK.

# Commentary on provisions of Bill

## Part 1: Administration and Conduct of Elections

### Voter Identification, applications for postal and proxy votes etc.

#### Clause 1: Voter Identification

103 Clause 1 gives effect to Schedule 1 which provides for a new requirement for electors to present photographic identification at polling stations for voting at UK Parliamentary elections in Great Britain, and makes other related provisions.

#### Schedule 1: Voter Identification

104 Schedule 1 amends the RPA 1983, primarily to introduce new requirements for voter identification for UK Parliamentary elections taking place in Great Britain. Some minor changes to existing voter identification procedure and provisions in Northern Ireland are also included in the Schedule to reflect some of the provisions being introduced for Great Britain or to support existing law.

105 Paragraph 2 inserts new sections 13BD (“Electoral identity document: Great Britain”) and 13BE (“Anonymous elector’s document: Great Britain”), into the RPA 1983. New section 13BD(1) creates a new form of identification document which will be an accepted form of identification at a polling station. This document is referred to as a “Voter Card” in the remainder of the commentary on Schedule 1. The Voter Card is available to people who are registered, or have applied to be registered, to vote in parliamentary elections in Great Britain and local government elections in England, and to registered electors who are eligible to vote (or will be once registered) in PCC elections in Wales (or will be once they have reached age 18). This is to reflect the elections where the requirement to show photographic identification will apply as a result of the Bill, or as a result of future proposed changes to secondary legislation. Electors will be able to apply for a Voter Card from the Electoral registration officer for the area in which they are registered. They will be able to apply for it at the same time as they apply to be registered to vote.

106 Subsection (4) requires the registration officer to determine an application in accordance with regulations. Subsections (5) to (7) provide further regulation-making powers in relation to the timing for applying and the issuing and collection of Voter Cards, including power if necessary to amend the parliamentary elections conduct rules (contained in Schedule 1 to the RPA 1983) if collection is to take place at a polling station.

107 Subsection (8) requires the registration officer to issue the Voter Card to the person free of charge. Subsections (9) to (12) create additional regulation-making powers about information to be contained on Voter Cards, others aspects of the form of the Voter Card, including the ability to confer a role in relation to design of the content or the form of the Voter Card on the Electoral Commission, and any period of validity of a Voter Card (which may be used to create temporary versions of Voter Cards).

108 New section 13BE largely mirrors new section 13BD, but for people who are registered as an anonymous elector, so that they may apply for an anonymous elector’s document (referred to as an Anonymous Elector’s Document in the remainder of the commentary on Schedule 1). Eligibility is otherwise the same as under new section 13BD, and anonymous electors would also be able to apply for an Anonymous Elector’s Document at the same time as they apply for an anonymous entry in the electoral register. The provisions of new section 13BE are essentially the same as those governing section 13BD except that the Anonymous Elector’s Document must contain the person’s electoral number rather than their name.

- 109 Given that the Anonymous Elector's Document. will need to contain the person's electoral number, which is subject to change, subsection (13) creates an additional regulation-making power which can be used to authorise or require a reminder to be sent to an anonymous elector about the need to obtain an anonymous elector's document, and to require a registration officer to issue the holder of an Anonymous Elector's Document with a new document in prescribed circumstances, for example where the officer has renumbered their register and allocated a new number to that anonymous elector.
- 110 Paragraph 3 amends section 13C of the RPA 1983 under which electoral identity cards are already issued in Northern Ireland. It inserts new subsections (3A) and (3B) to mirror some additional regulation-making powers which are in section 13BD for Great Britain. New subsection (3A) provides that regulations can make provision about issue and collection of electoral identity cards. New section (3B) provides that amendments can be made to Schedule 1 to the RPA 1983 if that is necessary due to making regulations about collection from a polling station. New subsection (4A) enables regulations to be made about the information to be included on a card, and the form of the card. Currently the Chief Electoral Officer determines these points.
- 111 Paragraph 4 amends section 13CZA (provision of false information: application for electoral identity card) of the RPA 1983, which currently only applies to Northern Ireland but is widened to extend to the whole of the UK by paragraph 35 of this Schedule, and therefore to applications for voter cards and Anonymous Elector's Document in Great Britain.
- 112 Paragraph 4(3) substitutes a new subsection (5) and (6) to include the penalties if the offence is committed in England, Wales or Scotland. A person is liable on summary conviction in England and Wales to a maximum imprisonment of 51 weeks (but subject to the rule in subsection (6)) or a fine, or both, on summary conviction in Scotland to imprisonment for a maximum of 12 months, or a fine not exceeding the statutory maximum (or both). In Northern Ireland the penalty remains imprisonment for a maximum of 6 months, or a fine not exceeding level 5 on the standard scale (or both).
- 113 Paragraph 4A amends section 56 of the RPA 1983 to expand the existing types of registration decision that can be appealed in England and Wales, so that an appeal can also be made against an ERO's refusal of an application for a Voter Card or an Anonymous Elector's Document. This change also applies to ERO decisions in Scotland by virtue of section 57. Paragraph 4B makes the same change to section 58 to enable an appeal against the Chief Electoral Officer's refusal of an application for an electoral identity card in Northern Ireland.
- 114 Paragraph 5 inserts a new section 59A into the RPA 1983. It introduces a requirement for the Secretary of State (which includes the Minister for the Cabinet Office as a result of clause 57(2)) to prepare and publish evaluations regarding the effect of voter identification requirements on electors applying for ballot papers.
- 115 Subsection (2) specifies that these evaluations should take place following the first two UK Parliamentary general elections taking place after section 59A comes into force. Under subsections (3) to (5), if corresponding requirements about the production of identification at polling stations are introduced for local government elections (which would be through secondary legislation), the requirement to publish an evaluation would also apply to the first 'stand-alone' set of local council elections (but not a by-election).
- 116 Subsection (6) requires that any data collected under new rule 40B in Schedule 1 of the RPA 1983 (or under a corresponding provision for local council elections) is taken into account when preparing the evaluations). Under rule 40B, the data collected is to be prescribed in regulations but is likely to be the types of identification document presented by people, and whether they are refused a ballot paper and if so, the reasons for that.



- 117 Paragraph 6 amends section 61 (other voting offences) of the RPA 1983 under which it is an offence to vote more than once. Under subsection (6), applying for a ballot paper is treated as having voted. The amendment inserts a new subsection (6ZA) and (6ZB) which ensure that an elector would not be treated as having committed any offence related to trying to obtain multiple ballots simply because they made permitted further applications for a ballot paper, where the previous application(s) were refused under rule 37 of the Parliamentary elections rules (see below) on the grounds that they did not show an accepted form of identification.
- 118 Paragraph 7 extends section 66B (failure to comply with conditions relating to supply etc of certain documents) of the RPA 1983. Section 66B makes it an offence to breach rules set out in regulations which restrict inspection or disclosure of important electoral documentation. The amendment means this offence would also apply in respect of a breach of similar regulations under the new rule 19B (inserted by the Bill) which will set out conditions for inspection or disclosure of the date of birth list or new rule 56A (also inserted by the Bill) which will set out the conditions for inspection or disclosure of the ballot paper refusal list.
- 119 Paragraphs 8A to 29 amend the rules for the conduct of UK Parliamentary elections, which are set out in Schedule 1 to the RPA 1983, to introduce voter identification and make connected changes.
- 120 Paragraph 8A inserts new rule 19B (Date of birth lists for polling stations in Northern Ireland) into Schedule 1 to the RPA 1983 in respect of Northern Ireland only. Rule 19B places a duty upon the Chief Electoral Officer to provide date of birth lists for each polling station in Northern Ireland. The date of birth lists must contain the date of birth for each voter allotted to the polling station, and each person voting as proxy at that polling station. This is for the purpose of enabling polling station staff to carry out their duty to check on a voter's or proxy's date of birth as provided for under rule 37(1B)(a)(ii) of Schedule 1 to the RPA 1983 (as inserted by 14(4)) where the apparent age of the voter compared to the date supplied by the voter when they registered to vote (or were appointed as a proxy, in the case of a proxy registered to vote in Great Britain) raises a reasonable doubt as to whether the voter is the elector or proxy they represent themselves to be.
- 121 Under new rule 19B(1) the Chief Electoral Officer must provide to each polling station a list containing the date of birth (supplied by the elector when they registered to vote) for all electors allotted to vote at that polling station. The Chief Electoral Officer must also provide a list containing the dates of birth supplied at registration of all proxies voting on behalf of electors allotted to that polling station. Where the proxy is on a register in Great Britain the list should contain the date of birth of the proxy provided on the application for a proxy vote. Rule 19B(2) provides that these lists should contain sufficient information to allow the staff at a polling station to carry out the checks when required.
- 122 Rule 19B(3) and (4) prohibit the Chief Electoral Officer, any person to whom the Chief Electoral Officer has delegated functions, the presiding officer, clerk or other officer appointed to work at the polling station from allowing date of birth lists to be inspected, supplying the lists to another person, or making use of the information contained within the lists, otherwise than in accordance with the rules (including any regulations made under paragraph (5) of rule 19B).
- 123 Rule 19B(5) to (8) provide that regulations may make provision in relation to inspection or disclosure of the date of birth lists. Rule 19B(5)(a) and (b) provide that regulations may be made enabling inspection of the lists by prescribed persons and authorising or requiring prescribed persons to supply a copy of the lists to persons prescribed.
- 124 Rule 19B(5)(c) provides that the regulations may make provision in relation to the payment of a fee in respect of inspecting the list or the supply of the list. Any fee will be limited and the amount set in the regulations.



- 125 Rule 19B(6) provides that regulations made under subparagraph 5(a) or 5(b) may impose conditions in relation to the inspection of a list, supply of a copy of a list or the purposes for which information contained in the date of birth list can be used following inspection or supply.
- 126 Rule 19B(7) provides that the conditions that may be imposed under paragraph 6(b) in relation to supply of a copy of a list include conditions relating to the extent to which a person who has received a copy of the list may supply the copy to another person, disclose to another person information in the list or use any such information other than the purpose for which it was supplied.
- 127 Rule 19B(8) ensures that regulations made under paragraph (5) may also impose conditions on the supply, disclosure or use of information in the lists mirroring any conditions made in paragraph (7) on any person who has received a copy of the list or had information disclosed to them from the list under paragraph (7).
- 128 Paragraph 9 amends rule 25 (provision of polling stations) of Schedule 1 to provide that every polling station must have an area for an elector to have their identification viewed in private.
- 129 Paragraph 10 amends rule 26 (appointment of Presiding Officers and clerks). Rule 26(3) enables clerks to act for the Presiding Officer, but paragraph 10(2) amends this to ensure that is not the case for refusing to issue a ballot paper in line with the procedures set out in rule 35(3) (failure to answer a statutory question satisfactorily) or rule 37 (failure to show satisfactory identification), or for resolving doubts about a person's identity. The effect of this provision means that only the Presiding Officer can do this.
- 130 Paragraph 11 adds a new paragraph (3ZA) to rule 28 (issue of official poll cards) of Schedule 1. New paragraph (3ZA) sets out that poll cards issued to electors and proxy voters who vote at a polling station (as opposed to postal voters) in England, Scotland and Wales must include the list of types of identification which are acceptable to enable an elector to vote.
- 131 Paragraph 12 amends rule 29 (equipment of polling stations). It inserts a new sub-paragraph into paragraph (3) for elections in Northern Ireland requiring a Returning Officer to provide each polling station with the date of birth lists prepared under Rule 19B.
- 132 Paragraph 12 also amends rule 29 to require additional equipment to be provided to every polling station in England, Scotland and Wales. These are:
- a. under new paragraph (3ZA), a ballot paper refusal list in the prescribed form. This document, required by new rule 40ZB, will be used to record cases where an elector has been refused a ballot paper.
  - b. under new paragraph (4A), a large notice to be displayed in each polling station with information about the types of identification that are accepted, and telling people that further evidence may be needed to resolve any discrepancy between the name on the electoral register and the name on a person's identification document.
- 133 Paragraph 13 amends rule 35 (questions to be put to voters) of Schedule 1 to the RPA 1983. These provisions create two new statutory questions that can be asked of a person seeking to obtain a ballot paper but where there is a question about whether the person is who they claim to be. These questions are (za) "What is your name?" and (zb) "What is your address"? If a clerk asks these questions to a person and they do not answer them satisfactorily, they must refer the matter to the Presiding Officer.
- 134 These new statutory questions will be discretionary for clerks or Presiding Officers to use; there is no mandatory use of the questions. However, where the elector answers the question

unsatisfactorily, they will be unable to obtain a ballot paper. Where the questions are asked, answering them satisfactorily is additional to, rather than instead of, the requirement to show a valid piece of identification (under rule 37).

135 Paragraph 14 amends rule 37 (voting procedure) of Schedule 1 to the RPA 1983, as it applies to Northern Ireland. Paragraph 14(2) amends the heading of that rule to read “Voting procedure and voter identification requirements: Northern Ireland”.

136 Paragraph 14(3) inserts a new paragraph (1AA) into rule 37 as it applies to Northern Ireland, which provides that at the voter’s request, the polling station staff must arrange for the voter to have their identification viewed in private. The polling station staff must ensure that no other person can see the voter’s identification, except for any person permitted by the voter.

137 Paragraph 14(4) amends paragraph (1B) in rule 37 as it applies to Northern Ireland, such that an officer or clerk must deliver a ballot paper to an elector unless:

- a. they believe that the voter’s age could not plausibly match that which is provided on their identification (this is already a requirement),
- b. they believe that the voter’s age does not plausibly match the date of birth supplied under a relevant provision (“relevant provision” is defined in new paragraph (1DC) of rule 37, which is inserted by paragraph 14(7) of Schedule 1 (see paragraph 143 below)). In the case of an elector or proxy registered to vote in Northern Ireland, this is the date of birth supplied when the voter registered to vote. In the case of proxies registered to vote in Great Britain, this is the date of birth supplied when the person was appointed as a proxy. (This is already a requirement for electors but is a new requirement for proxies),
- c. they have a reasonable suspicion that the identification is forged (this is a new requirement).

138 Paragraph 14(5) specifically adds the language of “reasonable suspicion” of a forged document to paragraph (1C), allowing the Presiding Officer to refuse to give an elector a ballot paper in those circumstances. Paragraph 14(6) makes a similar change to paragraph (1D), so that a polling clerk can refuse to issue a ballot paper to an elector where the clerk has a reasonable suspicion that their identification document is forged (as well as on existing grounds), in which case they must refer the matter to the Presiding Officer.

139 Paragraph 14(7) inserts a new paragraph (1DA) which ensures that electors in Northern Ireland who have changed their name on their form of identification but not on the electoral register may provide additional proof of their identification to resolve this discrepancy, and will then still be able to obtain a ballot paper as long as the Presiding Officer has no other reason to doubt that the elector is who they claim to be. Paragraph 14(7) also inserts new paragraph (1DB). If the Presiding Officer refuses to deliver a ballot paper to a voter because they have reasonable doubt that the voter is who they say they are, the voter can make further applications, and paragraphs (1A) to (1DA) apply again.

140 Paragraph 14(7) also inserts new paragraph 1(DC) which defines the term “relevant provision” for the purposes of rule 37(1B) (see paragraph 137 above).

141 Paragraph 14(8) and 14(9) amends paragraph (1E), to make clear that the identification documents should be accepted in any format that they are issued in and regardless of any expiry date, and adds a new paragraph (1EA) which defines a forged document as one that is a false document made to resemble a real document. Paragraph 14(8) also adds two new documents that may be produced as identification in Northern Ireland and clarifies the names of existing documents.

- 142 Paragraph 14(10) inserts a new paragraph (1FA), ensuring that no other person may inspect an elector's identity document except with the permission of the elector.
- 143 Paragraph 15 amends rule 37 (voting procedure) of Schedule 1 to the RPA 1983, as it applies to England, Wales and Scotland. Paragraph 15(2) amends the heading of that to read "Voting procedure and voter identification requirements: Great Britain".
- 144 Paragraph 15(3)(a) amends rule 37(1) to provide that a ballot paper must be delivered to a voter who applies for one, subject to the new paragraphs (1A) to (1J) of rule 37, which set out the requirement to produce identification, and also to rule 35 (relating to satisfactorily answering certain questions). Paragraph 15(3)(b) removes rule 37(1)(a), the provision which previously required the number and name of the elector to be called out when an elector was applying for a ballot paper.
- 145 Paragraph 15(4) inserts new paragraphs (1A) to (1N) into rule 37. The effect of these provisions is as follows:
- 146 (1A) A ballot paper can only be issued to a voter if the voter has shown a 'specified document' (defined by paragraphs (1H) to (1IB)).
- 147 (1B) At the voter's request, the polling station staff must arrange for the elector to have their identification viewed in private in England, Wales and Scotland and ensure that no other person can see the voter's identification, except for any person permitted by the voter.
- 148 (1C) and (1D) outline that, where an elector produces a document to the clerk and the clerk decides that the document raises a reasonable doubt as to whether the elector is who they claim to be or that the document presented by the elector is forged (as defined in paragraph (1J)), then the clerk must refer the matter to the Presiding Officer (without delivering a ballot paper). The Presiding Officer must proceed as if the documentation was presented to them in the first place (i.e. they must evaluate the document without considering that the clerk referred the matter to them). This ensures that only the Presiding Officer can refuse to issue a ballot paper.
- 149 (1E) requires the Presiding Officer to refuse to deliver a ballot paper to the elector if they have a reasonable suspicion over the identity of the elector raised by their identification document or believe their documentation is forged. (1F) provides an exception where the elector provides the Presiding Officer with additional evidence to explain why their name on their identification does not match the name on the register (for example a document showing a change in name after the elector getting married or changing their name for another reason).
- 150 (1G) If the Presiding Officer refuses to deliver a ballot paper to a voter under paragraph (1E) the voter can make further applications, and paragraphs (1A) to (1F) apply again each time.
- 151 (1H) Lists the acceptable types of identification that a voter (other than an anonymous elector) may produce, and specifies that all of them must contain the voter's photograph. Paragraph (1I) defines a "United Kingdom passport" and paragraph (1IA) sets out a table of all the concessionary travel passes which are acceptable identification.
- 152 (1IB) (along with 1IC) sets out that for electors with an anonymous entry in the electoral register, only an anonymous elector's document issued under section 13BE is a 'specified document'. This is because other forms of identification will contain their name, but will not contain other information necessary to enable their identity to be properly checked at the polling station. In addition, the anonymous elector's document must (a) have been issued by the appropriate registration officer (namely, the one for the constituency in which the election is being held, or one such officer if there is more than one), and (b) contain the elector's current electoral number. This is because an anonymous elector needs to be checked at the

polling station against their polling card (which contains their current electoral number) and the electoral register.

- 153 (1ID) ensures that a specified document includes one which has expired (though this is subject to paragraph (1E) if the document raises a reasonable doubt as to whether the voter is who they claim to be). This means that documents such as passports which have an expiry date may continue to be acceptable identification for voting purposes after that date has passed. An exception is provided by paragraph (1IE) for any Voter Card or anonymous elector's document which was issued only to be used on the day of a certain poll or polls.
- 154 (1K) Confers power to amend the list of 'specified documents', including the list of types of concessionary travel pass, by regulations. The Voter Card may not be removed from the list.
- 155 (1L) The power to remove accepted identification from the list can only be exercised if the Electoral Commission have recommended this (the Commission could recommend this of their own accord, or the Government could request they consider a proposed change).
- 156 (1M) states that only the Presiding Officer or clerk may inspect an identification produced by a voter, except as permitted by the elector and (1N) outlines that 'producing a document' in rule 37 means producing a type of identification for inspection by the polling station staff.
- 157 Paragraph 15(5) removes rule 37 paragraph (2) which sets out the existing voting procedure for anonymous electors.
- 158 Paragraph 15(6) removes rule 37(3)(a) as a consequence of removing rule 37(1)(a).
- 159 Paragraph 16 amends rule 38 (votes marked by Presiding Officer) of Schedule 1 to the RPA 1983. Rule 38 allows voters who are blind or have another disability or who are unable to read, to have their ballot paper marked by the Presiding Officer. Rule 38(1A) is substituted with new paragraphs (1A) and (1B). New paragraphs (1A) and (1B) provide that the relevant provisions of the voter identification requirements which apply in England, Wales and Scotland, and those which apply in Northern Ireland, also apply to voters in England, Wales and Scotland, and to voters in Northern Ireland respectively, who apply to have the Presiding Officer mark their vote under rule 38. If the voter cannot provide the required form of identification then the companion will be unable to mark the voter's ballot paper on their behalf.
- 160 Paragraph 17 amends rule 39 (voting by persons with disabilities) of Schedule 1 to the RPA 1983. Rule 39 allows voters who are blind or have another disability or who are unable to read, to apply to be assisted by a companion when they vote. Rule 39(2A) is substituted with new paragraphs (2A) and (2B). New paragraph (2A) and (2B) provide that the relevant provisions of the voter identification requirements which apply in England, Wales and Scotland, and those which apply in Northern Ireland, also apply to voters in England, Wales and Scotland, and to voters in Northern Ireland respectively where a voter wishes to vote with assistance from a companion. If the voter cannot provide the required form of identification then the Presiding Officer will not grant their application.
- 161 Paragraph 18 amends rule 40 (tendered ballot papers) of Schedule 1 to the RPA 1983. Rule 40 makes provision for the issuing of tendered ballot papers in a number of circumstances. Rule 40(1A) is substituted with new paragraphs (1A) to (1AB). These new paragraphs apply the relevant provisions of the voter identification requirements which apply in England, Wales and Scotland, and those which apply in Northern Ireland to voters in England, Wales and Scotland, and to voters in Northern Ireland respectively where a voter seeks to mark a tendered ballot paper; if the voter cannot provide the required form of identification then they will be unable to mark a tendered ballot paper.

- 162 Paragraph 19 inserts a new rule after 40ZA, "*Refusal to deliver ballot paper: Great Britain*", into Schedule 1 to the RPA 1983. Rules 40ZB(1) - (4) will require the ballot paper refusal list to be completed by the Presiding Officer or clerk at an election in England, Wales and Scotland, where a Presiding Officer refuses to deliver a ballot paper either as a consequence of failure of the voter applying as an elector, or as proxy, to answer a question put to them under rule 35 satisfactorily, or as a consequence of the voter's identification raising a reasonable doubt that the voter is who they say they are. The ballot paper refusal list must include the voter's electoral number or the name and address of the person for whom the voter applied as proxy, and the reason why a ballot paper was refused.
- 163 Rule 40ZB(4) to (6) deals with where a voter is refused a ballot paper and makes a further application. Rule 40ZB(5) and (6) provides that the Presiding Officer or clerk must record that further application and the outcome on the ballot paper refusal form.
- 164 New rule 40ZB(7) requires that if the ballot paper is refused to the voter, the refusal must be recorded on the ballot paper refusal list as soon as practicable. If the ballot paper is delivered on a further application, this must be recorded on the ballot paper refusal list as soon as practicable after the delivery of the ballot paper to the voter.
- 165 New rule 40ZB(8) defines electoral number for the purposes of completion of the ballot paper refusal list.
- 166 New rule 40ZB(9) provides that a decision to refuse to deliver a ballot paper is final, subject to new rule 37(1G) of the RPA 1983 which allows a voter to make further applications if a ballot paper is refused to them by a Presiding Officer and rule 40ZB(10) which provides that a decision to refuse a ballot paper is subject to review on an election petition .
- 167 New rule 40ZB(11) explains that reference to a refusal of a ballot paper under rule 37(1D) also includes reference to a refusal of a ballot paper under rule 38, 39, or 40.
- 168 Paragraph 20 amends the heading of existing rule 40A of Schedule 1 to the RPA 1983 to read "*Refusal to deliver ballot papers: Northern Ireland*", and amends that rule to clarify that after a ballot paper has been refused, further attempts are permitted under rule 37.
- 169 Paragraph 21 inserts new rule 40B which sets out new rules regarding collection and disclosure of information relating to the operation of rule 37. New rule 40B outlines:
- 170 40B(1) states the rules apply in England, Scotland and Wales.
- 171 40B(2) states the Presiding Officer must collect information (which will be set out in regulations) about applications for ballot papers under rules 37, 38, 39 and 40 and provide this information to the Returning Officer.
- 172 40B(3) states that a Returning Office in England or Wales must pass on the information to the relevant registration officer. In Scotland, the information remains with the Returning Officer (subparagraph (4)).
- 173 40B(5) requires the information to be anonymised, and then collated by the registration officer (or Returning Office in Scotland). The way it is to be collated will be set out in regulations.
- 174 40B(6) requires the registration officer (or Returning Officer in Scotland) to pass the anonymised information to the Secretary of State and on request to the Electoral Commission.
- 175 40B(7) the registration officer or Returning Officer should not disclose information other than in ways specifically outlined in the bill.
- 176 40B(8) the data collected under these measures should be retained for a period of ten years in the anonymised form.

- 177 40B(10) to 40B(11) outlines that providing this information doesn't breach any duty of confidence that registration officers, Returning Officers and Presiding Officers are under, and any other restrictions on disclosing data, but that disclosures in breach of the data protection legislation are not permitted (i.e. Data Protection Act 2018 section 3(9)).
- 178 40B(12) defines the relevant registration officer for the purposes of data collection as the registration officer of the relevant local authority that the constituency sits in or the registration officer of the local authority with the largest share of electors of the constituency.
- 179 Paragraph 22 adds a new paragraph (1)(db) to rule 43 (procedure on close of poll) of Schedule 1 to the RPA 1983. This requires that after the close of poll the Presiding Officer must put the ballot paper refusal list in a separate, sealed packet and deliver it to the Returning Officer.
- 180 Paragraph 22 also adds a new paragraph (1)(dc) to rule 43 (procedure on close of poll) for parliamentary elections in Northern Ireland. This requires that after the close of poll the Presiding Officer must put the dates of birth lists in a separate, sealed packet and deliver it to the Returning Officer.
- 181 Paragraph 22A inserts new rule 53B (destruction of date of birth lists: Northern Ireland) into Schedule 1 to the RPA 1983. This rule requires the Chief Electoral Officer to destroy the date of birth lists on the next working day following the 21st day after the member has been returned or if an election petition is presented before that time then on the next working day following the conclusion of proceedings or appeal.
- 182 Paragraph 23 adds new paragraph (2)(ba) to rule 54 (sealing up of ballot papers) of Schedule 1 to the RPA 1983. The provision requires that the Returning Officer shall not open the sealed packets of the ballot paper refusal list.
- 183 Paragraph 24 adds a new paragraph (1)(cb) to rule 55 (delivery of documents to registration officer) of Schedule 1 to the RPA 1983. As a result, the Returning Officer must send the completed ballot paper refusal list to the registration officer.
- 184 Paragraph 25 adds a new paragraph (1A) into rule 56 (orders for production of documents) of Schedule 1 to the RPA 1983. New paragraph (1A) provides for the opening of the sealed packet containing the ballot paper refusal list or for the inspection or production of that list by court order if the relevant court is satisfied by evidence on oath that the order is required for the purpose of an election petition relating to an election in England and Wales or Scotland.
- 185 Paragraph 26 inserts a new rule 56A, "*Inspection of ballot paper refusal list: Great Britain*", into Schedule 1 to the RPA 1983. New rule 56A(1) and (2) provide that further provisions regarding the circumstances in which a registration officer may be authorised to view the ballot paper refusal list after it has been sealed may be set out in regulations. New rule 56A(3) provides that further provisions regarding the disclosure of information contained in the ballot paper refusal list by a registration officer may be set out in regulations.
- 186 Paragraph 27 adds a new paragraph (2)(ba) into rule 57 (retention and public inspection of documents) of Schedule 1 to the RPA 1983, which provides that the completed ballot paper refusal list for elections held in England, Wales or Scotland will not be open for public inspection.
- 187 Paragraph 28 adds a new paragraph (2)(ba) into rule 58 (disposal of documents in Scotland), which applies rules 55 to 57 to UK Parliamentary elections in Scotland, to make clear that where rule 56A applies to Scotland, references to the registration officer are to be read as references to the Returning Officer.
- 188 Paragraph 29 amends the Appendix of Forms. Paragraph 29(2) inserts a new paragraph 1 before the existing paragraph 1 in the form of directions for the guidance of the voters in

voting. New paragraph 1 sets out that voters will be required to show an approved form of identification before being given a ballot paper. Paragraph 29(3) renumbers the existing paragraphs.

189 Currently only Northern Ireland has voter identification requirements. Paragraphs 30 to 35 extend a number of voter identification provisions which currently extend only to Northern Ireland so that they extend to England and Wales and to Scotland as well, and make consequential amendments as a result of those extensions.

190 Paragraph 36 repeals section 2(2) of the Elections (Northern Ireland) Act 1985, because this has been superseded by paragraph 10(2) of this Schedule - an amendment to rule 26(3).

## Clause 2: Power to make regulations about registration, absent voting and other matters

191 Clause 2 gives effect to Schedule 2 which makes provision for electoral registration applications, absent vote applications (postal and proxy), as well as applications for other documents related to elections.

## Schedule 2: Power to make regulations about registration, absent voting and other matters

192 Paragraphs 1 to 11 of Schedule 2 (Power to make regulations about registration, absent voting and other matters) make amendments to the RPA 1983.

193 Paragraph 1 amends section 53 RPA 1983 which concerns the power to make regulations related to electoral registration and voting by post or by proxy. The amendment amends subsection (1) to insert new paragraph (ba). New paragraph (ba) expands the scope of section 53(1) to allow provisions to be made by regulations with respect to applications under sections 13BD, 13BE and 13C RPA 1983 and documents or cards issued under any of those sections (i.e. electoral identity documents, anonymous electors' documents and electoral identity cards).

194 Paragraph 2 provides that Schedule 2 to RPA 1983 is amended in accordance with paragraphs 3 to 11, as detailed below. Section 53(3) RPA 1983 provides that regulations made under section 53(1) may contain any such provisions as are mentioned in Schedule 2 to RPA 1983.

195 Paragraph 3 amends paragraph 1 of Schedule 2 to RPA 1983 which provides some of the general regulation-making powers relating to what registration officers may do in pursuit of their registration duties, particularly around how they can obtain information and evidence, including the following. Paragraph 1(2) of Schedule 2 provides that provision can be made authorising a registration officer to require persons to give information for the purposes of the officer's registration duties. Paragraph 1(2A) states that provision made under paragraph 1(2) for registration officers in Great Britain to require an applicant for electoral registration to provide evidence of their identity or their entitlement to registration has to specify the types of evidence that can be required. Paragraph 1(4) allows provisions to be made authorising a registration officer to inspect, for the purpose of registration duties, records kept by local or public authorities, and to make copies of information contained in such records.

196 Paragraph 3(2) of this Schedule expands paragraph 1(2A) of Schedule 2 so that it applies in relation to registration officers throughout the UK rather than Great Britain, and so that it applies to applicants for electoral identity documents, anonymous electors' documents and electoral identity cards under sections 13BD, 13BE and 13C RPA 1983 respectively, as well as to registration applications.

197 Paragraph 3(3) inserts new sub-paragraph (5A) to expand the meaning of a registration officer's 'registration duties' to include:

- a. in the case of a registration officer in Great Britain, the officer's functions (i) in relation to electoral identity documents and anonymous electors' documents under sections 13BD and 13BE RPA 1983, and (ii) in relation to absent vote applications under paragraph 3, 4 or 6 of Schedule 4 to the Representation of the People Act 2000, other than applications in relation to a local government election, or local government elections, in Scotland or Wales, and
- b. in the case of the Chief Electoral Officer for Northern Ireland, the Officer's functions (i) in relation to electoral identity cards under section 13C RPA 1983 and (ii) in relation to applications under section 6, 7 or 8 of the Representation of the People Act 1985.

198 Paragraph 4 amends paragraph 1A of Schedule 2 to RPA 1983 which contains powers to make regulations in relation to the disclosure of information for verification purposes relating to electoral registration. These powers are used to underpin aspects of the voter registration process whereby certain details about an applicant are compared against data to help a registration officer in determining the application. Paragraph 4(2) and (3) amends existing sub-paragraph (1)(a) to provide that provision can be made via regulations so that information may be verified about a wider category of individuals listed in new sub-paragraph (1A). The individuals listed in new sub-paragraph (1A) are: (a) a person who is registered in a register maintained by the registration officer; (b) a person who is named in (i) an application for registration in, or alteration of, a register (including a partially completed application submitted through the UK digital service - see new sub-paragraph (1B)); (ii) an application (including a partially completed application) for one of the types of electoral identity document under section 13BD, 13BE or 13C RPA 1983, or; (iii) a relevant absent vote application.

199 Paragraph 4(4) inserts new sub-paragraphs (6) to (8) into paragraph 1A of Schedule 2 to RPA 1983. New sub-paragraph (6) provides that in sub-paragraph (1), in relation to verifying information about a person named in a relevant registration or absent vote application, references to disclosing information include references to disclosing evidence provided by a person in connection with the application.

200 New sub-paragraph (7)(a) to (c) in paragraph 1A defines "relevant absent voting application", "relevant registration application" and "UK digital service" as used in paragraph 1A.

201 New sub-paragraph (8) in paragraph 1A provides that a notice, including a partially completed notice, under section 8(9) of the RPA 1985 which cancels a proxy appointment is to be treated as a relevant absent voting application for the purposes of paragraph 1A.

202 Paragraph 5 of this Schedule amends paragraph 3ZA of Schedule 2 to RPA 1983. Paragraph 3ZA allows provisions to be made about the form and content of, and manner of making of, electoral registration applications, and about the evidence to be provided by such an applicant to support an application. Paragraph 5(2) expands sub-paragraph (1) of paragraph 3ZA to include applications for electoral identity documents and anonymous elector documents in Great Britain under sections 13BD and 13BE RPA 1983. Paragraph 5(3) inserts new sub-paragraphs (2A) and (2B) into paragraph 3ZA. New sub-paragraph (2A)(a) provides that provisions may be made to confer functions on the Secretary of State to enable registration applications listed in new sub-paragraph (2B) to be made in a particular manner; and to authorise the Secretary of State, in prescribed circumstances, to complete such applications in part for people, for example to pre-populate forms with information already held by the Secretary of State where appropriate. These powers would be used to underpin aspects of online application services. New sub-paragraph (2B) lists relevant applications for the purpose of new sub-paragraph (2A) as (a) an application for registration in, or alteration of (i)



- a register of parliamentary electors, (ii) a register of local government electors in England, or (iii) a register of local government electors in Scotland or Wales, where the application is submitted through the UK digital service, and (b) applications under section 13BD or 13BE RPA 1983 for Voter Cards or anonymous elector documents.
- 203 Paragraph 5(4) inserts a new paragraph 3ZA(3A) to allow for provisions to be made requiring a person making an application for a Voter Card or an anonymous elector's document under section 13BD or 13BE to provide evidence that the person is the person named in the application. Paragraph 5(5) and (6) makes consequential amendments to paragraph 3ZA(4) and (6).
- 204 Paragraph 5(7) inserts new sub-paragraph (7) into paragraph 3ZA of Schedule 2 to RPA 1983 explaining what is meant by an application submitted through "the UK digital service".
- 205 Paragraph 6 of Schedule 2 substitutes the existing paragraph 3A (about registration applications in Northern Ireland) of Schedule 2 to RPA 1983 with a new paragraph 3A which covers, for Northern Ireland, both applications for electoral registration and applications for electoral identity cards under section 13C RPA 1983, as well as forms used in connection with a canvass under section 10 RPA 1983. The new paragraph 3A(1) replicates the existing powers in paragraph 3A, enabling provision to be made about (subsection (1)(a)) the form and contents of registration applications and applications under section 13C as well as any declarations in connection with those applications, and the manner in which they are to be made, and (subsection (1)(b)) the manner in which forms in connection with a canvass are submitted.
- 206 New paragraph 3A(2) provides that provision made under sub-paragraph (1) may confer functions on the Secretary of State or the Chief Electoral Officer for Northern Ireland to allow applications to be made or forms to be submitted in a particular manner, confer other functions on the Chief Electoral Officer, and confer functions on the Electoral Commission, and provisions may also authorise the Secretary of State or Chief Electoral Officer to complete applications or forms in part for people in certain circumstances.
- 207 New paragraph 3A(3) enables provision to be made requiring a person making an application for registration in Northern Ireland to provide evidence that they are the person making the application and to provide evidence of their entitlement to be registered. New paragraph 3A(4) also provides that provisions can be made requiring a person making an application under section 13C to provide evidence that the person is the person named in the application.
- 208 New paragraph 3A(5) provides that any provision made in relation to sub-paragraph (3) or (4) must specify the kind of evidence that a person is required to provide and paragraph 3A(6) gives examples of the evidence which may be specified - a person's date of birth or national insurance number. Under new paragraph 3A(7) provision made under sub-paragraph (3) or (4) may require that this evidence is provided to the Chief Electoral Officer or some other prescribed person.
- 209 New paragraph 3A(8) provides that provision can be made about how a requirement for an applicant to provide a signature in an application for electoral registration in Northern Ireland or a form submitted in connection with a canvass can be satisfied.
- 210 Paragraph 7 of Schedule 2 to the Bill inserts new paragraph 5ZA into Schedule 2 to the RPA 1983. New paragraph 5ZA(1) allows regulations to be made about the manner in which 'relevant absent vote applications' can be made (defined in new paragraph 5ZA(5) and (6)). New paragraph 5ZA(2) enables provision under sub-paragraph (1) to (a) confer functions on the Secretary of State, registration officers, or local or public authorities in Great Britain to enable applications to be made in a particular manner; (b) confer other functions on

- registration officers; (c) confer functions on the Electoral Commission; and (d) authorise the Secretary of State or the Chief Electoral Officer for Northern Ireland, in prescribed circumstances, to complete applications in part for people.
- 211 New paragraph 5ZA(3) provides for provisions to be made that impose requirements to be met in relation to a relevant absent voting application. Paragraph 5ZA(4) provides for provisions to be made about how a requirement for an applicant to provide a signature in connection with a relevant absent voting application may be satisfied.
- 212 Paragraph 8 of Schedule 2 to the Bill amends paragraph 8B(1) of Schedule 2 to the RPA 1983, which allows provision to be made to authorise or require a registration officer to treat a prescribed person's statement of fact as sufficient evidence of that fact, so that it also extends to applications for electoral identity documents, anonymous elector's documents and electoral identity cards under sections 13BD, 13BE and 13C respectively.
- 213 Paragraph 9 inserts new paragraph 8BA allowing provisions to require registration officers to keep records relating to applications for electoral identity documents and anonymous elector's documents, and relating to any documents issued as a result of those applications, and allowing provisions to require the Chief Electoral Officer for Northern Ireland to do likewise for applications for electoral identity cards and such cards issued. New paragraph 8BA(4) also sets out, in both instances, that provisions may be made to allow this information to be shared as prescribed.
- 214 Paragraph 10 expands paragraph 8C of Schedule 2 to the RPA 1983, which enables provision to be made about retention, disposal and other processing of information received in the course of registration-related procedures, so that these powers also apply to information relating to applications under sections 13BD, 13BE and 13C.
- 215 Paragraph 11 inserts new sub-paragraph (1ZZA) into paragraph 13 of Schedule 2 to RPA 1983. Paragraph 13(1)(b) of Schedule 2 to RPA 1983 allows provision to be made to create a criminal offence for a person, without lawful authority, to destroy, mutilate, deface or remove any notice published by the registration officer in connection with the officer's 'registration duties'. New paragraph 13(1ZZA) expands the meaning of 'registration duties' to include references to (a) in the case of a registration officer in Great Britain, their functions under sections 13BD and 13BE RPA 1983 in relation to electoral identity documents and anonymous elector's documents, and their functions in relation to absent vote applications under paragraph 3, 4 or 6 of Schedule 4 to the Representation of the People Act 2000, other than applications in relation to a local government election, or local government elections in Scotland or Wales; (b) in the case of the Chief Electoral Officer for Northern Ireland, their functions under section 13C RPA 1983 in relation to electoral identity cards and in relation to absent vote applications under section 6, 7 or 8 of the Representation of the People Act 1985.
- 216 Paragraph 12 provides a power to make regulations to amend Schedule 4 to the RPA 2000 and section 6 or 7 of the RPA 1985 in order to remove a requirement that an applicant's absent vote application in Great Britain (other than an 'excluded application', i.e. an application in relation to a local government election, or local government elections, in Scotland or Wales - see paragraph 12(2)) and Northern Ireland respectively must include their signature.
- 217 Such regulations may make (a) different provision for different purposes; and (b) consequential, supplementary, incidental, transitional, transitory or saving provision (including consequential provision amending any provision made by the Representation of the People Acts (paragraph 12(3))). Any such regulations are to be made by statutory instrument subject to the affirmative resolution procedure (paragraph 12(4)).
- 218 Paragraph 13 provides a power to make provision about unique reference numbers in relation to elections in Northern Ireland. A unique reference number ('URN') is issued to every elector

that registers digitally in Northern Ireland for use when applying for an absent vote. Paragraph 13(1) provides that regulations may be made about the issuing or use of URNs in connection with applications to register, applications for an absent vote or canvass. Paragraph 13(2) provides that such regulations may amend, repeal or change provisions relating to URNs in the Representation of the People Acts 1983 and the Elected Authorities (Northern Ireland) Act 1989.

219 Paragraph 13(3) provides that regulations may make (a) different provision for different purposes; or (b) consequential, supplementary, incidental, transitional, transitory or saving provision (including provision amending any provision made by the Representation of the People Act or the Elected Authorities (Northern Ireland) Act 1989. In accordance with paragraph 13(5) and (6), any such regulations are to be made by statutory instrument and subject to the affirmative resolution procedure.

220 Paragraph 14 makes the following consequential repeals: (a) section 2(2) of the Elections (Northern Ireland) Act 1985; (b) paragraph 24(5) of Schedule 1 to the Representation of the People Act 2000; and (c) paragraph 20(4) of Schedule 4 to the Electoral Registration and Administration Act 2013.

## Postal and Proxy Voting

### Clause 3: Restriction of period for which person can apply for postal vote

221 Clause 3 gives effect to Schedule 2 to the Bill. This amends Schedule 4 to the RPA 2000 so as to limit to a maximum of three years the period for which a person can apply to vote by post at UK Parliamentary elections in England, Wales and Scotland, and local government elections in England.

### Schedule 3: Restriction of period for which person can apply for postal vote

222 Paragraph 1 of Schedule 3 provides for Schedule 4 to the RPA 2000 (absent voting in Great Britain) to be amended in line with the amendments set out in the Schedule.

223 Paragraph 2 amends paragraph 3 of Schedule 4 to the RPA 2000 which currently provides for applications for absent voting at elections to be made for a definite or indefinite period. The amendments amend sub-paragraph (1) of paragraph 3, and insert a new sub-paragraph (1A), to provide that at UK Parliamentary elections or local government elections in England it will no longer be possible for a person to be able to apply for a postal vote for an indefinite period. Under the changes, a grant of an application to vote by post in relation to UK Parliamentary elections or local government elections in England may not exceed three years. The amendments provide that the postal vote of a person who has chosen to apply for a postal vote for the maximum period possible will run until the third 31 January following the date on which the application is granted. This will ensure that these postal vote applications will cease on 31 January in the year in question, which will give the elector time to apply for a fresh postal vote ahead of any scheduled elections for May in that year, if the elector wishes to continue to vote by post. The amendments also allow a person to apply for a postal vote for a shorter period than the period ending with the third 31 January following the date on which the application is granted.

224 New sub-paragraph (1B) provides that the provisions in sub-paragraph (1A) do not apply to a postal voter who is registered to vote at parliamentary elections in pursuance of an overseas elector's declaration. Instead, any grant of a postal vote application by an overseas elector will run until the period ending with the 1 November during which the person is entitled to remain registered to vote as an overseas elector (which may not exceed 3 years) in accordance with new section 1D(1)(a) or (3)(a) of the RPA 1985. An overseas elector may apply to vote by post for a shorter period if they wish.

- 225 The amendments make consequential changes to sub-paragraphs (4) and (5) of paragraph 3 of Schedule 4 concerning the record of absent voters and the removal from that record to reflect that there is now a limit on the period for which a person may hold a postal vote at UK Parliamentary elections and local government elections in England.
- 226 The amendments make a consequential change to sub-paragraph (7) of paragraph 3 of Schedule 4, and insert a new sub-paragraph (7A), to reflect that a proxy voter who wishes to vote by post instead may apply for a postal vote for a period not exceeding 3 years. New sub-paragraph (7B) provides that the provisions in sub-paragraph (1B) apply where an overseas elector who is a proxy makes an application to vote by post. The amendments preserve the existing position that a person may apply to vote by post for an indefinite period or for a particular period at local government elections in Scotland or Wales.
- 227 Paragraph 3 amends paragraph 7 of Schedule 4 to the RPA 2000 which concerns persons voting as a proxy on behalf of another elector at an election. The amendments make equivalent changes in relation to these persons to those made by paragraph 2 of the Schedule. Under the changes, a grant of an application to vote by post by a proxy voter in relation to UK Parliamentary elections or local government elections in England may not exceed three years. The amendments preserve the existing position that a person appointed as proxy for another elector may apply to vote by post for an indefinite period or for a particular period at local government elections in Scotland or Wales.
- 228 Paragraph 4 makes transitional provision in relation to existing postal voters at the time the limit on the maximum period for which a person can apply for a postal vote comes into force. The paragraph provides that the transitional arrangements will apply to postal voters who, immediately before the day to be specified in regulations by the Secretary of State (“the specified day”), have a postal vote for an indefinite period or for a particular period that would expire after the end of three years beginning with the specified day. Under paragraph 4, these persons will continue to be able to vote by post until either the third 31 January following the specified day or, if this is sooner, “the signature refresh date”. The signature refresh date is the date by which the registration officer would ordinarily be required to send a notice to the postal voter requiring them to provide a fresh signature (under the existing signature refresh provisions, this notice must be sent by 31 January in any year if a person’s signature on record is more than five years old). The notice that is ordinarily required to be sent will not be so required if the person’s only entitlement to vote as an absent voter is a postal vote that will expire on the signature refresh date under these transitional provisions. The registration officer must send to a postal voter before the end of the period for which they have a postal vote a notice informing the person of the date on which their postal vote entitlement is to end, and information about how to make a fresh application to vote by post.
- 229 The transitional arrangements provide that the new limit on the period for which a person may apply for a postal vote is phased in for existing long-term postal voters. They provide that these persons will cease to have a postal vote on the 31 January in the year in question, which will give them time to make a fresh postal vote application ahead of any scheduled elections for May in that year, if they wish to continue to vote by post.
- 230 The transitional arrangements in this paragraph do not apply in relation to a person who is registered to vote in parliamentary elections in pursuance of an overseas elector’s declaration made at any time before the day on which section 12 comes into force (see instead Part 2 of Schedule 7).

#### Clause 4: Handling of postal voting documents by political campaigners

- 231 Clause 4 amends the RPA 1983, introducing a new criminal offence banning political campaigners from handling postal voting documents issued to others.

- 232 Subsections (1) and (2) insert the new handling offence as new section 112A of the RPA 1983.
- 233 New section 112A(1) provides that those defined in section 112A(7) as “political campaigners” commit an offence if they handle postal voting documents in relation to UK Parliamentary and English local elections. For these purposes, “political campaigners” (as defined in subsection (7)) includes candidates, election agents and party workers.
- 234 New section 112A(2) provides an exemption from the offence for specified persons who may handle postal votes in the normal course of their duties, such as a postal operator.
- 235 New section 112A(3) creates two further exemptions to this offence where the handler is a listed family member or carer of the postal voter.
- 236 New section 112A(4) provides that it is a defence for a person charged with the offence to show that they did not dishonestly handle the postal voting document for the purpose of promoting a particular outcome at an election.
- 237 New section 112A(5) provides that where sufficient evidence has been introduced to raise the defence as an issue, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- 238 New section 112A(6) makes the offence a “corrupt practice”, bringing the offence within the existing prosecution, sentencing and penalty regime for electoral offences in the RPA 1983. This offence carries a maximum penalty of up to two years in prison, a fine, or both; and prohibition from standing for electoral office and from voting for a period of 5 years. In line with other electoral offences, this subsection makes it clear that anyone who aids, abets, counsels or procures the commission of the offence in relation to handling postal voting documents is also guilty of a corrupt practice.
- 239 New section 112A(7) sets out the persons who are deemed to be a political campaigner for the purpose of this section. A political campaigner is a person who is:
- a. a candidate at the election;
  - b. an election agent of a candidate at the election;
  - c. a sub-agent of a person within paragraph (b);
  - d. employed or engaged by a person who is a candidate at the election for the purposes of that person’s activities as a candidate;
  - e. a member of a registered political party and carries on an activity designed to promote a particular outcome at the election;
  - f. employed or engaged by a registered political party in connection with the party’s political activities;
  - g. employed or engaged by a person within any of paragraphs (a) to (f) to carry on an activity designed to promote a particular outcome at the election;
  - h. employed or engaged by a person within paragraph (g) to carry on an activity designed to promote a particular outcome at the election.
- 240 New section 112A(8) defines some of the terms used in new section 112A, including “relevant election” to which the provisions apply, namely UK Parliamentary elections and local elections in England. New subsections (9)-(11) provide some further interpretation of the terms used.

241 Subsection (3) applies the existing processes for the identification of a person guilty of a corrupt or illegal practice by an election court (set out in section 160 of the RPA 1983) to those convicted of the new offence.

242 Similarly, subsection (4) applies the existing provisions for the prosecution of corrupt practices (set out in section 168 of the RPA 1983) to those convicted of the new offence. Under these provisions, on indictment, the person would be liable to imprisonment for a term not exceeding two years, or a fine, or both. On summary conviction, the person would be liable to imprisonment for a maximum of six months, or to a fine, or to both.

243 Subsection (5) applies the existing provisions in relation to incapacities (set out in section 173 of the RPA 1983) to persons convicted of the offence.

## Clause 5: Handing in postal voting documents

244 Clause 5 amends Schedules 1 and 2 to the RPA 1983, introducing powers to allow regulations to be made setting out requirements for the handing in of postal votes to the Returning Officer and at polling stations, including setting a limit on the number of postal voters on behalf of whom a person may hand in postal votes, and for postal votes to be rejected if not handed in in accordance with the requirements.

245 Subsection (4) of the clause amends rule 45 of Schedule 1 to the RPA 1983 which concerns the counting of votes at UK Parliamentary elections. Paragraph (1B) of rule 45 concerns the requirements for a postal ballot paper to be taken to be “duly returned” and therefore included in the count at a UK Parliamentary election in England, Wales or Scotland. Subsection (4) amends this to specify that a postal vote will be taken to be duly returned if the postal vote does not fall to be rejected under regulations made under this provision (more detail on rejection of postal votes is set out below). Subsection (4) also amends paragraph (2) of rule 45 which concerns the return of postal ballot papers to the Returning Officer at UK Parliamentary elections in Northern Ireland and the amendments make equivalent changes for these elections in Northern Ireland as set out above for UK Parliamentary elections in Great Britain.

246 Subsection (5) amends Schedule 2 to the RPA 1983 which sets out provisions which may be contained in regulations as to registration and other matters. Paragraph 12 of Schedule 2 currently provides for regulations to be made in relation to the issue and receipt of postal ballot papers. Subsection (5) inserts a new paragraph 12ZA into Schedule 2 that sets out provisions that may be made where regulations under rule 45(1B)(a) or (b) in Schedule 1 provide that a postal voting document may be handed in to a polling station or to the Returning Officer at UK Parliamentary elections in Great Britain.

247 Under new paragraph 12ZA(2), regulations may require a person seeking to hand in a postal voting document to complete a form containing specific information, which the government anticipates would include, among other information, the name(s) of the postal voter(s) whose ballot papers are being handed in. Regulations may make provision to require the “relevant officer” receiving the ballot to reject the document if the person fails to complete the form. The relevant officer is defined, along with other terms, in new paragraph 12ZA(12) as: (i) the Presiding Officer or clerk at the polling station, where the postal vote is handed in at a polling station, or (ii) the Returning Officer or person acting under the authority of the Returning Officer where the postal vote is handed in to the Returning Officer. Regulations may also make provision as to the arrangements to be made in respect of those forms.

248 New paragraph 12ZA allows regulations to require the rejection of postal ballots handed in on behalf of more than the maximum number of electors (in addition to the individual’s own postal ballots). The maximum number of other electors will be set out in secondary legislation.

The individual handing in the postal voting documents on behalf of another will be able to hand in postal ballots for all the polls in which the elector(s) can vote.

- 249 Under new subparagraph (3) of new paragraph 12ZA, the regulations may set out the procedure to be followed where an individual hands in postal voting documents on behalf of more than the prescribed number of electors. Provision may be made to require a relevant officer to reject postal voting documents handed in by a person who hands in ballots on behalf of more than the prescribed number of electors, or where a relevant officer has reasonable cause to suspect a person is handing in postal ballots on behalf of more than the prescribed number of electors. The maximum applies to all the postal ballots that are handed in together or, if the individual has already handed in postal ballots in relation to that election (or elections held on the same day), to the combined total of postal ballots handed in by that individual. Subparagraph (4) provides an explanation of the meaning of terms used in subparagraph (3).
- 250 New paragraph 12ZA(5) provides that provision may be made to authorise the relevant officer to reject a postal voting document handed in by a person where they have reasonable cause to suspect that the person may be in breach of the offence under new section 112A of the RPA 1983 (offence relating to handling of postal voting documents).
- 251 Under new paragraphs 12ZA(6) and (7), provision may be made in respect of a postal voting document that is rejected, or brought into a polling station or the offices of the Returning Officer so that it may be handed in, but is left behind there without being handed in; for the storage and disposal of those documents; and for the transfer of those documents to the Returning Officer and registration officer.
- 252 New paragraph 12ZA(9) provides for notification that a postal ballot paper has been rejected or left behind. New paragraph 12ZA(10) specifies that the person to be notified is the person whose ballot paper is rejected, or where that person is a proxy, that person and the elector for whom the person voted as proxy.
- 253 Subsection (5) also inserts new paragraph 12ZB into Schedule 2 to the RPA 1983 which allows equivalent provision to new paragraph 12ZA (in relation to UK Parliamentary elections in Great Britain) to be made about the handing in of postal votes to the Returning Officer at UK Parliamentary elections in Northern Ireland. Postal votes cannot be returned to the polling station in Northern Ireland.

#### Clause 6: Limit on number of electors for whom a proxy can vote

- 254 Clause 6 gives effect to Schedule 4 of the Bill. This amends provisions in the RPA 1983, RPA 1985 and Schedule 4 to the RPA 2000 to introduce a new limit of four on the total number of electors for whom a person may act as proxy in UK Parliamentary elections or local government elections in England. Within this limit of four, no more than two electors can be electors who are registered otherwise than in pursuance of an overseas elector's declaration or a service declaration. All four may be for overseas electors or service voters.

#### Schedule 4: Proxy Voting: Limits and Transitional Provision

- 255 Schedule 4 amends provisions in the RPA 1983, RPA 1985 and Schedule 4 to the RPA 2000.
- 256 Paragraph 2(2) of the Schedule inserts a new subsection (1A) into section 61 of the RPA 1983 to provide for a new electoral offence at UK Parliamentary elections in the United Kingdom and local government elections in England.
- 257 New subsection (1A) makes it an offence for:

- a person ("P") to apply to appoint a proxy at (a) a particular UK Parliamentary election, or (b) UK Parliamentary elections, knowing that the person to be appointed



is already appointed as a proxy for four or more other electors at (respectively) (a) that election or UK Parliamentary elections, or (b) UK Parliamentary elections or a particular UK Parliamentary election, and

- where P is registered to vote at UK Parliamentary elections otherwise than in pursuance of an overseas elector's declaration or a service declaration, and P knows that the person to be appointed for (a) a particular UK Parliamentary election or (b) UK Parliamentary elections, is already appointed as a proxy at (respectively) (a) that election or these elections, or (b) a particular UK Parliamentary election, or UK Parliamentary elections, for two or more other electors who are registered to vote otherwise than in pursuance of an overseas elector's declaration or a service declaration.

258 New subsection (1A) also makes it an offence for:

- A person ("P") to apply to appoint a proxy at (a) a particular local government election in England, or (b) local government elections in England, knowing that the person to be appointed is already appointed as a proxy for four or more other electors at (respectively) (a) that election or local government elections in England, or (b) local government elections in England or a particular local government election in England, and
- where P is registered to vote at local government elections in England otherwise than in pursuance of a service declaration, and P knows that the person to be appointed is already appointed as a proxy at (a) a particular local government election in England, or (b) local government elections in England for two or more other electors who are registered to vote otherwise than in pursuance of a service declaration at (respectively) (a) that election or local government elections in England, or (b) local government elections in England or a particular local government election in England.

259 Paragraph 2(3) inserts a new subsection (3B) into section 61 to provide that a person is also guilty of an offence if they vote as proxy:

- for more than four electors at a UK Parliamentary election or at Parliamentary elections when those elections are being held in more than one constituency on the same day (for example a general election) or a local government election or elections (if more than one local election is being held on that day) in England;
- for more than two electors at a UK Parliamentary election or at Parliamentary elections when those elections are being held in more than one constituency on the same day (for example a general election), where the person knows that none of those electors is registered to vote at these elections in pursuance of an overseas elector's declaration or a service declaration;
- for more than two electors at a local government election or elections (if more than one local election is being held on that day) in England, where that person knows that none of those electors is registered to vote at these elections in pursuance of a service declaration.

260 A person found guilty of an offence under new subsections (1A) or (3B) shall be guilty of an illegal practice and will be liable to an unlimited fine in England and Wales, and a fine not exceeding level 5 on the standard scale in Scotland and Northern Ireland.

261 Paragraph 2(4) amends existing section 61(4) of the RPA 1983 concerning voting as proxy at an election, as a consequence of new subsections (1A) and (3B), to provide that the existing



offence of voting as proxy for more than two persons of whom the person is not a close relative continues to apply to a local government election in Wales and Scotland.

- 262 When a person votes as a proxy voter, they may be asked certain questions by the Presiding Officer in the polling station to ensure that the person is voting in accordance with the requirements on the number of persons for whom they may vote as a proxy. For UK Parliamentary elections, the questions are set out at rule 35 of Schedule 1 to the RPA 1983. Paragraph 4 removes a number of existing questions and inserts new questions in rule 35 to reflect that, at UK Parliamentary elections in the United Kingdom, the Schedule limits the total number of electors for whom a person may act as a proxy to four, and within the four electors, to no more than two electors who are registered to vote otherwise in pursuance of an overseas elector's declaration or a service declaration, regardless of the family relationship to the elector.
- 263 Paragraph 4 also amends Rule 35 of Schedule 1 to the RPA 1983 by inserting a new question in relation to elections in Northern Ireland so that a person voting as proxy at a parliamentary election may be asked for their date of birth when applying for a ballot paper to enable polling staff to confirm that the proxy is the elector they represent themselves to be.
- 264 Paragraph 5 inserts a new paragraph 5C into Schedule 2 to the RPA 1983, which allows for provision to be made in regulations for checks on proxy eligibility in Northern Ireland and information about a person's registration status to be provided by registration officers in Great Britain. This mirrors existing provision in relation to Great Britain.
- 265 Paragraph 6 amends section 8 of the RPA 1985 which concerns proxies at UK Parliamentary elections in Northern Ireland. New subsection (2A) is inserted to provide that a person may not be a proxy unless they will be registered in a register of parliamentary electors in Great Britain or Northern Ireland. Subsection 3 is also amended to remove the existing nationality requirements for proxies in Northern Ireland.
- 266 Paragraph 6 also amends subsection 5 of section 8 of the RPA 1985. It currently provides that a person may vote as a proxy voter at the same UK Parliamentary election in Northern Ireland in any constituency, on behalf of up to two electors and an unlimited number of specified family members. The amendments amend section 8 to set out the new limit of 4 on the total number of electors for whom a person is entitled to vote as proxy at UK Parliamentary elections in Northern Ireland.
- 267 Paragraph 6 also inserts a new subsection (7A) into section 8 of the RPA 1985. This provides that any requirements prescribed in relation to applications for a proxy under 8(6) (application for an indefinite period) and 8(7) (application for a particular election) of the RPA 1985 must contain the requirement for the date of birth to be included in the application for a proxy vote.
- 268 Paragraph 7 amends paragraph 6 of Schedule 4 to the RPA 2000 which provides for a person to be appointed as proxy to vote for another person at elections in Great Britain. Paragraph 6 of Schedule 4 to the RPA 2000 currently provides that a person may vote as a proxy voter at the same UK Parliamentary election in Great Britain in any constituency, or at the same local government election in any electoral area, on behalf of up to two electors and an unlimited number of specified family members. In legislation, a UK Parliamentary election and a local government election are each defined by reference to a particular constituency or area. The amendments set out the new limit of four (no more than two of whom can be registered otherwise than in pursuance of an overseas elector's declaration or a service declaration) on the total number of electors for whom a person is entitled to vote as proxy at a UK Parliamentary election or (where these take place in more than one constituency on the same day) UK Parliamentary elections in Great Britain or a local government election or (where

these take place in more than one electoral area on the same day) local government elections in England.

- 269 Paragraphs 8-11 make provision in relation to existing proxy vote arrangements that are in place at the time that the new limit on the number of persons for whom a person may act as proxy comes into force.
- 270 Paragraph 8 provides that existing proxy appointments at UK Parliamentary elections in Great Britain and local government elections in England (in force as a result of an application made before the date on which the offence in paragraph 2(2) of the Schedule relating to the appointment of proxies comes into force) will cease on a day to be specified in regulations by the Secretary of State (“the specified day”). Electors wanting to continue with a proxy vote arrangement will need to reapply for a proxy vote under the new rules that provide that a person may act as proxy for up to four electors only. Registration officers in Great Britain will be required to send a notice to an elector who has appointed a proxy before the specified day informing them of the date on which their proxy vote arrangement will cease to be in force and information about how to make a fresh application to vote by proxy.
- 271 Paragraph 8 further provides that, in relation to Great Britain, if the specified day is 31 January in a particular year, and the registration officer would be required by the specified day to send a notice to the elector requiring them to provide a fresh signature (under the existing signature refresh provisions), the requirement to send the notice to the elector would not apply unless the elector has other absent voting arrangement that still require the provision of a fresh signature.
- 272 Paragraphs 8 require that once a proxy appointment ceases to be in force under these provisions, the registration officer (in Great Britain) must as soon as practicable after this remove the entries relating to the appointment from the relevant absent voters’ record.
- 273 Paragraph 9 provides that existing proxy appointments at UK Parliamentary elections in Northern Ireland (in force as a result of an application made before the date on which the relevant provisions (“the relevant provisions”) of the Schedule come into force) will cease on a day to be specified (“the specified day”) in regulations by the Secretary of State. The relevant provisions are the offence in paragraph 2(2) of the Schedule relating to the appointment of proxies and the requirement in paragraph 6(2) that proxies be registered in a register of parliamentary electors. Electors wanting to continue with a proxy vote arrangement will need to reapply for a proxy vote under the new rules that provide that a person may act as proxy for up to four electors only or the rules requiring that the proxy be registered. The Chief Electoral Officer in Northern Ireland, will be required to send a notice to an elector who has appointed a proxy before the specified day informing them of the date on which their proxy vote arrangement will cease to be in force and information about how to make a fresh application to vote by proxy. Paragraph 9(4) requires that once a proxy appointment ceases to be in force under these provisions, the Chief Electoral Officer must as soon as practicable after this remove the entries relating to the appointment from the relevant absent voters’ record. Paragraph 9(5) requires that there can be more than one specified day if paragraphs 2(2) and 6(2) come into force on different days.
- 274 In relation to UK Parliamentary elections in Great Britain and local government elections in England, paragraph 10 provides that an application for a proxy appointment that is made before, but not determined by, “the specified day” is to be treated as not having been made and the registration officer will be required to send the person information about how to make a fresh application. This paragraph provides that these provisions do not apply where the application is made on or after the date on which the offence in paragraph 2(2) of the Schedule relating to the appointment of proxies comes into force. The effect of the provisions in

paragraph 10 is that, if the offence concerning the appointment of proxies is commenced before the specified day, any elector who has been granted a proxy vote before the specified day, on the basis of an application made on or after the date of commencement of the provision containing the offence, would be able to continue with those proxy arrangements, and an elector whose application for a proxy vote is still being processed on the specified day would not need to make a fresh application to vote by proxy. These provisions are designed to enable the transitional arrangements for existing proxy voters to run smoothly.

275 In relation to UK Parliamentary elections in Northern Ireland paragraph 11 provides that an application for a proxy appointment that is made before, but not determined by, “the specified day” is to be treated as not having been made and the Chief Electoral Officer will be required to send the person information about how to make a fresh application. These paragraphs provide that these provisions do not apply where the application is made on or after the date the relevant provisions come into force. The effect of these provisions is that, if the relevant provisions are commenced before the specified day, any elector who has been granted a proxy vote before the specified day, on the basis of an application made on or after the date of commencement of the provision containing the offence, would be able to continue with those proxy arrangements, and an elector whose application for a proxy vote is still being processed on the specified day would not need to make a fresh application to vote by proxy. Paragraph 11(4) provides that there can be more than one specified day if paragraphs 2(2) and 6(2) come into force on different days. These provisions are designed to enable the transitional arrangements for existing proxy voters to run smoothly.

## Clause 7: Requirement of secrecy

276 This clause amends the requirement to maintain the secrecy of voting set out in section 66 of the RPA 1983 in order to extend it to postal and proxy voting in a “relevant election”.

277 Subsection (2) inserts new subsections (3A), (3B) and (3C) into section 66 of the RPA 1983. New subsection (3A) mirrors existing secrecy provisions for voting in person and extends those to voting by post. Those provisions include a restriction on obtaining or attempting to obtain, or communicating, information about whether or for whom the person has voted.

278 New subsection (3B) provides that an elector who has appointed a proxy to vote by post on their behalf does not contravene subsection (3A) by obtaining from their proxy information relevant for the vote to be cast (except the official mark on a ballot paper) and the proxy does not contravene subsection (3A) by communicating such information to the elector who appointed them.

279 New subsection (3C) provides that a person voting as proxy for another elector at an election must not communicate at any time to any person, except the elector for whom they are voting as proxy, any information as to the candidate for whom that person is about to vote or has voted (as proxy), or, except for purposes authorised by law, the number or other unique identifying mark on the back of a ballot paper sent or delivered to that person.

280 Subsection (3) inserts new subsections (4A) and (4B) into section 66 of the RPA 1983 to mirror the existing secrecy requirement under section 66(5). The existing subsection (5) only applies to a person (companion) assisting a blind voter by voting on their behalf, and the new subsections extend this to companions voting on behalf of voters who are blind, have other disabilities or are unable to read. Subsection (6) of the clause amends the Parliamentary elections rules to reflect this extension of the secrecy requirement. Subsection (4) amends section 66(5) of the RPA 1983 so that the existing secrecy requirement continues to apply to local government elections in Scotland and Wales.

281 Subsection (5) inserts a new subsection 66(6A) which defines the term “relevant election”, to which the extended secrecy provisions apply. Those elections are UK Parliamentary elections and local government elections in England.

282 The existing offence at section 66(6) of the RPA 1983 will apply to a person who acts in contravention of any of the secrecy requirements set out in section 66 of the RPA, including the new requirements. A person found guilty shall be liable on summary conviction to an unlimited fine in England and Wales, and a fine not exceeding level 5 on the standard scale in Scotland and Northern Ireland, or to imprisonment for up to 6 months.

## Undue Influence

### Clause 8: Undue influence

283 Section 115 of the RPA 1983 sets out the corrupt practice of undue influence. Clause 8 of this Bill replaces section 115(2) of the RPA 1983 with new section 115(2) to (6).

284 New section 115(2) makes clear that, for a person to be guilty of undue influence, a person must carry out an activity listed in new section 115(4) for a specific purpose. This purpose is either to induce or compel an elector (or an elector’s proxy) to vote in a particular way (e.g. for or against a particular candidate, political party or referendum question) or not to vote at all (new section 115(2)(a)), or to impede more generally the free exercise of the franchise of an elector (or proxy) (new section 115(2)(b)).

285 The phrase “for the purpose of” in new section 115(2) shows that, as is currently the case, the intent of the person carrying out the activity is key: it is enough to establish an intent to unduly influence an elector (or proxy), even if the activity was not actually successful in this regard.

286 New section 115(3) is similar to new section 115(2) in that it sets out that a person will also be guilty of undue influence if they carry out an activity listed in new section 115(4) because an elector (or proxy) has voted in a particular way or not voted at all, or because the person assumes that the elector (or proxy) has done so. As is currently the case, undue influence is not limited to activities which occur before an elector (or proxy) casts their vote; undue influence can also be exerted after an elector (or proxy) casts their vote. Such activities may seek to influence future voting decisions by the same individual or, indirectly, influence the vote of others who have yet to make their voting decision.

287 New section 115(4) lists the seven categories of activity which may constitute undue influence. All activities are carried out in relation to “a person”, meaning that an activity may in some circumstances constitute undue influence if carried out in relation to a person other than an elector (or proxy) (for example, an activity carried out against a family member of an elector for the purpose of inducing that elector to vote in a particular way).

288 The seven categories of activity are:

- a. Using (or threatening to use) physical violence including, but not limited to, physical restraint or abduction;
- b. Damaging or destroying (or threatening to damage or destroy) property;
- c. Damaging (or threatening to damage) a person’s reputation by, for example, disseminating information about a person;
- d. Causing (or threatening to cause) financial or economic loss by, for example, boycotting business premises owned or operated by a person;
- e. Causing spiritual injury to or placing undue spiritual pressure on a person.

- f. Doing any other act designed to intimidate a person.
- g. Deceiving a person in relation to the conduct or administration of an electoral event. This could be (for example): deception about the date of an electoral event or location of a polling station; deception as to the requirements and qualifications for voting; deception as to the mechanics of voting, such as the significance of placing a cross on a ballot.

289 New section 115(4)(e) relates to causing spiritual injury or placing undue spiritual pressure on a person. This is often, but not always, inflicted or exerted by those in a position of spiritual or religious authority. “Spiritual injury” includes (for example) the act of excluding a person from the membership of an organised belief system or banning them from attending a place of worship. “Undue spiritual pressure” includes (for example) the suggestion that to vote or not vote for a particular candidate or party:

- a. is a duty or obligation arising from the spiritual or religious beliefs that a person holds or purports to hold;
- b. improves or reduces a person’s spiritual standing or wellbeing;
- c. has specific spiritual consequences, either positive (e.g. going to “heaven” or similar) or negative (e.g. damnation);
- d. has other consequences of a spiritual nature, such as exclusion from the membership of an organised belief system.

290 However, there is a degree of spiritual influence inherent in all positions of religious or spiritual authority. It is only when this spiritual influence becomes a form of improper or inappropriate pressure that it amounts to “undue” spiritual influence. Therefore “undue spiritual pressure” does not include legitimate aspects of the enjoyment of the freedoms of thought, belief or expression, for example, a religious leader expressing their opinion on political or other matters that have implications for the principles of that religion, or the behaviour of religious groups for whom not voting is an established doctrinal position.

291 New section 115(4)(f) relates to all other acts which are designed to intimidate a person which are not covered by the first five categories. This covers other activities which amount to what would generally be considered to be intimidation of electors but which do not neatly fit within one of the other specified categories of activities. New section 115(4)(f) does not seek to exhaustively define the meaning of “intimidation”; it is ultimately for a court to be satisfied objectively whether or not a specific activity amounts to intimidation.

292 New section 115(5) provides that a person can carry out undue influence directly, jointly with other persons or indirectly via other persons acting on the person’s behalf. In order for a person to carry out undue influence indirectly, as in new section 115(5)(c), that person must have authorised or consented to the relevant activity.

293 New section 115(6) provides that the activities which are set out in new section 115(4)(f) and (g) can be carried out via act or omission.

## Schedule 5: Undue influence: Further Provision

294 Schedule 5 contains a number of amendments. The effect of existing legislation (as amended by this Schedule) is that any incapacity arising from a person being reported by an election court as personally guilty of the corrupt practice of undue influence, or arising from a person being convicted of the corrupt practice of undue influence anywhere in the UK, makes that person incapable of being elected to any of the following elective offices:

- a. Member of the House of Commons;
- b. Member of the Scottish Parliament;
- c. Member of the Senedd Cymru;
- d. Member of the Northern Ireland Assembly;
- e. Member of any local authority in any part of the United Kingdom;
- f. Elected mayor of a local authority in England or Wales;
- g. Mayor for a combined authority in England;
- h. Mayor of London;
- i. Member of the London Assembly;
- j. Police and crime commissioner.

295 Paragraphs 1 to 3 amend the Local Government Act 1972. The effect of these amendments is that a person is disqualified from being elected to or holding the office of a member of a local authority in England or Wales where that person has been reported by an election court as personally guilty of, or is convicted of, the corrupt practice of undue influence set out in:

- a. article 77 of the Scottish Parliament (Elections etc.) Order 2015 in relation to an election of the Scottish Parliament;
- b. article 81 of the National Assembly for Wales (Representation of the People) Order 2007 in relation to an election to the Senedd Cymru;
- c. section 115 RPA 1983 as applied by Schedule 1 to the Northern Ireland Assembly (Elections) Order 2001 in relation to an election to the Northern Ireland Assembly;
- d. paragraph 3 of Schedule 9 to the Electoral Law Act (Northern Ireland) 1962 (“ELA (NI) 1962”) in respect of a district council election in Northern Ireland.

296 Paragraph 4 amends the Local Government Act (Northern Ireland) 1972. The effect of this amendment is that a person is disqualified from being elected to or holding the office of a member of a district council in Northern Ireland where that person has been reported by an election court as personally guilty of, or is convicted of, the corrupt practice of undue influence set out in:

- a. section 115 RPA 1983, and also that section as applied by Schedule 1 to the Northern Ireland Assembly (Elections) Order 2001 in relation to an election to the Northern Ireland Assembly;
- b. article 69 of the Police and Crime Commissioner Elections Order 2012 in relation to a police and crime commissioner election;
- c. regulation 136 of the Recall of MPs Act 2015 (Recall Petition) Regulations 2016 in relation to a recall petition;
- d. article 77 of the Scottish Parliament (Elections etc.) Order 2015 in relation to an election of the Scottish Parliament;
- e. article 81 of the National Assembly for Wales (Representation of the People) Order 2007 in relation to an election to the Senedd Cymru.

297 Paragraph 5 amends the Local Government (Scotland) Act 1973. The effect of this amendment is that a person is disqualified from being elected to or holding the office of a member of a

local authority in Scotland where that person has been reported by an election court as personally guilty of, or is convicted of, the corrupt practice of undue influence set out in:

- a. article 81 of the National Assembly for Wales (Representation of the People) Order 2007 in relation to an election to the Senedd Cymru;
- b. section 115 RPA 1983 as applied by Schedule 1 to the Northern Ireland Assembly (Elections) Order 2001 in relation to an election to the Northern Ireland Assembly;
- c. paragraph 3 of Schedule 9 to the ELA (NI) 1962 in respect of a district council election in Northern Ireland.

298 Paragraph 6 amends the Representation of the People Act 1983. The effect of these amendments is that a person is disqualified from being elected to or holding a seat in the House of Commons where that person has been reported by an election court as personally guilty of, or is convicted of, the corrupt practice of undue influence set out in paragraph 3 of Schedule 9 to the ELA (NI) 1962 in respect of a district council election in Northern Ireland.

299 Paragraph 7 amends the Greater London Authority Act 1999. The effect of this amendment is that a person is disqualified from being elected to or holding the office of a member of the London Assembly or the Mayor of London where that person has been reported by an election court as personally guilty of, or is convicted of, the corrupt practice of undue influence set out in:

- a. article 77 of the Scottish Parliament (Elections etc.) Order 2015 in relation to an election of the Scottish Parliament;
- b. article 81 of the National Assembly for Wales (Representation of the People) Order 2007 in relation to an election to the Senedd Cymru;
- c. section 115 RPA 1983 as applied by Schedule 1 to the Northern Ireland Assembly (Elections) Order 2001 in relation to an election to the Northern Ireland Assembly;
- d. paragraph 3 of Schedule 9 to the ELA (NI) 1962 in respect of a district council election in Northern Ireland.

300 Paragraph 8 amends the Government of Wales Act 2006. The effect of this amendment is that a person is disqualified from being elected to or holding the office of a member of the Senedd Cymru where that person has been reported by an election court as personally guilty of, or is convicted of, the corrupt practice of undue influence set out in paragraph 3 of Schedule 9 to the ELA (NI) 1962 in respect of a district council election in Northern Ireland.

301 Paragraph 9 amends the Local Democracy, Economic Development and Construction Act 2009. The effect of this amendment is that a person is disqualified from being elected to or holding the office of a mayor of a combined authority in England where that person has been reported by an election court as personally guilty of, or is convicted of, the corrupt practice of undue influence set out in:

- a. article 77 of the Scottish Parliament (Elections etc.) Order 2015 in relation to an election of the Scottish Parliament;
- b. article 81 of the National Assembly for Wales (Representation of the People) Order 2007 in relation to an election to the Senedd Cymru;
- c. section 115 RPA 1983 as applied by Schedule 1 to the Northern Ireland Assembly (Elections) Order 2001 in relation to an election to the Northern Ireland Assembly;
- d. paragraph 3 of Schedule 9 to the ELA (NI) 1962 in respect of a district council election in Northern Ireland.



302 Paragraph 10 amends the Police Reform and Social Responsibility Act 2011. The effect of this amendment is that a person is disqualified from being elected to or holding the office of a police and crime commissioner in England and Wales where that person has been reported by an election court as personally guilty of, or is convicted of, the corrupt practice of undue influence set out in:

- a. article 81 of the National Assembly for Wales (Representation of the People) Order 2007 in relation to an election to the Senedd Cymru;
- b. section 115 RPA 1983 as applied by Schedule 1 to the Northern Ireland Assembly (Elections) Order 2001 in relation to an election to the Northern Ireland Assembly;
- c. paragraph 3 of Schedule 9 to the ELA (NI) 1962 in respect of a district council election in Northern Ireland.

303 Paragraph 11 repeals two provisions which are redundant as a result of the amendment made to section 115 RPA 1983 by clause 8.

## **Assistance with voting for persons with disabilities**

### **Clause 9: Assistance with voting for persons with disabilities**

304 This clause replaces the current requirement for each polling station to provide a tactile voting device (TVD) for voters with sight loss with a new requirement for Returning Officers to provide each polling station with such equipment as is reasonable to enable, or make it easier, for voters with disabilities (including, but not limited to, sight loss) to vote. It also further expands the criteria for who can act in the role of 'companion', by widening it to someone who is aged 18 or over.

305 Subsection (2) amends Schedule 1 of the RPA 83, substituting the requirement for Returning Officers in England and Wales, Scotland and Northern Ireland to provide the TVD with a broader requirement to provide such equipment as it is reasonable to provide for the purposes of enabling, or making it easier for voters with disabilities - including those who have sight loss - to vote in the manner directed by rule 37 of the Schedule, which includes the procedure to mark the ballot paper. As a result of the definition of disability in section 202 of the RPA 1983, the provisions in this clause also include a person who has a short term inability to vote in the manner directed by rule 37.

306 The requirements under this provision do not affect any other statutory requirement or duty imposed on a Returning Officer under the Equality Act 2010, or the Disability Discrimination Act 1995.

307 Subsection (3) changes the qualifying requirement for a person to assist a voter with disabilities in the role of their 'companion' at the polling station, amending rule 39 (Voting by persons with disabilities) of Schedule 1 to the RPA 1983. As a result of this change, a companion is no longer required to be someone either entitled to vote in the election or a close family member of the voter who has attained the age of 18, but can be anyone of the age of 18 or over.

308 Subsection (4) amends the form of declaration to be made by the companion of a voter with disabilities, which is contained in the Appendix of Forms of Schedule 1 to the RPA 1983, to reflect the updated qualifying requirements.

## Northern Ireland elections

### Clause 10: Local elections and Assembly elections in Northern Ireland

309 Clause 10 gives effect to Schedule 6 which contains further changes relating to local elections in Northern Ireland, and changes for elections to the Northern Ireland Assembly that correspond with provisions made in Part 1 of the Bill for Parliamentary elections.

### Schedule 6: Local elections in Northern Ireland and elections to the Northern Ireland Assembly

#### **Part 1 - Local elections in Northern Ireland**

- 310 Schedule 6 amends the legislation for local and assembly elections in Northern Ireland to reflect some of the changes made by Part 1 of the Bill to the legislation for UK Parliamentary elections in Northern Ireland. Part 1 of the Schedule makes changes for local elections and Part 2 of the Schedule makes changes for assembly elections.
- 311 Paragraphs 2 to 5 of Part 1 amend the ELA (NI) 1962 in relation to the new offence of handling postal voting documents by political campaigners. Paragraph 2 amends the ELA (NI) 1962 and applies the existing incapacities for a person reported by an election court as guilty of a corrupt or illegal practice in section 96 ELA NI 1962 to those reported as guilty of the corrupt practice of the new offence of handling postal voting documents by political campaigners (see paragraph 265 below).
- 312 Paragraph 3 applies the existing provisions for the prosecution of corrupt practices (set out in section 108 of the ELA (NI) 1962) to those convicted of the new offence. Under these provisions, on indictment, the person would be liable to imprisonment for a term not exceeding two years, or a fine, or both. On summary conviction, the person would be liable to imprisonment for a maximum of six months, or to a fine, or to both.
- 313 Paragraph 4 applies the existing provisions in relation to incapacities (set out in section 112 of the ELA (NI) 1962) to persons convicted of the offence.
- 314 Paragraph 5 extends to the corrupt practice of handling postal votes by a political campaigner existing provision (set out in section 114 ELA (NI) 1962) that states that candidates shall not be liable nor his election avoided for corrupt practices committed by an agent unless the candidate has authorised or consented to the committing of the corrupt practice.
- 315 Paragraphs 7 to 16 of Schedule 6 amend Schedule 5 to the ELA (NI) 1962 (Local Election Rules).
- 316 Paragraph 7 inserts new rule 16B (date of births lists) into Schedule 5 of the ELA (NI) 1962. Under new rule 16B(1) the Chief Electoral Officer must provide to each polling station a list containing the date of birth supplied at registration for all electors allotted to vote at that polling station. The Chief Electoral Officer must also provide a list containing the dates of birth supplied at registration of all proxies voting on behalf of electors allotted to that polling station. Where the proxy is or will be on a register of local government electors in Great Britain the list should contain the date of birth of the proxy provided on the application for a proxy vote. Rule 16B(2) provides that these lists should contain sufficient information to allow the staff at a polling station to carry out the checks when required.
- 317 Rule 16B(3) and (4) prohibit the Returning Officer, any person to whom the Returning Officer has delegated functions, the presiding officer, clerk or other officer appointed to work at the polling station from allowing date of birth lists to be inspected, supplying the lists to another person or making use of the information contained within the lists otherwise than in accordance with the rules including any regulations made under the rules.

- 318 Paragraph 8 amends rule 22 (provision of polling stations) of Schedule 5 to provide that every polling station must have an area for an elector to have their identification viewed in private.
- 319 Paragraph 9 amends rule 23 (appointment of presiding officers and clerks). Rule 23(3) enables clerks to act for the Presiding Officer, but paragraph 9 amends this to ensure that is not the case for refusing to issue a ballot paper in line with the procedures set out in rule 32(3) (failure to answer a statutory question satisfactorily).
- 320 Paragraph 10(2) amends rule 26 by inserting a new sub-paragraph to rule 26 (equipment of polling stations) relating to date of birth lists. New sub-paragraph (3)(f) provides that the Returning Officer shall provide each polling station with the date of birth lists prepared under Rule 16B.
- 321 Paragraph 10(3) to (5) also amends rule 26 (equipment of polling stations) by replacing the requirement for each polling station to provide a tactile voting device (TVD) for voters with sight loss with a requirement for the Returning Officer to provide each polling station with such equipment as is reasonable to enable, or make it easier, for voters with sight loss, and other disabilities, to vote. As a result of the definition of disability in rule 35, the provisions in this clause also include a person who has a short-term inability to vote in the manner directed by rule 34.
- 322 The requirements under this provision in rule 26, do not affect any other statutory requirement or duty imposed on the Chief Electoral Officer under section 75 of the Northern Ireland Act 1998 or the Disability Discrimination Act 1995.
- 323 When a person votes as a proxy voter, they may be asked certain questions by the Presiding Officer in the polling station. For local elections in Northern Ireland, the questions are set out at rule 32. Paragraph 11(2) amends the question ‘what is your date of birth’ so that it can be asked of a person voting as proxy to ensure that the proxy is the elector they represent themselves to be.
- 324 Some of the questions that may be asked of a proxy voter are to ensure that the person is voting in accordance with the requirements on the number of persons for whom they may vote as a proxy. Paragraph 11(3) also removes a number of existing questions and inserts new questions in rule 32(2) to reflect that, at local elections in Northern Ireland, the Schedule limits the total number of electors for whom a person may act as a proxy to four, and within the four electors, to no more than two electors who are registered to vote otherwise in pursuance of a service declaration, regardless of the family relationship to the elector.
- 325 Paragraph 11(4) inserts new paragraph (2A) into rule 32 to provide that if the clerk asks any of the questions in paragraph 1 and 2 of rule 32 and they are not answered satisfactorily then they must refer the matter to a Presiding Officer.
- 326 Paragraph 11(5) amends rule 32(3) to provide that a Presiding Officer must refuse to deliver a ballot paper to a person if they fail to answer the statutory questions satisfactorily.
- 327 Paragraph 11(6) inserts new paragraph (6), which requires that a voter must be informed, before being asked one of the questions, that giving false information may be an offence and that a ballot paper will be refused if the person fails to answer each question satisfactorily.
- 328 Paragraph 12 amends rule 34 (voting procedure). Paragraph 12(3) inserts a new paragraph (2A) into rule 34 which provides that at the voter’s request, the polling station staff must arrange for the voter to have their identification viewed in private. The polling station staff must ensure that no other person can see the voter’s identification, except for any person permitted by the voter.

329 Paragraph 12(4) amends paragraph (3) in rule 34 such that a Presiding Officer must deliver a ballot paper to an elector unless:

- a. they believe that the voter's age could not plausibly match that which is provided on their identification (this is already a requirement),
- b. they believe that the voter's age does not plausibly match the date of birth supplied under a relevant provision ("relevant provision" is defined in new paragraph (5C) of rule 34, which is inserted by paragraph 11(7) of Schedule 5 (see paragraph 286 below)). In the case of an elector or proxy registered to vote in Northern Ireland, this is the date of birth supplied when the voter registered to vote. In the case of proxies registered to vote in Great Britain, this is the date of birth supplied when the person was appointed as a proxy (this is already a requirement for electors but is a new requirement for proxies).
- c. they have a reasonable suspicion that the identification is forged (this is a new requirement).

330 Paragraph 12(5) specifically adds the language of "reasonable suspicion" of a forged document to paragraph (4) of rule 34, allowing the Presiding Officer to refuse to give an elector a ballot paper in those circumstances. Paragraph 12(6) makes a similar change to paragraph (5) of rule 34, so that a polling clerk can refuse to issue a ballot paper to an elector where the clerk has a reasonable suspicion that their identification document is forged (as well as on existing grounds), in which case they must refer the matter to the Presiding Officer.

331 Paragraph 12(7) inserts a new paragraph (5A) which ensures that electors in Northern Ireland who have changed their name on their form of identification but not on the electoral register may provide additional proof of their identification to resolve this discrepancy, and will then still be able to obtain a ballot paper as long as the Presiding Officer has no other reason to doubt that the elector is who they claim to be. Paragraph 12(7) also inserts new paragraph (5B). If the Presiding Officer refuses to deliver a ballot paper to a voter because they have reasonable doubt that the voter is who they say they are, the voter can make further applications, and paragraphs (1A) to (5A) apply again.

332 Paragraph 12(7) also inserts a new paragraph (5C) which defines the term "relevant provision" for the purposes of rule 34(3) (see paragraph 140 above).

333 Paragraph 12(8)(a) amends rule 34(6) to make clear that the identification documents IDs should be accepted in any format that they are issued in and regardless of any expiry date. Paragraph 12(8)(b)-(e) amends the list of documents at rule 34(6) that can be produced as identification by adding two new documents and adding the updated names of two existing documents.

334 Paragraph 12(9) insert paragraphs 6B which defines a forged document as one that is a false document made to resemble a real document and 6C which provides that only the Presiding Officer may inspect an ID document except as permitted by the voter.

335 Paragraph 13 updates cross references to rule 34 made by rule 35 to reflect changes made to rule 34.

336 Paragraph 14 amends rule 36 (voting by persons with disabilities). Paragraph 14(2) changes the qualifying requirement in paragraph 2 of rule 36 for a person to assist a voter with disabilities in the role of their 'companion' at the polling station. As a result, a companion is no longer required to be either entitled to vote in the election as an elector or a close family member of the voter who has attained the age of 18, but can be anyone of the age of 18 or over.

- 337 Paragraph 14(3) updates cross references to rule 34 made in rule 36 to reflect changes made to rule 34.
- 338 Paragraph 15 updates cross references to rule 34 made in rule 37 to reflect changes made to rule 34.
- 339 Paragraph 16 updates cross references to rule 34 made in rule 38 to reflect changes to rule 34.
- 340 Paragraph 17 amends rule 41 (sealing and delivery of documents etc) by adding a new subparagraph (db) to paragraph (1). This requires that after the close of poll the Presiding Officer must put the dates of birth lists in a separate, sealed packet and deliver it to the Returning Officer.
- 341 Paragraph 18 amends rule 56A (destruction of home address forms) by expanding the rule to also cover date of birth lists. The amended rule requires the Chief Electoral Officer to, along with the home address forms, destroy the date of birth lists on the next working day following the 21st day after the member has been returned or if an election petition is presented before that time then on the next working day following the conclusion of proceedings or appeal.
- 342 Paragraph 19 amends the form of declaration to be made by the companion of a voter with disabilities which is contained in the Appendix of Forms in Form 10 to reflect the updated qualifying requirements.
- 343 Paragraphs 21 to 24 amend Schedule 9 to the ELA (NI) 1962.
- 344 Currently, the corrupt practice of undue influence which is set out in section 115 of the RPA 1983 is duplicated in paragraph 3 of Schedule 9 to the ELA (NI) 1962 in respect of local government elections in Northern Ireland. Paragraph 21 substitutes a new paragraph 3 of Schedule 9 to that Act to make the same changes as are being made to section 115 of the RPA 1983.
- 345 Paragraph 22 amends Schedule 9 of the ELA (NI) 1962 by inserting new paragraph 5ZA which mirrors changes made to the RPA 1983 (new section 112A) which introduces a new criminal offence banning political campaigners from handling postal voting documents issued to others.
- 346 New paragraph 5ZA(1) provides that those defined in paragraph 5ZA(6) as “political campaigners” commit an offence if they handle postal voting documents in relation to local elections in Northern Ireland. For these purposes, “political campaigners” is defined in subparagraph (6) and includes candidates, election agents and party workers.
- 347 New paragraph 5ZA(2) provides an exemption from the offence for specified persons who may handle postal votes in the normal course of their employment/duties, such as a postal operator.
- 348 New paragraph 5ZA(3) creates two further exemptions to this offence where the handler is a listed family member or carer of the postal voter.
- 349 New paragraph 5ZA(4) provides that it is a defence for a person charged with the offence to show that they did not dishonestly handle the postal voting document for the purpose of promoting a particular outcome at an election.
- 350 New paragraph 5ZA(5) provides that where sufficient evidence has been introduced to raise the defence as an issue, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- 351 New paragraph 5ZA(6) sets out the persons who are deemed to be a political campaigner for the purpose of this section. A political campaigner is a person who is:

- a. a candidate at the election;
- b. an election agent of a candidate at the election;
- c. employed or engaged by a person who is a candidate at the election for the purposes of that person's activities as a candidate;
- d. a member of a registered political party and carries on an activity designed to promote a particular outcome at the election;
- e. employed or engaged by a registered political party in connection with the party's political activities;
- f. employed or engaged by a person within any of paragraphs (a) to (e) to carry on an activity designed to promote a particular outcome at the election;
- g. employed or engaged by a person within paragraph (f) to carry on an activity designed to promote a particular outcome at the election.

352 New paragraph 5ZA(7) defines some of the terms used in new paragraph 5ZA.

353 Paragraph 23 of Schedule 5 amends paragraph 12A of Schedule 9 of the ELA (NI) 1962 by inserting new sub-paragraph (1A) to provide for a new electoral offence at a local election in Northern Ireland.

354 New sub-paragraph (1A) makes it an offence for:

- a person ("P") to apply to appoint a proxy at (a) a particular local election in Northern Ireland, or (b) local elections in Northern Ireland, knowing that the person to be appointed is already appointed as a proxy for four or more other electors at (respectively) (a) that election or local elections in Northern Ireland, or (b) local elections in Northern Ireland or a particular local election in Northern Ireland, and
- where P is registered to vote at local elections in Northern Ireland otherwise than in pursuance of a service declaration, and P knows that the person to be appointed for (a) a particular local election in Northern Ireland or (b) local elections in Northern Ireland, is already appointed as a proxy at (respectively) (a) that election or these elections, or (b) a particular local election in Northern Ireland, or local elections, for two or more other electors who are registered to vote otherwise than in pursuance of a service declaration.

355 Paragraph 23 also amends sub-paragraph (4) of paragraph 12A to provide that a person is also guilty of an offence if they vote as proxy:

- for more than four electors at a local election in Northern Ireland or at local elections in Northern Ireland when (if more than one local election is being held on that day);
- for more than two electors at a local election in Northern Ireland or local elections (if more than one local election is being held on that day) in Northern Ireland, where that person knows that none of those electors is registered to vote at these elections in pursuance of a service declaration.

356 Paragraph 23(4) and (5) amend sub-paragraph 6 and insert new sub-paragraph (6A) into paragraph 12A of Schedule 9 under which it is an offence to vote more than once. Under subsection (6), applying for a ballot paper is treated as having voted. The amendment to sub-paragraph (6) and new sub-paragraph (6A) ensure that an elector would not be treated as having committed any offence related to trying to obtain multiple ballots simply because they

made permitted further applications for a ballot paper, where the previous application(s) were refused under rule 34 of the local election rules (see above) on the grounds that they did not show an accepted form of identification.

- 357 A person found guilty of an offence under sub-paragraphs (1A) or (4) shall be guilty of an illegal practice and will be liable to a fine not exceeding level 5 on the standard scale in Northern Ireland.
- 358 Paragraph 24 amends the requirement to maintain the secrecy of voting set out in paragraph 27 of Schedule 9 to the ELA (NI) 1962 in order to extend it to postal and proxy voting at a local election in Northern Ireland.
- 359 Sub-paragraph (3) of paragraph 24 inserts new sub-paragraphs (3A), (3B) and (3C) into paragraph 27 of the Schedule 9 to the ELA (NI) 1962. New sub-paragraph (3A) mirrors existing secrecy provisions for voting in person and extends those to voting by post. Those provisions include a restriction on obtaining or attempting to obtain, or communicating information about whether or for whom the person has voted.
- 360 New sub-paragraph (3B) provides that an elector who has appointed a proxy to vote by post on their behalf does not contravene sub-paragraph (3A) by obtaining from their proxy information relevant for the vote to be cast (except the official mark on a ballot paper) and the proxy does not contravene sub-paragraph (3A) by communicating such information to the elector who appointed them.
- 361 New sub-paragraph (3C) provides that a person voting as proxy for another elector at an election must not communicate at any time to any person, except the elector for whom they are voting as proxy, any information as to the candidate for whom that person is about to vote or has voted (as proxy), or, except for purposes authorised by law, the number or other unique identifying mark on the back of a ballot paper sent or delivered to that person.
- 362 Sub-paragraph (4) of paragraph 24 inserts new subparagraphs (5) and (6) into paragraph 27 of Schedule 9 to the ELA (NI) 1962 to mirror existing secrecy requirements under sub-paragraph (3)(e) of paragraph 27. Paragraph 24(2) omits subparagraph (3)(e) as it only applies to a person (companion) assisting a blind voter by voting on their behalf, and the new subparagraphs extend this to companions voting on behalf of voters who are blind, have other disabilities or are unable to read.
- 363 The existing offence at section 111(2A)(d) of the ELA (NI) 1962 will apply to a person who acts in contravention of any of the secrecy requirements set out in paragraph 27 of Schedule 9 to the ELA (NI) 1962, including the new requirements. A person found guilty shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale in Northern Ireland, or to imprisonment for up to 6 months.
- 364 Paragraphs 25 and 26 amend the Local Elections (Northern Ireland) Order 1985. Paragraph 25 amends the eligibility requirements for a person to act as proxy in Article 3 (proxies at local elections) of the Local Elections (NI) Order 1985. Paragraph 25(2) inserts new paragraph (1A) providing that a person is not capable of acting as proxy unless they are or will be registered in the register of local electors in Northern Ireland or Great Britain. Paragraph 25(3) removes the existing nationality requirements for a person to act as proxy in paragraph (2)(b) of Article 3.
- 365 Paragraph 25(4) amends paragraph 4 and inserts (4A) and (4B) into Part 1 of Schedule 2 to the Local Elections (NI) Order 1985 which concerns proxies at local elections in Northern Ireland. It currently provides that a person may vote as a proxy voter at the same local election in Northern Ireland in any electoral area, on behalf of up to two electors and an unlimited number of specified family members. The amendments set out the new limit of 4 on the total



number of electors for whom a person is entitled to vote as proxy at a local election or local elections in Northern Ireland (no more than two of whom can be registered otherwise than in pursuance of a service declaration).

- 366 Paragraph 26 amends paragraph 9(1) of Part 1 of Schedule 2 to the Local Elections (NI) Order 1985 to provide that applications for a proxy vote must contain the date of birth of the proxy.
- 367 Paragraph 27 makes amendments to the Elected Authorities (Northern Ireland) Act 1989. Part 2 of Schedule 1 to that Act applies and modifies certain parts of the RPA 1983 in relation to local elections in Northern Ireland. Schedule 2 to the Bill amends section 53 of, and Schedule 2 (which concerns provisions which may be contained in regulations as to registration etc) to, the RPA 1983 by making or amending provisions in relation to applications for absent votes and applications for electoral identity cards and similar documents. These amendments are not required to be applied separately to local elections in Northern Ireland and so paragraph 27 disapplies these provisions from Part 2 of Schedule 1 to the Elected Authorities (Northern Ireland) Act 1989 accordingly.
- 368 Paragraph 28 amends the Elections Act 2001. Schedule 1 to the Elections Act 2001 applies with modifications to the Parliamentary elections rules where a local election in Northern Ireland is combined with a parliamentary election in Northern Ireland. Paragraph 28 ensures that the new questions relating to proxy limits are asked at local elections combined with parliamentary elections and that the right election is referred to.
- 369 Paragraphs 29 and 30 make provision in relation to existing proxy vote arrangements that are in place at the time that the new limit on the number of persons for whom a person may act as proxy comes into force.
- 370 Paragraph 29 provides that existing proxy appointments at local elections in force as a result of an application made before the date on which the relevant provisions (“the relevant provisions”) of the Schedule come into force, will cease on a day to be specified (“the specified day”) in regulations by the Secretary of State. The relevant provisions are the offence in paragraph 23 of the Schedule relating to the appointment of proxies and the requirement in paragraph 25(2) that proxies be registered in a register of local registers. Electors wanting to continue with a proxy vote arrangement will need to reapply for a proxy vote under the new rules that provide that a person may act as proxy for up to four electors only or the rules requiring that the proxy be registered. The Chief Electoral Officer in Northern Ireland, will be required to send a notice to an elector who has appointed a proxy before the specified day informing them of the date on which their proxy vote arrangement will cease to be in force and information about how to make a fresh application to vote by proxy. Paragraph 29(4) requires that once a proxy appointment ceases to be in force under these provisions, the Chief Electoral Officer must as soon as practicable after this remove the entries relating to the appointment from the relevant absent voters’ record. Paragraph 29(5) requires that there can be more than one specified day if paragraphs 23 and 25(2) come into force on different days.
- 371 Paragraph 30 provides that an application for a proxy appointment that is made before, but not determined by, “the specified day” is to be treated as not having been made and the registration officer will be required to send the person information about how to make a fresh application. The paragraphs provide that these provisions do not apply where the application is made on or after the date on which the relevant provisions come into force. The effect of these provisions is that, if the relevant provisions are commenced before the specified day, any elector who has been granted a proxy vote before the specified day, on the basis of an application made on or after the date of commencement of the provision containing the offence, would be able to continue with those proxy arrangements, and an elector whose application for a proxy vote is still being processed on the specified day would not need to

make a fresh application to vote by proxy. Paragraph 30(5) provides that there can be more than one specified day if paragraphs 23 and 25(2) come into force on different days. These provisions are designed to enable the transitional arrangements for existing proxy voters to run smoothly.

## **Part 2 - Elections to the Northern Ireland Assembly**

- 372 Part 2 of Schedule 5 makes changes for elections to the Northern Ireland Assembly. Paragraphs 32 to 44 amend the Northern Ireland Assembly (Elections) Order 2001 ('the 2001 Order')
- 373 The 2001 Order applies, with modifications, provisions of the RPA 1983 to Assembly elections in Northern Ireland. Therefore most of the changes made in the Bill for Parliamentary elections in Northern Ireland will automatically apply for the purpose of Assembly elections in Northern Ireland. Paragraphs 32 to 44 modify some of the changes made by the Bill for Parliamentary elections for the purpose of Northern Ireland Assembly elections or ensure that any new sections inserted into the RPA 83 Act are applied to the Assembly Order.
- 374 Paragraph 33 of Part 2 of Schedule 5 modifies new section 61(1A) RPA 83 (offences relating to the limit on proxies) as it applies to the 2001 Order by removing the references to the person acting as proxy already being appointed to vote for two or more electors at Parliamentary elections. This is because there is no indefinite absent vote list for Assembly elections, instead the indefinite absent vote list for local elections applies to Assembly elections. A person can only apply for a proxy at assembly elections for a particular election.
- 375 Paragraph 34 modifies subsection (8) of new section 112A (handling of postal voting documents by political campaigners) as it applies to the 2001 Order. Subsection (8) defines the terms postal voting documents and refers to a postal voting statement. This term is not relevant in Northern Ireland where it is instead known as the declaration of identity. Therefore the reference to a postal voting statement in section 112A(8) is omitted as it applies to Assembly elections.
- 376 Paragraphs 35 to 40 modify entries in Schedule 1 to the RPA 1983 (Parliamentary elections rules) as they apply to Assembly elections in the 2001 Order.
- 377 Paragraph 35 amends the 2001 Order by modifying the entry for new rule 19B (preparation of date of birth lists.) The modification substitutes the wording "register of parliamentary electors" and replaces it with "register of local government electors in Great Britain" in 1b(ii) of rule 19B. This is to ensure that the correct information is included in the lists as proxy voters must be registered as local electors to vote at Assembly elections.
- 378 Paragraph 37 amends rule 31 (notification of requirement of secrecy) by omitting the current modification 'in paragraph a for "blind voter" substitute voter with disabilities.' This modification is no longer needed as the amendments made in the Bill to rule 31 of the Parliamentary Election Rules in clause 6(6) of the Bill will automatically apply to Assembly elections. Clause 6(6) substitutes relevant voter for 'blind voter' and defines relevant voter as a voter who is blind or has another disability or is unable to read. This modification is no longer needed as the amendments made in the Bill to rule 31 of the Parliamentary Election Rules in clause 6(6) of the Bill will automatically apply to Assembly elections. Clause 6(6) substitutes relevant voter for 'blind voter' and defines relevant voter as a voter who is blind or has another disability or is unable to read.
- 379 Paragraph 38 modifies paragraph (1DC) of rule 37 (voting procedure) as it applies to Assembly elections. Rule 37(1DC) provides a definition of the relevant provision referred to in Rule 37(1B). Rule 37(1B) places a duty on polling station staff to check the date of birth of a voter in specific cases against that given either at registration if the voter is registered in

- Northern Ireland (sub-paragraph (a)) or against the application for a proxy vote where the voter is registered in a register of parliamentary electors in Great Britain (sub-paragraph (b)). Paragraph 38 modifies the applied version of sub-paragraph (b) so that it instead refers to voters registered in a register of local government electors in Great Britain and dates of birth provided in a proxy voting application under Northern Ireland local election legislation.
- 380 Paragraph 39 modifies rule 38 (votes marked by the Presiding Officer) as it applies to Assembly elections. Paragraph 39 modifies Rule 38 so that references to marking the ballot paper are changed from marking the vote to reflect the single transferable vote system in Northern Ireland.
- 381 Paragraph 40 inserts a new entry Rule 53B (destruction of date of birth lists) into the 2001 order. This applies Rule 53B of the parliamentary election rules to Assembly elections, which requires the Chief Electoral Officer to destroy the date of birth lists on the next working day following the 21st day after the member has been returned or if an election petition is presented before that time then on the next working day following the conclusion of proceedings or appeal.
- 382 Paragraph 41 modifies section 8(2A) of the RPA 1985 as applied to Assembly elections to provide that a person on the register in Great Britain acting as a proxy for an elector at an Assembly election in Northern Ireland would need to be on the local register in Great Britain in order to be eligible to be proxy at a Northern Ireland Assembly election.
- 383 Paragraph 42 amends in the annex the form of declaration to be made by the companion of a voter with disabilities to reflect the updated qualifying requirements to be a companion which is that they must be aged 18 or over. They do not need to be a close family member.
- 384 Paragraphs 43 and 44 make provision about existing proxy arrangements which are already in place. Paragraph 43 provides that existing proxy appointments at Assembly elections (in force as a result of an application made before the date on which paragraphs 2(2) and 6(2) of Schedule 4 (“the relevant provisions”) come into force) will cease on a day to be specified (“the specified day”) in regulations by the Secretary of State. Electors wanting to continue with a proxy vote arrangement will need to reapply for a proxy vote under the new rules that provide that a person may act as proxy for up to four electors only. The Chief Electoral Officer in Northern Ireland, will be required to send a notice to an elector who has appointed a proxy before the specified day informing them of the date on which their proxy vote arrangement will cease to be in force and information about how to make a fresh application to vote, by proxy.
- 385 Paragraph 43(4) requires that once a proxy appointment ceases to be in force under these provisions, the Chief Electoral Officer must as soon as practicable after this remove the entries relating to the appointment from the relevant absent voters’ record. Paragraph 43(5) provides that there can be more than one specified day if the relevant provisions come into force on different days.
- 386 Paragraph 44 provides that an application for a proxy appointment that is made before, but not determined by, “the specified day” is to be treated as not having been made and the registration officer will be required to send the person information about how to make a fresh application. The paragraphs provide that these provisions do not apply where the application is made on or after the date on which the relevant provisions come into force. The effect of this provisions is that, if the offence concerning the appointment of proxies is commenced before the specified day, any elector who has been granted a proxy vote before the specified day, on the basis of an application made on or after the date of commencement of the relevant provisions, would be able to continue with those proxy arrangements, and an elector whose application for a proxy vote is still being processed on the specified day would not need to

make a fresh application to vote by proxy. These provisions are designed to enable the transitional arrangements for existing proxy voters to run smoothly. Paragraph 44(5) provides that there can be more than one specified day if the relevant provisions come into force on different days.

## Clause 11 - Simple majority system to be used in elections for certain offices

- 387 Clause 11 amends the existing primary legislation providing for the election of Police and Crime Commissioners (PCCs) in England and Wales, and the Mayor of London, combined authority mayors and local authority mayors in England, to change the voting system from the Supplementary Vote (SV) system to the Simple Majority system, also known as “First Past the Post”.
- 388 Subsections (1) to (6) relate to elections for the Mayor of London. Section 4 of the Greater London Authority Act 1999 is amended to remove provision for the SV system to apply where there are three or more candidates (Simple Majority voting already applies where there are only two candidates); section 16 is amended to change the voting system to be used at by-elections for the Mayor of London and the definition of “mayoral vote”, which is now redundant, is removed from section 29. Schedule 2, which sets out the details of the SV and counting system, is repealed. The Representation of the People Act 1983 is amended at section 165 to remove subsection (4) which clarifies that the a vote deemed to be thrown away as cast for someone who is not capable of being elected applies only to the affected first preference or second preference vote i.e. the elector’s other vote is not deemed to be thrown away.
- 389 Subsections (7) to (11) relate to elections for local authority mayors. Section 9HC of the Local Government Act 2000 is amended to replace provision for the SV system with provision for Simple Majority voting; references to first preference and second preference votes are removed from section 9HD (entitlement to vote) and from the list of definitions at section 9R. The application of Schedule 2, which sets out the vote counting process under the SV system for elections with three or more candidates for local authority mayor, is amended so that it only applies in Wales.
- 390 Subsections (12) to (15) relate to elections for combined authority mayors. Schedule 5B to the Local Democracy, Economic Development and Construction Act 2009 is amended at paragraph 4 to replace provision for the SV system with provision for Simple Majority voting. Paragraph 5, which applies the SV system to elections where there are three or more candidates, is repealed, and references to first preference and second preference votes in the context of entitlement to vote are removed from paragraph 6.
- 391 Subsections (16) to (18) relate to elections for Police and Crime Commissioners. Section 57 of the Police Reform and Social Responsibility Act 2011 is amended to replace provision for the SV system with provision for Simple Majority voting; the application of Schedule 9 which sets out the vote counting process under the SV system for elections with three or more candidates for a Police and Crime Commissioner is repealed. Schedule 9 itself is also repealed.

## Part 2: Overseas Electors and EU Citizens

### Overseas Electors

#### Clause 12: Extension of franchise for parliamentary elections: British citizens overseas

- 392 Clause 12(1) inserts new sections into the RPA 1985, replacing existing sections 1 and 2 with new sections 1, 1A, 1B, 1C, 1D and 1E. Clause 12(2) gives effect to Schedule 7, which contains minor and consequential amendments and transitional provisions related to the clause.

- 393 New section 1 replaces the existing provision in section 1(1) of the RPA 1985 that extended the franchise for UK Parliamentary elections to include overseas electors.
- 394 New section 1(1) sets out the eligibility to vote as an overseas elector, namely that the person must meet the requirements of new section 1A (qualifying as an overseas elector in respect of a constituency), must on the date of the poll be registered in a register of parliamentary electors and must on both the declaration date and the date of the poll be both a British citizen and not be otherwise ineligible to vote (by, for example, being disqualified to vote having been found guilty of certain elections offences).
- 395 New section 1(2) defines the use of “the declaration date”, as the date on which an overseas elector’s declaration (under new section 1C) or renewal declaration (under new section 1E) is made.
- 396 New section 1A(1) replaces existing section 1(2), (3) and (4) of the RPA 1985. It states that in order to qualify as an overseas elector in respect of a constituency on the date that an overseas elector’s declaration is made the individual must not reside in the United Kingdom.
- 397 In addition, new section 1A(1) also provides that, in order to qualify as an overseas elector in a particular constituency an individual must satisfy either one of two conditions that are outlined in new subsections (2) (the ‘previous registration condition’) and (3) (the ‘previous residence condition’). An individual:
- a. satisfies the previous registration condition if they were registered to vote in an electoral register in the UK at some point in the past in respect of an address at a place in the constituency, and if they have not been registered in any electoral register since that register entry ceased to have effect; or
  - b. satisfies the previous residence condition if they have never been registered on an electoral register but have previously been resident in the UK, and on the last day that they were resident in the UK they were resident at an address at a place in the constituency (this includes those individuals who were not resident at such an address on that last day but who would be entitled to make a ‘declaration of local connection’ as provided for by section 7B of the RPA 1983) in respect of such an address.
- 398 An address for the purposes of the previous registration condition and previous residence condition may include an address that no longer exists (for example, if it has subsequently been demolished).
- 399 New section 1A(4) provides that, for the purpose of the previous residence condition, an individual is considered to have been entitled to make a declaration of local connection on the last day they were resident in the UK, even if section 7B of the RPA 1983 was not in force on that date.
- 400 New section 1A(5) defines “declaration date” and “electoral register” for the purposes of new section 1A.
- 401 New section 1B(1) to 1B(4) replaces existing section 2(1) of the RPA 1985. It provides that a person is eligible to be registered in pursuance of an overseas elector’s declaration if they have made a valid declaration under section 1C (overseas elector’s declaration) and that conditions in subsections (2) and (3) are met.
- 402 The conditions, in new subsections (2) and (3) respectively, are that:
- a. the address at which the applicant is seeking to register (either as their previous registration address or their previous residence address) under their declaration is situated within the area for which the registration officer in question is responsible,

- b. the registration officer is satisfied that the person qualifies to be an overseas elector (in accordance with new section 1A) in respect of that constituency on the date the person makes a valid declaration.

403 New section 1B(4) provides registration officers with the ability to disregard the requirement in new section 1A(3)(c) (that an applicant registering as 'previously resident' has never been included on an electoral register) if the registration officer considers there is insufficient evidence to confirm whether or not an applicant has been registered at any time, for example if they no longer hold a copy of a relevant electoral register.

404 New section 1B(5) provides that declarations must be received by the registration officer within three months of the declaration's date, otherwise the declaration will be of no effect. This replicates section 2(6) of the RPA 1985.

405 New section 1B(6) provides that for the purposes of section 1A there is to be a conclusive presumption that a person registered pursuant to an overseas elector's declaration was not resident in the UK on the day they made the declaration. This is to allow the registration officer to remove any existing domestic registration and replace it once an overseas elector's application has been successful. This replicates section 2(7) of the RPA 1985.

406 New section 1B(7) directs to relevant provisions of the RPA 1983 which relate to the making of applications for electoral registration

407 New section 1C replaces existing section 2(3), (3A) and (4) of the RPA 1985. It sets out the detailed requirements for an overseas elector's declaration. New section 1C(1) sets out the core requirements that all overseas electors' declarations must contain. New section 1C(2) sets out the specific additional information needed when applying under the previous registration condition; and new section 1C(3) does likewise for the previous residence condition where the declarant was previously resident at an address in a place within the constituency.

408 New section 1C(4) provides the specific additional information required where a declarant applies on the basis of the previous residence condition where the declarant would, on the last day they were resident in the UK, have been entitled to make a 'declaration of local connection'.

409 New section 1C(5) only applies in relation to declarations that specify an address in Northern Ireland. It makes provision that enables a British citizen who was born in Northern Ireland to declare on their declaration that they are an Irish citizen in addition to, or instead of, declaring they are a British citizen. This reflects the terms of the Good Friday Agreement. This provision is currently contained in section 2(3A) of the RPA 1985.

410 New section 1C(6) provides that a declaration is void if it contains more than one registration address. Where a declarant makes two or more declarations with the same date but different addresses, each of those declarations are void. This is a replication of the wording in section 2(4) of the RPA 1985. This provision combined with new section 1D(4)(d) prevents a person from making more than one valid declaration at any one time.

411 New section 1C(7) provides for the declarant to be able to cancel their declaration at any time should they so wish. This replicates section 2(5) of the RPA 1985.

412 New section 1C(8) defines "electoral register" and "registered" for the purpose of section 1C.

413 New section 1C(9) deems persons found abandoned in Northern Ireland as a new-born infant as having been born in Northern Ireland unless the contrary is shown, for the purposes of section 1C(5). This is a replication of section 2(10) of the RPA 1985.

414 New section 1D makes provision in relation to the period a person is entitled to remain registered as an overseas elector.

- 415 New section 1D(1) replaces section 2(2) of the RPA 1985. Under subsection (1)(a) once an overseas elector has registered successfully, the overseas elector's registration entitlement lasts until the third 1 November following the date they are entered on the electoral register. However, under subsection (1)(b), an overseas elector's entitlement ends sooner if an event occurs which is described in section 1D(4).
- 416 Under new section 1D(2), an overseas elector's registration entitlement can be renewed where the registration officer concerns receives at any time during the last 6 months of a registration period a renewal declaration made by the elector, and the registration officer is satisfied that the elector is entitled to remain registered as an overseas elector. Where this occurs, under new section 1D(3) that elector is entitled to remain registered until the third 1 November that follows the day after the last day of the current registration period. An overseas elector's registration entitlement can be renewed more than once in this way. This renewal process is a new concept introduced by the Bill and therefore there are no corresponding provisions currently contained in the RPA 1985.
- 417 New section 1D(4) sets out the events which will end an overseas elector's registration entitlement sooner:
- a. the registration officer determines that the person was not entitled to be registered or to remain registered;
  - b. where the registration officer determines that the person's entry in the register resulted from, or was altered by, an application that was made by someone else other than the person;
  - c. the individual cancels their overseas elector's declaration (which is provided for in new section 1C(7)), or
  - d. another entry in respect of the person in an electoral register takes effect (for example if a person becomes registered as the result of a further overseas elector's declaration relating to a different address or if a person moves back to the UK and registers as an elector).
- 418 New section 1D(5) provides that a renewal declaration must be received by the registration officer within three months of the declaration's making date, otherwise the renewal declaration will have no effect.
- 419 New section 1D(6) defines terms used in section 1D.
- 420 New section 1D(7) provides a conclusive presumption that an elector was not resident in the United Kingdom on the day the renewal declaration is made by that elector.
- 421 New section 1D(8) imposes a duty on registration officers to remove an overseas elector's entry from the register where that overseas elector is no longer entitled to be registered. This replicates the words of section 2(2) of the RPA 1985.
- 422 New section 1E(1) specifies the core requirements of a renewal declaration.
- 423 New section 1E(2) provides that a renewal declaration must also state the UK address in respect of which the overseas elector is registered and confirm that the individual has not been separately registered in respect of that address, or registered in respect of any other UK address, since the individual registered as an overseas elector in respect of that address.
- 424 New section 1E(3) makes provision for a British citizen who was born in Northern Ireland and is specifying a registration address in Northern Ireland to declare, as part of a renewal declaration, that they are an Irish citizen in addition to, or instead of, a British citizen.



425 New section 1E(4) sets out that if a person submits a renewal declaration with more than one registration address, the declaration is void. Equally, if an individual makes two or more renewal declarations with the same date but which specify different addresses, each of those declarations are void.

426 New section 1E(5) defines terms used in this section.

## Schedule 7: Overseas electors

### **Part 1 - Minor and Consequential Amendments**

427 Schedule 7 Part 1 contains minor and consequential amendments and Part 2 contains transitional provision relating to this section.

428 Paragraphs 1 to 4 make amendments to the RPA 1983. Paragraphs 1 to 3 make consequential amendments as a result of the replacement of sections 1 and 2 RPA 1985 with new sections 1 to 1E by clause 10.

429 Paragraph 4 makes amendments to Schedule 2 to the RPA 1983 (provisions which may be contained in regulations as to registration etc).

430 Sub-paragraphs (2) and (3) of paragraph 4 enable provision to be made in secondary legislation relating to renewal declarations and how these are to be transmitted to the registration officer. These replicate existing powers relating to overseas elector's declarations contained in paragraph 3ZA of Schedule 2 to the RPA 1983.

431 Sub-paragraph (4) of paragraph 4 inserts sub-paragraph (1AA) into paragraph 5 of Schedule 2 to the RPA 1983. This enables provisions to be prescribed in regulations which authorise a registration officer to require other kinds of evidence that such an officer considers appropriate in support of an application for registration in pursuance of an overseas elector's declaration. It also enables provisions to be prescribed in regulations authorising a registration officer to deem such other kinds of evidence as the officer considers appropriate to be sufficient or conclusive evidence for the purposes of determining whether a person satisfies the conditions to be an overseas elector.

432 Paragraph 5 amends section 12 of the RPA 1985 (offences as to declarations) so as to extend the offence in section 12(1) to include renewal declarations as well as overseas elector's declarations.

433 Paragraphs 6, 7 and 9 make consequential amendments as a result of the replacement of sections 1 and 2 RPA 1985 with new sections 1 to 1E by clause 10.

434 Paragraphs 8 and 10 omit section 42(7) of the Constitutional Reform and Governance Act 2010 ("CRAG") and section 4(6) of the House of Lords Reform Act 2014 respectively. These provisions are no longer required as the new section 1 of the RPA 1985 extends the franchise to a person who has been entered on a register of local government electors.

435 Paragraph 11 repeals a number of provisions which are redundant as a result of the replacement of sections 1 and 2 RPA 1985 with new sections 1 to 1E by clause 10.

### **Part 2 - Transitional provision**

436 Paragraph 12 defines terms that are used in Part 2.

437 Paragraph 13 provides that applications for registration made in pursuance of an overseas elector's declaration which are made prior to the date when clause 10 comes fully into force ("the commencement date") will continue to be determined in accordance with sections 1 and 2 of the RPA 1985 as they exist prior to the commencement date. This includes applications

that were made before the commencement date, but which are determined after the commencement date.

438 Paragraph 14 makes transitional provisions for overseas electors who are registered in pursuance of an overseas elector's declaration made before the commencement date, including those persons (described in paragraph 13) who were registered on or after the commencement date as the result of a declaration made before the commencement date.

439 Sub-paragraph (2) provides that

- a. those overseas electors are treated on and after the commencement date as being registered on the basis of satisfying the previous registration condition within the meaning of new section 1A(2) of the RPA 1985 (as substituted by clause 10(1)) in respect of the address specified in the pre-commencement declaration; and
- b. subject to sub-paragraph (3), new sections 1D (Duration of entitlement to be registered) and 1E (Renewal Declaration) of the RPA 1985 have effect in respect of those overseas electors.

440 Sub-paragraph (3) sets the length of the overseas elector's registration entitlement. In accordance with sub-paragraph (3)(a), the registration entitlement lasts no longer than 12 months beginning from the date on which the overseas elector's register entry first takes effect. However, where an overseas elector's registration entitlement would otherwise expire on or after the commencement date but before the specified day, sub-paragraph (3)(b) extends that registration entitlement to the end of the specified day. For these purposes, sub-paragraph (4) defines "specified day" as a day specified by the Secretary of State by regulations.

441 Paragraph 15 makes transitional provisions for registered overseas electors who have a postal vote in place immediately before the commencement date. This paragraph sets out that, where that postal vote entitlement would otherwise end after the date on which the elector's registration entitlement ends as a result of paragraph 14, the postal vote entitlement ends at the same time as the registration entitlement (unless it ends sooner).

442 Paragraph 16 makes transitional provisions for overseas electors who have made a postal vote application prior to the commencement date, but that application has not yet been determined by a registration officer on the commencement date.

For these individuals, their postal vote arrangement (if granted) will last until:

- the end of the period during which the overseas elector is entitled to be registered in pursuance of an overseas declaration in accordance with paragraph 14 (even if the application had originally asked for a longer period of postal vote entitlement),
- or sooner, if a shorter period was specified in the application.

443 Paragraph 17 enables the Minister to make regulations to supplement the transitional provisions set out in paragraphs 13 to 16. The regulations may make supplementary or incidental provision, and may make different provision for different purposes or areas. The regulations are to be made by statutory instrument under the negative resolution procedure.

444 Paragraph 18 enables the Secretary of State to take appropriate steps in promoting awareness of the changes made by this Bill to the overseas elector franchise amongst those who qualify, or are likely to qualify, as eligible to register to vote under the new rules as overseas electors.

445 Subparagraphs (3) and (4) of paragraph 18 allows a limited category of persons to disclose information to the Secretary of State for the purposes of identifying those who are, or are

likely to be, qualifying people and what information the Secretary of State may use for this purpose. Any disclosure of personal information must not contravene the data protection legislation (such as the Data Protection Act 2018).

## Voting and Candidacy Rights of EU citizens

### Clause 13: Voting and Candidacy Rights of EU citizens

446 Clause 13 gives effect to Schedule 8, which amends voting and candidacy rights of EU citizens.

### Schedule 8: Voting and Candidacy Rights of EU citizens

#### **Part 1 - Amendments to the Representation of the People Act 1983**

447 Paragraph 1(1) amends the franchise for local government electors as set out in section 2 of the RPA 1983, but only for England. New sub-paragraphs (i) & (ii) are inserted into section 2(1)(c) which relate, respectively, to the local franchises in England and Wales. The impact of this is that the local franchise in England is amended, whilst the local franchise in Wales is not. The new sub-paragraph (c)(i), which relates to England only, substitutes the term 'relevant citizen of the Union' with two new terms: 'qualifying EU citizen' and 'EU citizen with retained rights'. The effect of the amendments will be that only those EU citizens captured by the new terms will be able to vote in local government elections, PCC elections, and referendums in England. EU citizens who are not captured by the new definitions will no longer be able to vote in those elections and referendums.

448 Paragraph 1(2) amends section 4(3) of the RPA 1983 which sets out the entitlement of a person to register as a local government elector. In line with the changes to the franchise, the effect of these amendments will be that only those EU citizens captured by the new definitions of EU citizens will be entitled to register as local government electors in England and Northern Ireland. EU citizens who are not captured by the new definitions will no longer be entitled to do so.

449 Paragraph 1(2) inserts new sub-paragraphs (i) & (ii) into subsection (3)(c) which relate, respectively, to the local franchises in England and Wales. The impact of this is that the local government franchise in England is amended, whilst the local government franchise in Wales is not. The new sub-paragraph (c)(i), which relates to England only, substitutes the term 'relevant citizen of the Union' with two new terms: 'qualifying EU citizen' and 'EU citizen with retained rights'. The effect of this is to remove the right to be registered on the basis of EU citizenship. Only EU citizens who meet the eligibility criteria of either of the newly defined groups will be entitled to be registered as local government electors in England. EU citizens who are not captured by the new definitions will no longer be entitled to be registered in the register of local government electors

450 This paragraph extends to Northern Ireland as provided for in clause 61(4)(b). Section 4(3) of the RPA 1983 is applied to local elections in Northern Ireland by Part 1 of Schedule 1 to the Elected Authorities (Northern Ireland) Act 1989. The effect of this is that the substitution of the terms described above will apply to local elections in Northern Ireland and only the newly defined groups will be entitled to register to vote.

451 This change will flow through to all elections and referendums that use the local government franchise and are reserved to the UK Government, including: all levels of local election in England and Northern Ireland, including parish elections; London mayoral and London Assembly elections; Northern Ireland Assembly elections; local authority mayoral and combined authority mayoral; Police and Crime Commissioner (PCC) elections (note that the

local franchise is only used for these in England, and that particular amendments are made to the Police Reform and Social Responsibility Act 2011 to give effect to the franchise change in respect of PCC elections in Wales); as well as local authority governance referendums, local council tax referendums, neighbourhood planning referendums and parish polls. This change will also carry through to any future elections which are based on the reserved local government franchise. In addition, these changes will also be applied to ward elections for common councillors in the City of London.

- 452 Paragraph 1(3) - (7) makes a number of amendments to sections 7B, and 15 to 17 of the RPA 1983 which allow persons, who would not otherwise be able, to register to vote either by way of a 'declaration of local connection (DoLC)', or by virtue of a relevant service qualification (by way of a 'service declaration'). The effect of these amendments will be to remove the right to register to vote via these methods on the basis of EU citizenship. Only EU citizens who meet the eligibility criteria of either of the newly defined groups will be entitled to register via these methods. The effect of these changes will be limited to England and Northern Ireland. The changes to section 7B of the RPA 1983, which amend provisions relating to the DoLC (specifically, paragraph 1(3)(a) and the changes to sections 15 and 16 of the RPA 1983, which amend provisions relating to the service declaration (specifically paragraph 1(4) and subparagraph (6)) extend to Northern Ireland as provided for in clauses 61(4)(b) and 61(4)(c) respectively. This ensures that the amendments are applied to local elections in Northern Ireland by Part 1 of Schedule 1 to the Elected Authorities (Northern Ireland) Act 1989.
- 453 Paragraph 1(3)(a) amends section 7B(3)(e) of the RPA 1983 to provide that, for the purposes of local government elections in England, on the date of declaration of local connection the person must be a 'qualifying EU citizen' or an 'EU citizen with retained rights' (rather than the old definition of 'relevant citizen of the Union').
- 454 Paragraph 1(3)(b) amends section 7B(7)(a) of the RPA 1983 which sets out the conditions whereby a person may register as a local elector only by way of a DoLC (since EU citizens are not eligible for the Parliamentary franchise). The effect is to align this eligibility criteria with the wider changes to voter and registration eligibility by substituting the term 'relevant citizen of the union' for 'qualifying EU citizen or an EU citizen with retained rights'.
- 455 Paragraph 1(4) - (7) amends the provisions in sections 15, 16 and 17 of the RPA 1983 which make provision for service declarations. These allow individuals with relevant service qualifications - e.g. persons who are military personnel, Crown Servants, British Council staff, or the family of these three groups, to register to vote as if they were still resident in the UK, despite having been posted abroad for their work.
- 456 Paragraph 1(4) amends section 15(5)(a) of the RPA 1983. Section 15(5) provides that whilst generally service declarations can only be made in respect of parliamentary elections (and then would be applied for local government elections), in the case of certain groups who are not eligible to vote in parliamentary elections, a service declaration can be made specifically for local government elections. The amendment to section 15(5)(a) applies this rule to the new categories of 'qualifying EU citizens' and 'EU citizens with retained rights'. It inserts new subparagraphs, (i) & (ii) which relate, separately and respectively, to the local franchises in England and Wales. The effect of this is to change section 15(5)(a) of the RPA 1983 as it relates to England only.
- 457 Paragraphs 1(5) and 1(6) amend the provisions in section 16 of the RPA 1983 (which sets out the content of a service declaration). The amendments require that, in England, a person must be a 'qualifying EU citizen or an EU citizen with retained rights' on the date of the declaration (rather than the previous category of 'relevant citizen of the Union'). Paragraph 1(5) makes this change to the version of section 16 which extends to England and Wales. New sub-

paragraphs (i) and (ii) are inserted into subsection (1)(e) which relate, respectively, to the local franchises in England and Wales. The effect of this is to change the provisions as they relate to England only. Paragraph 1(6) makes a corresponding change to the version of section 16 which extends to Northern Ireland.

- 458 Paragraph 1(7) amends section 17 of the RPA 1983 which stipulates the effect of a service declaration, which is that where a service declaration is in force when an individual applies to register to vote, that individual should be considered to hold the attributes listed in this section. The attributes listed at section 17(1)(c) relate to whether an individual should be considered to hold one of the various statuses related to nationality which confers eligibility to register to vote. Paragraph 1(7) inserts new sub-paragraphs (i) and (ii) which relate, respectively, to the local franchises in England and Wales. The effect of this is to change the provisions as they relate to England only. The new sub-paragraph (c)(i), which relates to England only, substitutes the term 'relevant citizen of the Union' with two new terms: 'a qualifying EU citizen or an EU citizen with retained rights'.
- 459 Paragraph 1(8) amends section 49(5) of the RPA 1983 which provides that if a person is registered in the parliamentary or local government register of electors, or entered in the list of proxies, they will not be prevented from voting on specified grounds, including that they are not a 'relevant citizen of the Union'. The section does allow, however, for a person's vote to be rejected on a scrutiny, or for a person to be liable to any penalty for voting if a person does not meet the stated eligibility criteria. In other words, this provision provides an element of protection to those already registered (e.g. they cannot be *prevented* from casting their vote) - whilst also allowing for their vote to be rejected after 'scrutiny'. Sub-paragraph 8(a) amends this section to replace references to "a relevant citizen of the Union" with references to "qualifying EU citizen or an EU citizen retained rights" in relation to local government electors in England; and also limits relevance of the term "relevant citizen of the Union" to local government electors in Wales. This amendment will also extend to local elections in Northern Ireland as provided in clause 61(4)(b) of the Bill. Section 49 of the RPA 1983 is applied to local elections in Northern Ireland by Part 1 of Schedule 1 to the Elected Authorities (Northern Ireland) Act 1989.
- 460 Paragraph 1(9) makes amendments to section 201 of the RPA Act 1983 which makes general provision about regulations made under the Act. The effect is that regulations made under the new power in section 203A(2) (inserted by paragraph 1(11) and discussed below) are to be subject to the negative resolution procedure.
- 461 Paragraph 1(10) inserts the new definitions of 'EU citizen with retained rights' and 'qualifying EU citizen' into section 203 (which contains general definitions for the RPA 1983). The existing definition of 'relevant citizen of the union' at section 202(1) of the Representation of the People Act 1983 has been left intact. This will avoid any impact on any legislation that continues to use the term 'relevant citizen of the union' after this Bill comes into effect.
- 462 Paragraph 1(11) inserts new sections 203A and 203B into the RPA 1983. These set out the new definitions of 'qualifying EU citizen' (203A) and 'EU citizen with retained rights' (203B). In the case of 'qualifying EU citizens', where the grant of voting and candidacy rights is dependent upon the UK entering into a treaty with another country, the provisions within the definition also prescribe the process by which a country is added to or removed from a list with the effect of granting or removing voting and candidacy rights from the relevant citizens.
- 463 New section 203A sets out the eligibility criteria that a person must meet in order to be a 'qualifying EU citizen'. It describes the group of people who will be granted voting and candidacy rights as a consequence of the UK having a treaty with another country.

- 464 Section 203A(1) sets out the two eligibility criteria that a person must meet in order to be considered ‘a qualifying citizen of the union’: a citizenship condition, and that they hold any form of leave to remain.
- 465 Section 203A(1)(a) requires that, in order to be a ‘qualifying citizen of the union’ a person must be a citizen of a country which is included in Schedule 6A at the relevant time. Schedule 6A (inserted by paragraph 1(12)) is a list of countries with which the UK has entered into a treaty containing provision relating to eligibility to vote and stand as a candidate in election.
- 466 Section 203A(1)(b) requires that, in order to be a ‘qualifying citizen of the union’ a person must also either hold any form of leave to enter or remain in the UK or Crown Dependencies, or not require such leave. The drafting at Section 203A(1)(b)(i) and (ii) intentionally mirrors the immigration requirements for ‘qualifying commonwealth citizens’ as described in section 4(6) of the RPA 1983. This ensures consistent treatment of enfranchised foreign nationals.
- 467 Section 203A(2) requires the Secretary of State to make regulations adding a country to the list in Schedule 6A where certain conditions are met as follows:
- 468 Section 203A(2)(a) requires that, in order to be added to Schedule 6A, a country must be a ‘qualifying country’. ‘Qualifying country’ is defined at Section 203A(5), see below.
- 469 Section 203A(2)(b) requires that, in order to be added to Schedule 6A, the United Kingdom and the country intend to become parties to a relevant treaty. ‘Relevant treaty’ is defined at section 203A(5), see below. This clause has the effect of requiring that a country has entered into an agreement with the UK on voting and candidacy rights, with the effect that each side will be guaranteeing to confer voting and candidacy rights for local elections, which means that UK nationals living in that country will then have that entitlement.
- 470 Section 203A(2)(c) provides that only treaties which are subject to Parliamentary scrutiny under Part 2 of CRAG, can be added to the list at Schedule 6A. Section 20 of CRAG requires treaties to be laid before Parliament before ratification. It provides an opportunity for both Houses to scrutinise the contents of a treaty and, potentially, to object to ratification (by passing a resolution). A treaty must have completed the process required by section 20 of CRAG before the Secretary of State can act to add a country to Schedule 6A. The completion of this process is the trigger which obliges the Secretary of State to act, thereby granting voting and candidacy rights to citizens of the relevant EU member state.
- 471 Read in conjunction with the amended section 201(2A) of the RPA 1983, the regulations will be subject to negative resolution procedure, so can be annulled by either House of Parliament. The effect of adding a country to the Schedule will be to grant voting and candidacy rights to citizens of that country provided they meet the additional criteria set out in the relevant immigration and electoral legislation. By giving effect to the provisions in domestic law, the UK will be in a position to ratify the associated treaty either at the same time as, or after, adding a country to Schedule 6A.
- 472 Section 203A(3) provides a power for the Secretary of State by regulations to remove a country from the list in Schedule 6A where that country ceases to be a party to the treaty which led to it being included on the list. Removing a country would remove voting and candidacy rights from the citizens of that country. The power to make such regulations enables, but does not require, the Secretary of State to remove a country. The power is drafted broadly so as to capture a range of unanticipated possible circumstances in which the UK, or the other country concerned, may cease to be a party to a treaty.
- 473 Read in conjunction with section 201(2) of the RPA 1983, regulations made under section 203A(3) will be subject to the affirmative resolution procedure and therefore must be laid

before and approved by a resolution of each House of Parliament. Section 203A(4) requires the Secretary of State to inform registration officers in England, registration officers for elections of Police and Crime Commissioners for police areas in Wales, the Chief Electoral Officer for Northern Ireland and the Electoral Commission when a country is added to, or removed from, Schedule 6A as soon as is reasonably practicable. This is intended to help ensure that:

- a. these persons and organisations are informed, in a timely fashion, of changes to the franchise – and associated candidacy rights – (along with any other relevant information the Secretary of State deems appropriate);
- b. registration officers are best supported with implementing changes to their local electoral registers, including beginning the process of informing relevant persons of their right to register or, in the event of the removal of a country from Schedule 6A, removing ineligible individuals from their electoral register.

474 Section 203A(5) provides definitions of the terms used in this section. These are: Section 203A(5) defines ‘the Islands’ as the Channel Islands, and the Isle of Man.

475 Section 203A(5) defines a ‘qualifying country’ as:

- a. a country that was a member state immediately before Implementation Period Completion Day (IPCD) - 31 December 2020 - other than the Republic of Ireland;
- b. a country ‘that was part of a member state immediately before IPCD other than the Republic of Ireland; or
- c. a country ‘that is formed entirely of two or more former countries, both or all of which were member States immediately before IPCD ,other than the Republic of Ireland’. The overall effect of this criteria is to limit the grant of local voting and candidacy rights under this legislation only to persons who are citizens of a country the territory of which was part of the EU as at 31 December 2020. 203A(5)(b) provides for the possibility that a part of a country that was an EU Member State at IPCD may, in future, secede to form a new independent nation state. 203A(5)(c) provides for the possibility that two or more countries that were EU Member States at IPCD may merge together to form a new state. In both of these scenarios, the effect would be to allow for the UK to negotiate a voting and candidacy eligibility treaty with a new state formed in these ways.
- d. The exclusion of the Republic of Ireland from the definition of ‘qualifying country’ reflects the fact that voting and candidacy rights of Irish citizens are long-standing and pre-date the UK’s membership of the EU.

476 Section 203A(5) defines ‘ratification’ in the same way as it is defined in s.25(3) of the Constitutional Reform and Governance Act 2010.

477 Section 203A(5) defines a ‘relevant treaty’ as ‘a treaty containing provision relating to eligibility to vote and stand as a candidate in elections.’

478 Section 203A(5) defines ‘treaty’ by reference to the definition in section 25 of the Constitutional Reform and Government Act 2010, as a written agreement between States (or States and International Organisations) that is binding in international law.

479 Section 203B sets out the eligibility criteria for an individual to be an ‘EU citizen with retained rights’. The policy intention is to provide continuity in relation to the voting and candidacy rights of EU citizens who have been living in the UK since before IPCD and who hold lawful immigration status.



480 Section 203B(1) sets out that to be an 'EU citizen with retained rights' a person must meet all of the following criteria:

- a. be an 'EU citizen with retained rights', a person must be a citizen of a 'country' as defined in s.203B(8). See below for that definition.
- b. be an 'EU citizen with retained rights', a person must have been an EU citizen immediately before IPCD.
- c. be an 'EU citizen with retained rights', a person must have been resident in either the UK or any of the Crown Dependencies - that is the Bailiwick of Jersey, the Bailiwick of Guernsey, or the Isle of Man - immediately before IPCD.
- d. be an 'EU citizen with retained rights', a person must also fall within any of the subsections 203B(2)-(4), which are explained below.
- e. be an 'EU citizen with retained rights', a person must not be a 'qualifying EU citizen'. The definition of a qualifying EU citizen is set out in section 203A as explained above.

481 Sections 203B(2)-(4) set out the various ways in which an individual may satisfy section 203B(1)(d), referred to above.

482 Section 203B(2)(a) and (b) stipulates that an individual may satisfy s.203B(1)(d) if they have settled or pre-settled status (forms of 'leave to enter or remain') under the UK EU Settlement Scheme (EUSS), or under one of the EUSS of the Crown Dependencies (the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man), **except** where such leave has been granted to an individual on the basis that they are a 'joining family member'. Section 203B(12) identifies the relevant provisions of the UK's and Crown Dependencies' Immigration Rules that currently apply to joining family members, and provides for the possibility that either or both of the relevant provisions of the Immigration Rules may be replaced.

483 Section 203B(3) states that an individual may satisfy s.203B(1)(d) if they meet the following two criteria. Firstly, they must currently hold non-EUSS leave to remain in the UK or Crown Dependencies (with the exception of those persons who hold EUSS leave as 'joining family members'). Secondly, they must satisfy the conditions set out in subsection (5), as discussed below.

484 Section 203B(4) states that an individual may satisfy s.203B(1)(d) if they meet the following three criteria. Firstly, that they do not, at the relevant time, require leave to remain in the UK or Crown Dependencies. Secondly, that they are resident at the relevant time in the UK or Crown Dependencies. Thirdly, that they must satisfy the criteria set out in subsection (5), as discussed below.

485 Section 203B(5) is the necessary condition which individuals must satisfy in order to meet the requirements of either 203B(3) or 203B(4) in full. Section 203B(5)(a) requires that, excepting those scenarios set out in 203B(7) (pursuant to section 203B(6)), a person must have continuously held UK or Islands leave, or not required such leave, since 30 June 2021 (see definition of "the relevant date" at section 203B(10)). 203B(5)(b) requires that, during any of that period in which a person did not require such leave under the Immigration Act 1971 (e.g. they are exempted from the requirement), they must have been resident in the UK or Crown Dependencies.

486 Section 203B(5) is the necessary condition which individuals must satisfy in order to meet the requirements of either 203B(3) or 203B(4) in full. Section 203B(5)(a) requires that, excepting those scenarios set out in 203B(7) (pursuant to section 203B(6)), a person must have continuously held UK or Islands leave, or not required such leave, since 30 June 2021 (see

definition of “the relevant date” at section 203B(10)). 203B(5)(b) requires that, during any of that period in which a person did not require such leave under the Immigration Act 1971 (e.g. they are exempted from the requirement), they must have been resident in the UK or Crown Dependencies.

- 487 203B(6) and (7) provide for specific exceptions to the requirement set out at 203B(5)(a) - that being the necessary condition which a person must meet in order to qualify under a ‘non-EUSS’ route under sections 203B(3) or (4). Section 203B(6) also requires that, in order for a period of time to be disregarded under these provisions, the individual must have been resident in the UK or Crown Dependencies for that period of time. Both exceptions set out in subsection (7) describe potential gaps in legal immigration status that may have been experienced by an individual - and tolerated by Home Office - as a consequence of operation of the ‘grace period’ regulations and the EUSS.
- 488 Subsection (7)(a) allows for a period of time where an individual did not have leave but was awaiting the outcome of an application for leave made before 30 June 2021 to be disregarded (provided that the application was ultimately successful).
- 489 Subsection (7)(b) allows for the disregardance of a period of time when an individual did not have leave but was subsequently granted EUSS leave (although not as a ‘joining family member’) by virtue of a late application, made after 30 June 2021, under the ‘reasonable excuse’ proviso. Note that such persons are expressly provided for in 203B(2); however, the exception at 203B(7) covers the possibility that such a person may subsequently go on to hold another form of leave, and therefore no longer be captured by 203B(2).
- 490 Section 203B(8) adds to the definition of “EU citizen with retained rights” at 203B(1). 203B(8)(a) stipulates that an EU citizen with retained rights may be from a country that was a member state immediately before IPCD, other than the Republic of Ireland
- 491 Section 203B(8)(b) stipulates that the section applies to a country that was part of an EU Member State immediately before IPCD, other than the Republic of Ireland. This allows for the possibility that a part of a country that was an EU Member State at IPCD may, in future, secede to form a new independent nation state. Citizens of that country may be eligible to qualify for retained rights, provided they meet the other eligibility requirements set out elsewhere.
- 492 Section 203B(8)(c) stipulates that the section applies to a country that is formed of two or more former countries, at least one of which was an EU Member State immediately before IPCD, other than the Republic of Ireland’. This allows for the possibility that a country that was an EU Member State at IPCD may merge with one or more countries that may or may not have been an EU Member State or States at IPCD, to form a new country. The effect is to enable citizens of such a new country to qualify as EU citizens with retained rights, subject to those persons meeting additional eligibility requirements set out elsewhere (including, as per 203B(1)(b), that they were a citizen of an EU Member State immediately before IPCD).
- 493 The exclusion of the Republic of Ireland in 203B(8)(a), (b), and (c) reflects the fact that Irish citizens’ voting and candidacy rights are long-standing and pre-date the UK’s membership of the EU.
- 494 Section 203B(9) indicates that references throughout section 203B to individuals who have leave to enter or remain under the Immigration Act 1971 should be taken to include individuals who are designated to be treated as having such leave.
- 495 Sections 203B(10) and 203B(11) provide definitions for the terms used in section 203B. Most of these are self-explanatory. ‘Residence scheme immigration rules’ refers to the EU Settlement

Schemes. There are four such schemes: one for the UK, and one for each of the Crown Dependencies.

496 Paragraph 1(12) creates the Schedule listing the countries the citizens of which are eligible (subject to the other eligibility requirements) to be considered ‘qualifying EU citizens’ as stipulated at s.203A(1). Currently, this list includes Luxembourg, Poland, Portugal, and Spain, as these countries have already reached bilateral treaties with the UK regarding voting and candidacy rights, and each of these agreements has completed the CRAG process in Parliament.

497 Paragraphs 1(9) to (12) extend to Northern Ireland and therefore local elections in Northern Ireland as provided for by clause 63(4)(b)

## **Part 2 - Amendments in relation to certain local elections in England and Wales**

498 Paragraph 2 amends the City of London (Various Powers) Act 1957 as it relates to the rights of European citizens to vote and to stand in Common Councillor elections in the City of London.

499 Paragraph 2(2) amends section 4 of the 1957 Act, which sets out definitions of terms used in Act. It substitutes the existing term, ‘relevant citizen of the Union’ with two new terms: ‘a qualifying EU citizen or an EU citizen with retained rights’. Those terms will have the same meaning as in the amended RPA 1983.

500 Paragraph 2(3) amends section 5 of the 1957 Act which sets out the criteria that a person must meet in order to stand as a candidate for election to the Common Council. It substitutes the term ‘relevant citizen of the Union’ with the two new terms: ‘EU citizen with retained rights’ and ‘qualifying EU citizen’. The effect is that only those EU citizens who are captured by the definitions of the new terms will qualify to stand as candidates for election to the Common Council.

501 Paragraph 2(4) amends section 6 of the 1957 Act which sets out the criteria that a person must meet in order to qualify to vote in ward elections. It substitutes the term ‘relevant citizen of the Union’ with the two new terms: ‘EU citizen with retained rights’ and ‘qualifying EU citizen’. The effect is that only those EU citizens who are captured by the definitions of the new terms will be entitled to vote in ward elections.

502 Paragraph 3 makes amendments to the Local Government Act 1972 in relation to the rights of EU citizens to stand for and hold office in local authorities in England. The effect of these amendments is that the only EU citizens who will be eligible to vote and stand for office as a member (“councillor”) or directly-elected mayor of a local authority in England will be qualifying EU citizens and EU citizens with retained rights. These changes follow the changes made in relation to the local franchise in England where ‘qualifying EU citizens’ and ‘EU citizens with retained rights’ have the same meaning as described at sections 203A and 203B of the RPA 1983 as inserted by paragraph 1(11) of Part 1 to the Schedule. EU citizens who are not captured by these definitions will no longer be able to stand for election and hold office as a member or directly-elected mayor of a local authority in England.

503 Paragraph 4 makes amendments to the Greater London Authority Act 1999 in relation to the rights of EU citizens to stand for and hold office as Mayor of London or London Assembly Member. The effect of these amendments is that the only EU citizens who will be eligible to stand for election and hold office as Mayor of London or as a London Assembly member will be qualifying EU citizens and EU citizens with retained rights. These changes follow the changes made in relation to the local franchise in England in Part 1 of the Schedule, and the changes made to the right to stand for and hold office in a local authority in England (paragraph 3 of Part 2 of the Schedule) where ‘qualifying EU citizens’ and ‘EU citizens with retained rights’ have the same meaning as described at sections 203A and 203B of the RPA

1983 as inserted by paragraph 1(11) of Part 1 of this Schedule. EU citizens who are not captured by these definitions will no longer be able to stand for election and hold office as a Mayor of London or London Assembly Member.

504 Paragraph 5 makes amendments to the definition of ‘qualifying citizen’ at paragraph 8(3) of Schedule 5B to the Local Democracy, Economic Development and Construction Act 2009 in relation to the rights of EU citizens to stand for and hold office as mayor for a combined authority area. The effect of these amendments is that the only EU citizens who will be eligible to stand for and hold office as a mayor for a combined authority area will be qualifying EU citizens and EU citizens with retained rights. These changes follow the changes made in relation to the local franchise in England in Part 1 of this Schedule, and the changes made to the right to stand for and hold office in a local authority in England (paragraph 3 of Part 2 of this Schedule) where ‘qualifying EU citizen’ and ‘EU citizen with retained rights’ have the same meaning as described at sections 203A and 203B of the RPA 1983 as inserted by paragraph 1(11) of Part 1 of this Schedule. EU citizens who are not captured by these definitions will no longer be able to stand for election and hold office as an elected mayor in a combined authority area.

505 Paragraph 6 makes amendments to the Police Reform and Social Responsibility Act (PRsRA) 2011, which includes voting and candidacy arrangements for the office of PCCs in both England and Wales. The amendments are largely limited to PCC elections in Wales. This is because for England, the franchise and candidacy rights for PCC elections follow those for local elections in England, and therefore reflect the changes made by Part 1 of Schedule 8 about which EU citizens are entitled to vote and stand at local elections in England. For Wales, the franchise for local elections is devolved, and is not the same as for PCC elections in Wales (which is reserved). For this reason amendments made by Part 1 of Schedule 8 do not flow through to PCC elections in Wales in the same way as for PCC elections in England. The amendments are:

- a. Section 102 has been amended to remove the definition of ‘relevant citizen of the Union’ and to define ‘qualifying EU citizen’ and ‘EU citizen with retained rights’ by reference to the RPA 1983.
- b. In sections 51(6C)(a), 52(1C)(a), and 64(1C)(a), which are specific to PCC elections in Wales, the term ‘relevant citizen of the Union’ has been substituted with ‘qualifying EU citizen or an EU citizen with retained rights’. The effect will be that the only EU citizens who will be able to be a relevant elector in Wales (under section 51), to vote in PCC elections in Wales (under section 52), and to stand for office as Police and Crime Commissioner (under section 64) will be those EU citizens captured by the new terms. As noted above, these changes specific to Wales are necessary due to recent legislation from the Welsh Parliament, which reduced the voting and candidacy age for local elections in Wales (which are devolved) to 16, whereas PCC elections in Wales (which are reserved) continue to have a voting and candidacy age of 18.
- c. In section 68, the citizenship condition (which covers both England and Wales) has been amended to substitute ‘citizen of the Union’ with ‘qualifying EU citizen or an EU citizen with retained rights’ and this applies to people in England and Wales. This remains consistent with the citizenship condition for the Mayor of London and combined authority mayors.

### **Part 3 - Amendments in relation to certain elections in Northern Ireland**

506 Paragraph 7 amends form 2 in Schedule 5 to the Electoral Law Act (Northern Ireland) 1962 by amending the declaration of nationality in the consent to nomination made by someone

*These Explanatory Notes relate to the Elections Bill as brought from the House of Commons on 18 January 2022 (HL Bill 96)*

standing for election at a local council in Northern Ireland. The effect of the amendment is that the wording 'citizen of another member state of the European Union' is changed to 'qualifying EU citizen or EU citizen with retained rights within the meaning of sections 203A and 203B of the RPA 1983'. The provision reflects the changes to eligibility for standing as candidate at local elections in Northern Ireland as provided for by paragraph 8 of Part 3 of this Schedule.

- 507 Paragraph 8 makes amendments to the section 3 of the Local Government Act (Northern Ireland) 1972 in relation to the rights of EU citizens to stand for office at local councils in Northern Ireland. The effect of these amendments is that only qualifying EU citizens or EU citizens with retained rights will be qualified to stand for election as a councillor in Northern Ireland. These changes follow the changes made in relation to the local franchise in England and Northern Ireland where 'qualifying EU citizens' and 'EU citizens with retained rights' have the same meaning as described at sections 203A and 203B of the RPA 1983 as inserted by paragraph 1(11) of Part 1 to this Schedule. EU citizens who are not captured by these definitions will no longer be able to stand for election as a councillor.
- 508 Paragraph 9 makes amendments to the Elected Authorities (Northern Ireland) Act 1989 by amending the franchise for local electors in Northern Ireland reflecting the changes for local government electors in England made by paragraph 1(2) of Schedule 8. The effect of these amendments will be that only those EU citizens captured by the new definitions of EU citizens will be able to vote in elections in Northern Ireland that use the local elections franchise. EU citizens who are not captured by the new definitions will no longer be able to vote in those elections. This will impact Assembly elections in Northern Ireland as these use the local elections franchise.
- 509 Paragraph 9(3)(a), which substitutes the term 'relevant citizen of the Union' for both new definitions - 'a qualifying EU citizen or an EU citizen with retained rights' - removes the automatic right to vote from all EU citizens (with the exception of citizens of the Republic of Ireland, Cyprus, and Malta) which is currently conferred by virtue of EU citizenship alone. The effect will be that only EU citizens who meet the eligibility criteria of either of the newly defined groups will be included in the local elections franchise in Northern Ireland.
- 510 Paragraph 9(3)(b), provides that the terms 'qualifying EU citizens' and 'EU citizens with retained rights' have the same meaning as described at sections 203A and 203B of the RPA 1983 as inserted by paragraph 1(11) of Part 1 to this Schedule.
- 511 Paragraph 1(2), (4) and (7) of Schedule 7 to the Bill insert into sections 7B, 15 and 17 of the RPA 1983 references to the new definitions of EU citizens for local elections in England. Paragraph 9(5) applies with modifications the changes to 7B, 15 and 17 to local elections in Northern Ireland.
- 512 Paragraph 10 makes amendments to the Northern Ireland Act 1998 to provide that EU citizens or EU citizens with retained rights are disqualified for membership of the Northern Ireland Assembly unless they are resident in the UK as set out in section 4(3) of the RPA 1983 and applied to Northern Ireland local elections by Schedule 1 to the Elected Authorities (Northern Ireland) Act 1989. The wording 'citizen of another member state of the European Union' is changed to 'qualifying EU citizen or EU citizen with retained rights within the meaning of sections 203A and 203B of the RPA 1983'.

#### **Part 4 - Transitional provision**

- 513 Paragraph 12 makes transitional provision enabling an EU citizen elected before the new provisions described above come into force, and who otherwise remains eligible, to serve their full term of office.

*These Explanatory Notes relate to the Elections Bill as brought from the House of Commons on 18 January 2022 (HL Bill 96)*

514 Paragraph 12(1) stipulates that to have this transitional provision apply to an individual, the following requirements must be satisfied:

- a. Immediately before the particular provision changing the individual's right to hold office (the 'relevant provision') took effect, the individual must have held one of the offices listed at paragraph 12(4) (see below).
- b. The individual's term in office must have been due to continue beyond the time that the relevant provision took effect.
- c. The individual must be in a situation where, but for the effect of this transitional provision, they would have become disqualified from continuing to hold office as a result of the relevant provision taking effect.

515 Paragraph 12(2) provides that the right of individuals who satisfy the requirements listed in paragraph 11(1) to complete their term in office will not be affected by the coming into force of a provision of Schedule 8 which would otherwise affect their ability to continue to hold that office. The effect of this is to allow office-holders who would otherwise lose the right to hold office under these measures to complete their term in office, though they would not be entitled to seek re-election.

516 Paragraph 12(3) stipulates that for the purposes of this transitional provision, an individual will be considered to be 'holding an office' from the moment that that person is elected, or declared to be returned as, the holder of an office.

517 Paragraph 12(4) lists the offices to which this provision applies. These are:

- a. members of the Northern Ireland Assembly
- b. offices elected at all levels of council election in England (parish, district, county, unitary, metropolitan and London boroughs, and the council of the Isles of Scilly), and those elected at district Council elections in Northern Ireland. Namely:
  - i. local authority mayors in England;
  - ii. combined authority mayors in England;
  - iii. the Mayor of London;
  - iv. members of the London Assembly;
  - v. PCCs in England and Wales;

518 Paragraph 12(5) clarifies the specific 'local authority' elections described in paragraph 12(4)(b), listing the specific elections given above.

519 Paragraph 13 enables regulations to be made containing transitional or saving provisions connected to the changes made by the rest of Schedule 8. The provision that can be made includes modifying the effect of provisions of other legislation (including primary legislation). Paragraph 13(4) stipulates that a statutory instrument made using this power would be subject to affirmative procedure in Parliament.

## Part 3: The Electoral Commission

### Strategy and policy statement

#### Clause 14: Strategy and Policy Statement

520 Clause 14 amends Part 1 of PPERA by inserting new sections that make provisions for the introduction of a 'Strategy and Policy Statement' ('the Statement') which will provide guidance to which the Electoral Commission ('the Commission') must have regard.

521 The Statement will be drafted, designated and published by the Secretary of State under new section 4A. The Statement may contain guidance about:

- a. Government strategic and policy priorities relating to elections, referendums and other matters in respect of which the Commission have functions (new section 4A(2)(a));
- b. the role and responsibilities of the Commission in supporting or enabling those priorities (new section 4A(2)(b));
- c. the Commission's exercise of its functions (new section 4A(3)(a));
- d. any other information (for example, about the roles and responsibilities of other persons) the Secretary of State considers appropriate (new section 4A(3)(b)).

522 Under new section 4B of PPERA, the Commission are required to have regard to the Statement, save for any guidance within the Statement that pertains to the roles and responsibilities of other persons (s4B(3)).

523 New section 4B(4) and (8) require the Commission to publish a report, and provide a copy of that report to the Speaker's Committee on the Electoral Commission on consideration given to the Statement in the exercise of their functions. The new section does not require this report to take a particular form and it is envisaged that this obligation can be met by a standalone report or as part of the Commission's existing annual reporting requirements to the House of Commons under PPERA (existing paragraphs 18 and 20 of Schedule 1 to that Act). This duty only applies after the end of a 12-month reporting period from the day a Statement has been designated by the Secretary of State and every 12 months thereafter.

524 Under new section 4B(5), if a new Statement is designated during the reporting period applying to a previous Statement, to avoid placing an undue burden on the Commission, the Commission are only required to report on the discharge of their functions against the later Statement, after the end of a 12-month period from the designation of the later Statement.

525 In addition, under new section 4B(7) if a Statement is withdrawn during a reporting period, the Commission are not required to report on consideration given to the withdrawn Statement during that particular reporting period.

526 New section 4C of PPERA outlines the consultation and approval process required before designating the Statement.

527 Under new section 4C(2), the Secretary of State is required to consult the Commission, the Speaker's Committee, and the Public Administration and Constitutional Affairs Committee on the draft Statement. The Secretary of State must also consult the Scottish and Welsh Ministers with regards to any guidance relating to the Commission's devolved Scottish and Welsh functions.

- 528 Under new section 4C(3), following this consultation, the Secretary of State may make any changes to the draft the Secretary of State considers appropriate (which could be none) before laying the draft before Parliament.
- 529 Under new section 4C(4) the draft Statement is then submitted to parliamentary approval via the affirmative resolution procedure on a non-amendable motion, which means the Statement can either be accepted or rejected in full by Parliament within a 40-day period. The 40-day period is defined in new section 4C(5).
- 530 New section 4C(5) also contains definitions, including of the relevant devolved Welsh and Scottish functions of the EC on which the Statement may contain guidance. The reason the definitions are included is because there is an obligation to consult the Scottish or Welsh ministers (as relevant) so far as the guidance relates to those devolved functions.
- 531 Under new sections 4C(7) and 4C(8), if the name or functions of the Public Administration and Constitutional Affairs Committee change or become the functions of a different committee, then any reference to the Public Administration and Constitutional Affairs Committee under section 4C(2) is to be read as a reference to the committee which for the time being has that name or those functions.
- 532 New section 4D outlines the 5-year review and designation process for the Statement.
- 533 Under new section 4D(1), when five years have elapsed since a Statement was last designated after being subject to the statutory consultation process in new section 4C(2), the Secretary of State must as soon as reasonably practicable review the existing Statement and, under section 4D(4), determine whether to revise it, leave it unchanged or withdraw it.
- 534 Under new section 4D(5), where the Secretary of State decides not to withdraw the Statement as a result of reviewing it, the Secretary of State must designate the Statement within nine months of the review date.
- 535 Under new section 4D(7), the publication, consultation and parliamentary approval processes apply to the Statement as to the original Statement.
- 536 New section 4E outlines the Secretary of State's powers to revise the Statement outside the 5-yearly review process.
- 537 Under new section 4E, the Secretary of State may review and revise a designated Statement either on the Secretary of State's own initiative or at the request of the Commission, provided that the Commission notifies both the Secretary of State and the Speaker's Committee and gives details of the changes to the Statement that the Commission propose should be made (new section 4E(2)).
- 538 Under new section 4E(4), the Secretary of State may make changes the Secretary of State considers appropriate to the Statement and may determine that the consultation process outlined in new section 4C does not apply to the revised Statement. The effect of new section 4E(4) is that any revisions (save for typographical or clerical errors) to the Statement under new section 4E must be submitted to parliamentary approval. When making revisions to the Statement under new section 4E(4), only the consultation requirements under new section 4C(2) may be disapplied.
- 539 Before making this determination, the Secretary of State is required under new section 4E(5) to consult the Speaker's Committee on whether the proposed changes to the Statement warrant a statutory consultation and consider the Committee's view. If the Secretary of State disagrees with the Committee's view and makes a determination not to consult, the Secretary of State must explain this decision to Parliament under new section 4E(8).



540 Under section 4E(6), the Secretary of State must also inform the statutory consultees listed in new section 4C(2) of any proposed changes to the Statement if the Secretary of State determines that a statutory consultation is not required.

### Clause 15: Examination of duty to have regard to strategy and policy statement

541 Clause 15 inserts new section 13ZA into PPERA. This new section expands the role of the Speaker's Committee to include a power to examine the performance by the Commission of their duty in relation to the Statement.

542 To support this work, new section 13ZA(2) gives the Speaker's Committee powers to request relevant information from the Commission. Under new section 13ZA(3), the Commission is required to provide this information as soon as reasonably practicable and in such form as the Committee may reasonably require. The Speaker's Committee could, for example, request the information in the form of oral evidence.

543 Under new section 13ZA(4)-(5), the Commission are not required to disclose to the Speaker's Committee information that, in the Commission's opinion, might adversely affect any current investigation or proceedings or where disclosure would contravene data protection legislation.

544 Clause 15(2) inserts a new paragraph 4 into Schedule 2 to PPERA, and makes provision for evidence given by a witness (written or oral) to the Speaker's Committee to be protected from use in civil, disciplinary or criminal proceedings against the witness, unless the evidence was given in bad faith. This new paragraph also provides that publication by the Speaker's Committee of any witness evidence is absolutely privileged in relation to defamation claims. This includes evidence from the Commission and any other person providing evidence to the Speaker's Committee.

## Membership of the Speaker's Committee

### Clause 16: Membership of the Speaker's Committee

545 Clause 16(1) and (2) make amendments to section 2 of and paragraph 2 of Schedule 2 to PPERA, which set out the membership of the Speaker's Committee. The amendments allow concurrent membership for the Secretary of State for Levelling Up, Housing and Communities and a Minister of the Crown appointed by the Prime Minister (new sub-section (2A)) and clarify the meaning of "appointed member" in the context of concurrent membership (new paragraph 2(1A) of Schedule 2)).

546 Clause 16(3) revokes the Transfer of Functions (Speaker's Committee) Order 2021 (S.I. 2021/310) which served a similar purpose to clause 16(1). Clause 16 also revokes sub-paragraphs (b) and (c) in article 7(1) of the Transfer of Functions (Secretary of State for Levelling Up, Housing and Communities) Order 2021 (S.I. 2021/1265) which are superseded by clause 16.

## Criminal Proceedings

### Clause 17: Criminal proceedings

547 Clause 17 amends paragraph 2 of Schedule 1 to PPERA (the Electoral Commission: incidental powers) by inserting provisions which expressly remove the potential for the Commission to bring criminal prosecutions in England, Wales and Northern Ireland (17(4)(2)(b)).

## Part 4: Regulation of Expenditure

### Notional expenditure of candidates and others

#### Clause 18: Notional expenditure: use of property etc on behalf of candidates and others

548 Clause 18 subsection (1) (notional expenditure: use of property etc. on behalf of candidates and others) amends section 90C of the RPA 1983 in order to clarify that ‘on behalf of’ means where the candidate has directed, authorised or encouraged that use by someone else. This will clarify that candidates only need to report benefits in kind which they have actually used, or directed or encouraged someone else to use and do not need to fear being responsible for benefits in kind of which they had no knowledge.

549 Clause 18 subsections (2)-(7) makes equivalent amendments to the rules on notional expenditure throughout electoral law, including in respect of other campaigners, including political parties. This will ensure consistency across the various pieces of legislation.

#### Clause 19: Codes of practice on expenses

550 Clause 19 subsections (1)-(2) amend the provisions in electoral law providing that the Electoral Commission may prepare guidance on election expenses for candidates. The amendments are to make it clear that the guidance can cover the application of the rules in relation to expenses incurred. This is to ensure that the codes of practice are sufficiently broad and fully serve the purpose of explaining the rules on spending.

551 Clause 19 subsection (3) amends the procedures to bring into force various codes of practice giving guidance in respect of election expenses under PPERA and the RPA 1983. This is to ensure the procedures are consistent with each other and the codes are all brought into force by a statutory instrument with no further parliamentary procedure.

#### Clause 20: Authorised persons not required to pay expenses through election agent

552 Clause 20 amends section 73 RPA 1983 (and equivalent provisions throughout electoral law) so that expenses incurred under section 75 by a third party do not have to be paid by the election agent. This is intended to provide clarity to third parties who have been authorised by a candidate or agent to promote them, under section 75 of the RPA 1983. This amendment ensures that they are able to both incur and pay for authorised expenses under section 75, rather than the expenses being paid through the agent of the candidate they are promoting.

### Registration of parties etc

#### Clause 21: Declaration of assets and liabilities to be provided on application for registration

553 Clause 21 subsections (1) to (4) amend PPERA section 28 which deals with the registration of political parties by the Electoral Commission. The treasurer of a political party will be required to confirm whether to the best of their knowledge and belief they have assets and liabilities in excess of £500 or not. Parties with assets/liabilities that do not exceed the £500 threshold will be required to make a declaration confirming that fact. Parties with assets/liabilities in excess of £500, will be required to produce a record of those assets/liabilities to accompany their declaration. Under PPERA Schedule 4 paragraph 9, the responsible officers of the party are required to sign an application.

554 New section 28(3C) (inserted by clause 21(3)) provides that when determining whether a political party has assets and/or liabilities exceeding £500, the liabilities must be presented as a

positive number. Minor parties are excluded from this declaration requirement. The declaration and record of assets/liabilities is incorporated into the registration process with the EC and into the register maintained by the EC (PPERA, s.23). The political party register, maintained by the EC, will indicate whether the assets/liabilities of a party are in excess of £500 or not.

## Clause 22: Prohibition on entities being registered political parties and recognised third parties at same time

555 Clause 22 narrows the registration criteria for political parties so as to exclude third parties (new subsection (7A) inserted into section 28 PERA) which means that recognised third-party campaigners will no longer be able to register as a political party if their notification as a third-party campaigner remains in force. Registered parties will be removed from the list of categories of third-party campaigners eligible to register with the EC in PERA 2000, section 88(2). Clause 22 also makes a series of consequential amendments as a result.

## Clause 23: Section 22: transitional provisions

556 Clause 23 sets out a transitional provision to provide for any groups appearing on both registers when the provision comes into force during a regulated period. In such a scenario, campaigners would only be permitted to spend in one capacity (of their choice) during the regulated period and, following this, would need to either deregister as a political party or allow their third-party notification to lapse. It will be an offence (new section 89A and section 79(2) of PERA) for a party to spend in both capacities post commencement.

## Controlled Expenditure etc

### Clause 24: Restriction on which third parties may incur controlled expenditure

557 Subsection (1) inserts new section 89A(1) of PERA, which will prevent any third party from incurring controlled expenditure (including notional expenditure) during a regulated period, unless it is either eligible to register under section 88(2) of PERA or an unincorporated association with the requisite UK connection. New subsections (4) and (5) make it an offence for a third party to incur controlled expenditure when not listed in section 88(2) or exempt. Defences are set out in new subsection (6).

558 New section 89A(7) of PERA provides that unincorporated associations have the 'requisite UK connection' if they are composed **solely** of registered overseas electors (defined in new subsection (8)); these associations are a separate category of unincorporated associations that are not eligible to notify the Electoral Commission because they do not fall into the unincorporated association category in section 54(2)(h) of PERA.

559 Third-party campaigner controlled expenditure is only regulated during a regulated period. The offence under new section 89A(4) or (5) will only apply during a regulated period. New section 89A(2) outlines that 89A(1) will not apply to third-party campaigners spending below £700, this mirrors section 75(1ZZB)(a) and (1ZA) of the RPA 1983.

### Clause 25: Third parties capable of giving notification for purposes of Part 6 of PERA

560 Clause 25 makes provision for the amendment of the list of eligible categories of third-party campaigners in section 88(2) of PERA 2000. This allows for the ability to add, remove or amend categories of third-party campaigners from the list in section 88(2). This will allow for any new categories to be added to or removed from the list should that be necessary. Any change would have an impact on who is permitted to incur controlled expenditure during regulated periods under new section 89A.

## Clause 26: Recognised Third parties: changes to existing limits etc

- 561 Subsections (2) to (4) amend section 88 of PPERA to require third-party campaigners to give a notification to the Electoral Commission at a lower level of spending than is currently required, thereby creating a two tier system for registration and introducing “the lower-tier expenditure limit”. Subsection (1) defines the lower tier expenditure limits applicable to controlled expenditure by third parties during a regulated period as set out in section 94(5) of PPERA.
- 562 Subsections (5) and (6) put in place a mechanism for third-party campaigners registered on the ‘lower tier’ to confirm or withdraw their statement (as a third party subject to lower tier expenditure limit) with the Electoral Commission. If a third-party campaigner is registered on the lower tier and thinks that it will exceed the existing per country spending limit, the third party is expected to send a “notification of alteration” to the Electoral Commission as is the case for any changes to an original notification under section 88(8) of PPERA. Failure to do so means the third party (or individual or responsible person) may be liable for the offence of spending in excess of third party limits.
- 563 Subsections (7), (8) and (9) amend section 94 of PPERA to incorporate this new ‘lower tier threshold’ as an expenditure limit for third parties alongside the existing spending limits for third-party campaigners. The lower tier for notification is set at those third parties intending to spend in excess of £10,000 on controlled expenditure across any combination of the constituent parts of the UK during a regulated period before an election. It also acts as the upper expenditure limit for non-recognised third parties. New subsection (4ZA) links the incurring of controlled expenditure to authorisation by a responsible person within the third party subject to the lower tier expenditure limits.
- 564 Subsection (10) makes it an offence under section 94(4) of PPERA for a third party to incur controlled expenditure in excess of £10,000 across the UK during a regulated period without notifying/registering with the Electoral Commission. If a recognised third-party campaigner subject to the lower tier expenditure limit exceeds their limit outlined in section 94(4) they become subject to all of the existing Part 6 regulation for recognised third-parties, and the corresponding spending limit offence in section 94(2).
- 565 Under subsection (11), a lower tier third-party campaigner is excluded from acting as a lead campaigner role in relation to any arrangement in which expenditure is incurred in pursuance of a common plan with one or more third parties. This is due to the fact that such parties are not subject to the reporting requirements of recognised third parties, and therefore the spending would be unreported.
- 566 Subsection (12) ensures that third-party campaigners subject to the lower tier expenditure limit will not be subject to some controls in PPERA namely sections 91, 92, 95A, 95B, 95D and 96 will not apply. This means that they will not be required to submit donations reports during a regulated period, or be subjected to the internal reporting and recording requirements of sections 91, 92 and 93 of PPERA.

## Clause 27: Joint campaigning by registered parties and third parties

- 567 New section 94BA PPERA (as inserted by clause 27(4)) requires campaign spending as part of a joint plan between a registered party and a third party (or third parties as the case may be) which can reasonably be regarded as intended to achieve a common purpose to be counted towards the spending limits of all parties involved in the joint plan (new section 94BA(3) and (6)). This expands upon the joint campaigning arrangements already in place for third parties by virtue of section 94(6) to arrangements between a registered party and a third party or third parties.

568 In order to ensure that joint campaigns are evident in spending returns, this will also require that political parties and registered third-party campaigners identify where their spending is part of a joint campaign. This will apply to the proposed section 94BA and to the existing rules for third-parties working with other third-parties in section 94(6) (clause 27 subsection(5)). Reporting only applies where a campaigner already reports on their spending (i.e. are a registered political party or a recognised third-party and, under the proposed rules, in the upper tier). Sections 80 and 96 of PPERA are amended accordingly.

## Part 5: Disqualification of offenders for holding elective office etc

### Clause 28: Disqualification orders

569 Subsection (1) of clause 28 sets out the circumstances in which the clause applies, i.e.:

- a. an offender is convicted by a criminal court of an offence listed in Schedule 9 which was committed when the offender was aged 18 or over; and
- b. the offence is aggravated by hostility related to candidates (as defined in clause 30), holders of relevant elective offices (as defined in clause 31) or campaigners (as defined in clause 32).

570 Subsection (2) provides that, in those circumstances, the court must, when dealing with the offender for the offence, also make a disqualification order. The effect of the disqualification order is that the offender is disqualified from being nominated for election to, being elected to or holding certain elective offices for a period of 5 years. This 5-year period starts on the date the order is made. Clause 35 lists the relevant elective offices to which the disqualification applies.

571 Under subsection (3) the court does not have to make the disqualification order if they consider it would be unjust due to particular circumstances about the offence or the offender. Where the court determines not to make the order the court must give its reasons for not doing so in open court.

572 Subsections (4) and (5) provide the criteria by which a court will determine whether an offence is aggravated by hostility related to a candidate, holder of elective office or campaigner for the purposes of subsection (1)(c). Subsection (4)(a) provides that an offence is aggravated by hostility if the offender demonstrated towards the victim of the offence hostility because the victim is, or the offender presumes the victim to be, a candidate etc. Examples of this hostility include, but are not limited to, hostility based on: the victim's status as a candidate; activities undertaken wholly or partly in the victim's capacity as a candidate; an opinion held or not held by the candidate; a policy advocated or opposed by the candidate. The hostility must be demonstrated by the offender at the time of committing the offence, or immediately before or after the commission of the offence.

573 Subsection (4)(b) provides that an offence is aggravated by hostility if the offence was motivated (wholly or partly) by hostility towards persons in their capacity as candidates, holders of relevant elective offices or campaigners. Subsection (4)(b) does not specify that the 'victim' of the offence must be a candidate etc. in order for the offence to be aggravated by the necessary hostility. This means that an offence could be aggravated by hostility for the purposes of subsection (1)(c) where (for example) an offender commits a relevant offence against person A (e.g. a candidate's parent) and that offence is motivated by the offender's hostility towards person B because B is a candidate.

574 Subsection (5) provides that it is immaterial for the purposes of subsection (4) whether or not an offender's hostility is also based (to any extent) on any other factor not listed in that



subsection, i.e. a factor other than the victim being or being presumed by the offender to be a candidate etc., or a factor other than hostility towards persons in their capacity as a candidate etc.

575 Subsection (6) allows the court to consider evidence presented by the prosecution or defence in deciding whether or not to make a disqualification order under this clause. Subsection (7) allows the court to consider such evidence even where that evidence would not have been admissible in the proceedings in which the offender was convicted.

576 Subsection (8) provides, for the purposes of determining whether an offender was aged 18 or over when the offence was committed, that where an offender is found to be committed over more than a single day it is taken to have been committed on the last of those days.

577 Subsection (9) provides definitions used in this clause.

### Clause 29: Vacation of office etc

578 Clause 29 sets out the process by which a holder of a relevant elective office who is disqualified from holding that office as a result of a disqualification under clause 28 should vacate their office. It is modelled on the existing provision in section 173(4) to (8) of the RPA 1983 which governs the process for a person vacating an office as the result of incapacities arising from being convicted of a corrupt or illegal practice (although the new disqualification order is not a corrupt or illegal practice).

579 Subsection (2) provides that the holder's office is vacated at the end of the 3-month period after the court made the disqualification order or, if earlier, the end of the period during which an appeal against the criminal conviction or sentence is allowed if such an appeal is not made by the person during that period.

580 When the office-holder makes an appeal against their conviction or the making of a disqualification order subsection (3) provides that the office is vacated at the end of the 3-month period unless:

- a. the appeal is dismissed or abandoned before the 3-month period expires, in which case the office is vacated at that earlier time; or
- b. the appeal is upheld before the 3-month period expires, in which case the holder is not required to vacate their office.

581 Subsection (4) provides that the office-holder is suspended from performing any of the functions of their office from the date that the disqualification order is made until either the date on which the holder's office is vacated in accordance with this clause, or the date within the 3-month period on which a court upholds the appeal against the officeholder's conviction or the making of the disqualification order (as described in subsection (3)). In the latter case, the holder's office is not vacated and the suspension also ceases.

582 Subsection (5) provides that, where an office-holder's appeal is successful after their office has already been vacated in accordance with this clause, the former office-holder is not entitled to resume that office as a result of that successful appeal.

583 Subsection (6) defines the term "order date", which is used in the clause.

### Clause 30: Candidates etc.

584 Clause 30 describes the first category of persons referred to in clause 28, hostility against whom on the part of an offender may result in the making of a disqualification order under that clause. Subsection (1) provides that this category includes:

- a. candidates or future candidates in respect of elections for a relevant elective office;

- b. substitutes or nominees in relation to the seats of a member of the Northern Ireland Assembly or a member of a district council in Northern Ireland.

585 Subsection (2) provides that “candidate” in subsection (1) includes individuals named on a list of candidates for those elections where winning candidates are selected from submitted lists (for example, elections to the Scottish Parliament or the London Assembly).

586 Subsection (3) defines “future candidate” for the purposes of this clause as an individual whose intention to stand as a candidate at the next scheduled election for a relevant elective office has been declared, but whose formal candidacy has not yet officially begun.

587 Subsection (4) defines “substitute” for the purposes of this clause as an individual who is included (or is being considered for inclusion) on a list or notice of possible substitutes provided by an independent member of the Northern Ireland Assembly or of a district council in Northern Ireland. When the office of such an independent member becomes vacant, an individual is chosen from that list or notice to fill the vacancy.

588 Subsection (5) defines “nominee” for the purposes of this clause as an individual who has been nominated (or is being considered for nomination) by the nominating officer of a registered political party to fill a vacancy in the office of a member of the Northern Ireland Assembly or of a district council in Northern Ireland where that member was a member of the registered political party. The term “nominee” also includes an individual who is being considered for such a nomination by a nominating officer. Subsection (6) provides that where a member of a district council was a member of more than one registered political party, the references to the nominating officer in subsection (5)(b) are to be read as references to the nomination officers of each of the registered political parties concerned.

589 Subsection (7) defines other terms used in the clause.

### Clause 31: Holders of relevant elective offices

590 Clause 31 describes the second category of persons referred to in clause 28 as holders of relevant elective offices (these offices are listed in clause 35).

591 The terms of some relevant elective offices do not commence immediately after the results of an election to that office have been declared: several days can pass between election and the start of a term of office. Subsection (2) clarifies that a person elected to such an office is treated as a “holder of a relevant elective office” for these purposes from the time of their successful election even if their term of office has not yet commenced.

### Clause 32: Campaigners

592 Clause 32 sets out the third category of persons referred to in clause 28 as campaigners. Subsection (1) lists the five types of campaigner for these purposes. The first four types of campaigner (listed in subsection (1)(a) to (d)) are:

- a. an individual who is a permitted participant in relation to a referendum (within the meaning of section 105 PPERA);
- b. an individual who is a recognised third party (within the meaning of section 160 PPERA);
- c. an individual who is involved in the conduct or management of a local referendum campaign; or
- d. an individual who is an accredited campaigner in relation to a recall petition (within the meaning of Part 5 of Schedule 3 to the Recall of MPs Act 2015).

593 Subsection (1)(e) sets out a fifth type of campaigner. This type of campaigner covers individuals who undertake campaigning activities for election, referendum or recall petition purposes and who are employed or engaged by a person listed in subsection (5) (e.g. a candidate, registered political party, recognised third party, or permitted participant etc.) wholly or partly for the purpose of carrying out such activities. It does not cover individuals who carry out these campaigning activities but who are not employed or engaged wholly or partly for that purpose.

594 Subsection (2) defines “election purposes” for the purposes of subsection (1)(e), and includes campaigners who undertake relevant campaigning activities at any time of year, not only during a specific election period. This reflects the fact that relevant campaigning takes place, particularly online, outside of formal election periods. Subsections (3) and (4) define “referendum purposes” and “recall petition purposes” respectively for the purposes of subsection (1)(e).

595 Subsection (5) lists the persons who may employ or engage campaigners for the purposes of subsection (1)(e). Subsection (6) defines other terms used in the clause.

596 Subsection (7) explains that a campaigner can be “engaged by” a candidate etc. for the purposes of subsection (1)(e) if the campaigner provides their services without remuneration. This means that this type of “campaigner” includes volunteers.

### Clause 33: Election etc of a person to the House of Commons subject to a disqualification order

597 Subsection (1) of clause 33 specifies that if a person who is elected as a member of the House of Commons is subject to a disqualification order, then that person’s election is void.

598 Subsection (2) makes an amendment to the House of Commons Disqualification Act 1975. The effect of this amendment is that a person may apply to Her Majesty in Council in accordance with section 7 of the 1975 Act for a declaration to the effect that a person purporting to be a member of the House of Commons is disqualified by virtue of a disqualification order, in the same way that a declaration can be sought that a person is disqualified for any other reason.

### Clause 34: Power to amend Schedule 9

599 Clause 34 allows the Secretary of State by subsequent regulations to add to, vary or omit offences from the list of criminal offences in Schedule 9 in respect of which a disqualification order can be made in accordance with clause 28.

### Clause 35 Interpretation of Part

600 Clause 35 defines the terms “disqualification order” and “relevant elective office” which are used in Part 5.

### Clause 36: Minor and consequential amendments

601 Clause 36 gives effect to Schedule 10, which contains minor and consequential amendments resulting from Part 5.

### Schedule 9: Offences for purposes of Part 5

602 Schedule 9 lists the existing criminal offences of an intimidatory nature in respect of which a disqualification order can be made.

### Schedule 10: Disqualification orders: minor and consequential amendments

603 Paragraph 1 of Schedule 10 amends the rules for Northern Ireland local elections, as set out in Schedule 5 to the ELA (NI) 1962.



- 604 Sub-paragraph (2) allows Returning Officers (ROs) to hold a nomination paper invalid in those circumstances where an RO is certain, based on information provided or otherwise available to the RO, that a candidate is disqualified by virtue of a disqualification order. This is not a duty or requirement and is very similar to the existing power which ROs already have under UK Parliamentary election rules, which allows them to hold a nomination paper invalid if a candidate is disqualified by virtue of the Representation of the People Act 1981.
- 605 Sub-paragraph (3) makes a small change to the consent to nomination form to include a reference to the disqualification order as a reason why someone might be disqualified for being elected and to ensure that a candidate declares that they are not so disqualified when giving their consent.
- 606 Paragraph 2 of Schedule 10 amends the Local Government Act 1972 (“the 1972 Act”). Section 85(1) of the 1972 Act provides that a local authority member ceases to be a member if they fail to attend a meeting of the authority within a period of six consecutive months. Paragraph 2(2) amends section 85(3A) so as to disregard any period of suspension arising from clause 27(4) for the purpose of calculating the six-month consecutive period.
- 607 Paragraph 2 also amends the 1972 Act so that, where a local authority member is disqualified as a result of a disqualification order, their office is vacated on the date determined in accordance with the procedure set out in clause 27.
- 608 Paragraphs 3 and 4 of Schedule 10 amend the Local Government Act (Northern Ireland) 1972 and Local Government (Scotland) Act 1973 respectively. The amendments are equivalent to the amendments to the Local Government Act 1972 described above.
- 609 Paragraph 5 of Schedule 10 amends the rules for UK Parliamentary elections, as set out in Schedule 1 to the RPA 1983. The amendments are equivalent to the amendment to the rules in Schedule 5 to the ELA (NI) 1962 described above.
- 610 Paragraphs 6 to 9 of Schedule 10 amend the Scotland Act 1998, Northern Ireland Act 1998, Greater London Authority Act 1999 and the Government of Wales Act 2006. The amendments relate to the Scottish Parliament, the Northern Ireland Assembly, the London Assembly, the office of the Mayor of London and the Senedd Cymru respectively, and are equivalent to the amendments to the Local Government Act 1972 described above.
- 611 Paragraph 10 of Schedule 10 amends the Armed Forces Act 2006. New sections 236A and 236B of that Act enable a military court or commanding officer sentencing an offender who is subject to service law to impose a disqualification order in the same circumstances as an offender before a civilian criminal court.
- 612 Paragraph 11 of Schedule 10 amends the Police Reform and Social Responsibility Act 2011. The amendments relate to the office of police and crime commissioner and are equivalent to the amendments to the Local Government Act 1972 described above.
- 613 Paragraph 12 of Schedule 10 includes a reference to the new disqualification order provisions in section 379(1) of the Sentencing Act 2020.

## **Part 6: Information to be included with Electronic Material**

### **Definitions**

#### **Clause 37: Definitions relating to electronic material and publication**

- 614 Subsections (1) to (5) set out definitions for ‘electronic material’, ‘promoter’ and ‘publish’ that are relevant to Part 6. Subsection (6) provides that the Secretary of State may make regulations to modify these definitions.

*These Explanatory Notes relate to the Elections Bill as brought from the House of Commons on 18 January 2022 (HL Bill 96)*

## Clause 38: Definitions relating to parties etc

615 Clause 38 defines the political entities that are referenced throughout this Part and are relevant to the requirements for the imposition of an imprint on paid-for and other electronic material:

- a. Registered party
- b. Recognised third party
- c. Candidate
- d. Future candidate
- e. Elected office-holder
- f. Referendum campaigner
- g. Recall petition campaigner
- h. Recall petition

616 Subsection (5) defines ‘future candidate’, which means a person who is a future candidate at an election for a relevant elective office as defined in clause 30(3). This category is intended to avoid any potential ambiguity in relation to when an imprint is required which could arise from candidates only being legally recognised for a limited pre-election period, despite the fact they may have been campaigning long before then.

617 Subsection (9) defines recall petition as having the same meaning as in the Recall of MPs Act 2015.

618 Subsection (10) clarifies that references to candidate, future candidate or elected office-holders in this part of the Bill include a candidate or future candidate at, or a person elected at, a municipal election in the City of London. In other words, all City of London elections so defined will be subject to the digital imprint regime.

## Requirements

### Clause 39: Requirement to include information with electronic material

619 Clause 39 introduces requirements for promoters and any person on behalf of whom the material is being published (who is not the promoter) to include a legible or audible and directly accessible (where not included in the material itself) imprint on electronic material within scope of the regime. The clause is subject to clauses 44 and 45 (subsection (8)).

620 Subsection (2) requires imprints to be displayed as part of the material or in a location that is directly accessible from the material only where that is not reasonably practicable. Subsection (3) provides that the imprint information required to be embedded within electronic material is the name and address of the promoter of the material and any person on behalf of whom the material is being published (and who is not the promoter).

621 Subsection (4) makes provisions for regulation-making powers to modify the details to be included in the imprint, if required. This is to accommodate technological advances and any required changes as a result of the implementation of the regime.

622 Subsections (5) to (7) sets out further imprint requirements, for example that it is legible or audible and retained as part of the material when republished. There are exceptions to the part, which are set out in clause 45.

## Clause 40: Electronic material to which section 39 applies: paid-for material

623 This clause sets out the conditions required for material to be in scope of the regime in relation to “paid-for” material. The first condition is that the electronic material can reasonably be regarded as intended to achieve any of the purposes set out in clause 41. The second condition is that the promoter of the material, or the person on behalf of whom the material is published, has paid for the material to be published. For example, this could be the promoter of the material paying a social media company to advertise the material.

624 Subsection (4) provides that the reference to paying for the material to be published includes providing any other form of consideration in return for the publication of the material. This would therefore include the provision of a benefit in kind in return for the publication of the material. This does not include any cost involved in the creation of the material.

## Clause 41: Purposes referred to in section 40

625 Clause 41 sets out the purposes, referred to in clause 40, for paid-for electronic material. Subsection (2) outlines the first purpose which is influencing the public to support or withhold support from: (a) a registered party; (b) registered parties who advocate (or do not advocate) particular policies or otherwise fall within a particular category of parties; and (c) candidates or future candidates who hold (or do not hold) particular opinions or otherwise come within a particular category of candidates or future candidates. Subsections (2)(b) and (c) relate to paid-for material that is about more than one candidate, future candidate or registered party who otherwise fall within a particular ‘category’ (e.g. ‘category of candidates’). For example, this could be material that asks the public to vote for candidates who support policies aimed at tackling climate change or cutting taxes, regardless of their party affiliation. This material is sometimes referred to in guidance from the Electoral Commission as material about ‘categories of candidates’ or parties.

626 Material that is about more than one candidate or future candidate in subsection (2)(c) will generally be enforced by the Electoral Commission (48(2)(a)(i)), whilst material about a particular candidate or future candidate (in subsection(4)) will be enforced by the police. Material that is about one or more than one registered party in subsections (2)(a) and (b) will be enforced by the Electoral Commission. This will enable the Commission in practice to enforce material about registered parties and referendums, as well as material about categories of candidates, future candidates and holders of elected office. This is broadly in line with the existing split of responsibilities between the enforcement authorities in the print regime. There may be a degree of overlap between material about categories of candidates, future candidates and holders of elected office and material that is about more than one particular candidate, future candidate or holder of elected office. In these instances, it is for the authorities to establish, based on the particular facts, where the enforcement responsibility lies.

627 Subsections (4) and (6) provide for the second and third purposes which are to influence the public to support (or withhold support from) a particular candidate, particular future candidate or an elected office-holder. This is material about singular candidates, singular future candidates and singular elected office-holders that will be enforced by the police.

628 Subsection (7) provides that the fourth purpose is to influence the public to support (or withhold support from) elected office holders who hold (or do not hold) particular opinions or who advocate (or do not advocate) particular policies or who otherwise fall within a particular category of elected office-holders. Similarly to subsections (2)(b) and (c), this includes material about more than one elected office holder who otherwise fall within a ‘category’ (‘category of elected office-holders’). For instance, this could be material about Members of Parliament who voted for or against a particular issue. This material will generally be enforced by the Electoral Commission (section 48(2)(a)(ii)).

629 Subsection (9) provides that the fifth purpose is to influence the public to support (or withhold support from) the holding of a referendum in the UK or any area in the UK or a particular outcome of such a referendum.

630 Subsection (3), subsection (5) and subsection (8) provide that the material does not need to expressly mention the name of any party, candidate, future candidate or elected office-holder to achieve any of the purposes set out in this section. Subsection (10) provides that the material does not need to expressly mention a particular outcome of a referendum to achieve the purpose set out in subsection (9)(b). It is likely that all material under subsection (9)(a) would by default expressly mention the holding of a referendum in the United Kingdom or any area in the United Kingdom.

631 Subsection (11) excludes polls held under section 64 of the Government of Wales Act 2006 from the definition of 'referendum' in this section.

#### Clause 42: Electronic material to which section 39 applies: other electronic material

632 Clause 42 outlines the conditions where an imprint will be required for other electronic material (i.e. material that hasn't been paid for). The first condition is that the material can reasonably be regarded to achieve any purpose within clause 43 or it wholly or mainly relates to a referendum to which Part 7 of PPERA applies and is published during the referendum period for that particular referendum. This requirement is narrower than the one that applies to paid for electronic material in respect of the holding of a referendum or particular outcome in a referendum as it will only apply to material published during a referendum period and as defined by Part 7 of PPERA. The second condition is that the promoter of the material or the person on behalf of whom it is published is a registered party, a recognised third party, a candidate or future candidate, an elected office holder, a referendum campaigner or a recall petition campaigner.

#### Clause 43: Purposes referred to in section 42

633 Clause 43 sets out the purposes referred to in clause 42. The first purpose in subsection (2) is promoting or procuring electoral success at one or more particular relevant elections in relation to: (a) a registered party, (b) registered parties who advocate (or do not advocate) particular policies or otherwise fall within a particular category of parties; or (c) candidates or future candidates who hold (or do not hold) particular opinions or otherwise come within a particular category of candidates or future candidates. As with paid-for material, subsections (b) and (c) relate to material about one or more registered parties, candidates or future candidates who otherwise fall within a category (e.g. a 'category of candidates'). For instance this could include material promoted by a registered third-party campaigner which encourages the public to vote for candidates who support a particular policy with regards to climate change.

634 As with paid-for material, the material does not need to expressly mention the name of any party, candidate or future candidate to achieve this purpose (subsection (4)).

635 Subsection (3) provides that prejudicing the electoral prospects of other parties, candidates or future candidates will also require an imprint. This includes material prejudicing the electoral prospects of candidates or future candidates on a party list.

636 Subsection (5) provides the second purpose which is promoting or procuring the election of a particular candidate or future candidate at one or more particular elections.

637 Subsection (6) provides that the material does not need to expressly mention the name of any candidate or future candidate, to be in scope of the regime.

638 Subsection (7) provides the third purpose which is promoting or procuring the success or failure of a recall petition. The material does not need to expressly mention the name of the member of the House of Commons to whom the petition relates (subsection (8)).

639 The regime in respect of other electronic material is focussed on particular elections (and recall petitions (subsection (7)) and referendums as per clause 42(2)(b)). Subsection (9) defines the 'relevant elections' for the purposes of this section, which includes elections for mayors in England and Wales.

#### Clause 44: Electronic material relating to more than one candidate or future candidate

640 This clause sets out where electronic material may be reasonably regarded as promoting or procuring the electoral success of two or more candidates standing in the name of a party or included in a list of candidates submitted by the party then it can be regarded as being published on behalf of the registered party (rather than on behalf of a candidate).

#### Clause 45: Exceptions to section 39

641 Clause 45 sets out a number of exceptions to the regime. Subsection (1), provides that generally, the re-publishing or 'sharing' of paid-for or other electronic material by another person ("person A") will not require a new imprint, where the original (clause 39 compliant) imprint is retained in the material, and the material (the content or the imprint) has not been materially altered since it was last published (by the original promoter, i.e. "person B"). It is the intent for an imprint to be required if the material had not previously required an imprint but then is republished by another person ("person A") so that it is captured by clause 39 (for example the promoter or the person on behalf of whom it is published is on the list of political entities in clause 42(3) meeting the second condition and the material also meets the first condition (clause 42(2)) n).

642 Clause 45(3) outlines exceptions for material published for journalistic purposes which is the publication of electronic material on a website or mobile application whose primary purpose is the publication of journalism unless the material consists of an advertisement. This is to ensure the regime does not attempt to regulate the media and press.

643 Subsection (4) defines 'mobile application' for the purposes of subsection (3).

644 Under subsection (5), there are also exceptions for party political broadcasts or referendum campaign broadcasts as such broadcasts are already subject to regulation outside of the digital imprints regime.

645 Subsection (6) defines broadcaster and referendum campaign broadcast for the purposes of subsection (5).

646 Subsection (7) makes provision to amend the section, by way of regulations, to add, modify or remove cases to which an imprint is not required.

#### Clause 46: Offence of breaching of section 39

647 Clause 46 sets out the offences, defences and penalties under the regime. Subsection (1) provides where electronic material is published without an imprint (in contravention of the requirements in clause 39), the promoter of the material and any person on behalf of whom the material is being published (if not the promoter) becomes liable for a criminal offence. The penalties are set out in subsection (2) and defences in subsections (3) and (4).

648 Under subsection (5) a court must notify the Electoral Commission when a person is convicted of an offence under subsection (1) and the sentence imposed, as soon as is practicable.

649 Subsection (6) provides for candidates and their election agents to be guilty of an illegal practice rather than guilty of an offence under this section.

650 Subsection (7) cross refers to clause 47 which provides for the removal of electronic material post-conviction of an offence under this section.

### Clause 47: Order to take down electronic material in breach of section 39

651 Subsections (1) to (6) provide for the removal of the electronic material following a conviction for an imprint offence. Subsection (2) provides that a court may order ‘a person by whom the electronic material is published’ (for example, the digital platforms hosting the content even if they are not the promoter) to remove the material or disable access to the material.

652 Subsection (4) makes it a criminal offence for any person who receives an order to take down (for example digital platforms) and fails to comply with it without a reasonable excuse. The penalties are set out in subsection (5). Subsection (3) sets out the right of appeal for a person to such an Order.

653 Under subsection (6) a court must notify the Electoral Commission of a person’s conviction for an offence under subsection (4) and the sentence imposed as soon as practicable.

### Clause 48: Enforcement by the Commission

654 Clause 48 makes provision for the Electoral Commission to impose civil sanctions (this does not prevent appropriate cases being referred to the police) by applying Parts 1 to 4 and 6 of Schedule 19C of PPERA and the Political Parties, Elections and Referendums (Civil Sanctions) Order 2010 (S.I. 2010/2860) in respect of certain offences. Those offences are set out in subsection (2). The Commission’s enforcement powers for paid-for electronic material are limited to offences related to registered parties and categories of registered parties, candidates and future candidates (subsection (2)(a)(i)), categories of elected office holders (subsection (2)(a)(ii)) and referendums (subsection (2)(a)(iii)). The police and the courts will enforce all other offences relating to paid-for electronic material.

655 The Commission’s enforcement powers for unpaid other electronic material are limited to referendums (subsection(2)(b)(i)), registered parties and categories of registered parties, candidates or future candidates (subsection(2)(b)(ii)). The police and the courts will enforce all other offences relating to other electronic material.

### Clause 49: Notice to take down electronic material in breach of section 39

656 Subsections (1) to (6) make provision for the Electoral Commission to issue a notice to take down the material or disable access to the material to ‘a person by whom the electronic material is published’.

657 The penalties are outlined in subsection (4). There is no alternative civil sanction available for this offence.

658 Under subsection (5) a court must notify the Electoral Commission of any person convicted for an offence under subsection (3) and any sentence imposed, as soon as practicable.

659 Subsection (6) cross refers to clause 50 which provides for the requirements to be included in the notice.

### Clause 50: Further provisions about notice under section 49

660 Subsections (1) to (6) set out the requirements for the Electoral Commission to issue a notice to take down material under clause 49. Subsections (4) and (6) outline the information that is required in the notice.



661 Subsections (8) to (10) outline the process of appeal in relation to a notice to take down information from the date it is given.

### Clause 51: Supply of information

662 Clause 51(1) introduces Schedule 12 making provision about the supply of information for the purposes of this Part.

663 Clause 51(2) makes provision for paragraphs 3 to 13 and 15 of Schedule 19B to PPERA (i.e. the Electoral Commission's investigatory powers) to be available to the EC for clause 48(2)(a) and (b) offences.

664 Schedule 12 places a general duty on any person (which includes organisations such as social media companies) to share information with the relevant enforcer (either the Electoral Commission or police) when requested for the enforcement of digital imprints only. This is to assist the EC and the police's ability to enforce the digital imprints regime by providing specified information to determine whether material is in scope of the regime or not. An information or electronic material disclosure order may be sought from a court where the requested information is not supplied.

## Supplementary

### Clause 52: Guidance

665 Clause 52 makes provisions for statutory guidance which as outlined in subsection(1), will contain details on the operation and enforcement of the regime.

666 Subsection (2) requires the authorities to have regard to the guidance in the exercise of their functions. The guidance will be addressed to both campaigners and the enforcement authorities.

667 Under subsection (3) the Electoral Commission will draft the guidance and the guidance must then be approved by the Government. Under subsection (4) the Government is able to modify the guidance before approving it, however under subsection (6), any draft guidance containing amendments must be accompanied by a statement outlining the reason for those amendments.

668 Subsections (5) to (9) outline the process for laying the guidance, which includes a 40 day period in which Parliament can resolve not to approve the guidance. The parliamentary procedure for the guidance is the equivalent to the negative statutory instrument parliamentary procedure, the subsequent order bringing the guidance into force is not subject to any parliamentary procedure.

669 Under subsection (10) the Commission is able to revise the guidance from time to time and must do so if directed to do so by the Secretary of State.

### Clause 53: Information in Commission's annual report

670 Clause 53 relates to the Electoral Commission's reporting requirements under paragraph 20 of Schedule 1 of PPERA. Under subsections (1) and (2) the Electoral Commission's annual report must include information about convictions (for offences relevant to this Part) reported to the Electoral Commission, orders to take down electronic material (including those made by the Electoral Commission) and the Electoral Commission's use of its powers to request information under Schedule 12. The Commission are not required to provide any information which may be unlawful or adversely impact upon ongoing investigations or proceedings (subsection (3)).

## Clause 54: Notices

671 This clause provides details on how a notice issued by the Electoral Commission or the police may be given, including electronically (subsection (1)); to whom within a body corporate, a partnership or an unincorporated association it may be given (subsections (2) to (4)) and where it should be addressed (subsections (5) to (6)).

672 Under subsection (7), a notice sent to a person by electronic means is to be treated as having been given on the working day immediately following the day on which it was sent. Subsection (8) provides for definitions of an officer and working day for the purposes of the section.

## Clause 55: Proceedings for an offence under this Part

673 Clause 55 provides for the time limit for prosecutions for offences under clauses 47 and 48(1). This clause reflects the existing position of the differences in time for prosecutions for offences related to the subject matter of registered parties and referendums (subsections (3) to (7)) and those with the subject matter of elected office holders and candidates (and now also future candidates) (subsections (9) to (15)).

## Clause 56: Offences committed by bodies corporate

674 This clause replicates section 152 of PPERA and is concerned with offences committed by corporate bodies.

## Clause 57: Offences committed by unincorporated associations etc

675 Clause 57 makes provision for an unincorporated association to also be guilty of an offence and liable for prosecution. The clause replicates section 153 of PPERA.

## Clause 58: Regulations under this Part

676 Under clause 58, the Government is only able to make regulations under the powers in Part 6 of the Bill following a recommendation from the Electoral Commission or consultation with the Electoral Commission, except for regulations under clause 52(9)(c) (which bring guidance into force).

## Clause 59: Meaning of “the Commission”

677 Under clause 59, references to “the Commission” throughout the Part mean the Electoral Commission.

## Schedule 11: Illegal Practices

678 Schedule 11 provides for the offence under clause 46(1) (which relates to breaching the requirement for an imprint in clause 39) to be treated as an illegal practice for the purposes of electoral law in the circumstances set out in the Schedule.

679 The effect of Schedule will be that a person (a candidate or their election agent) who is guilty of an illegal practice will be convicted under the relevant provision applied by Schedule 11 rather than under clause 46(1). Provisions about illegal practices do not apply to any case to which the civil sanctions under Schedule 19C to PPERA apply and vice versa.

680 Under paragraph 1, a candidate or election agent at elections to a Parliamentary election, an election to the Northern Ireland Assembly, a local government election (as defined in section 191 or 203 of RPA 1983), an election under Part 1A and Part 2 of the Local Government Act 2000 for the return of an elected mayor or an election for the return of a mayor of a combined authority in England and Wales, may be guilty of an illegal practice if they promote electronic material without an imprint.



- 681 Under paragraph 2, a candidate or election agent at elections to the Scottish Parliament, may be guilty of an illegal practice if they promote electronic material without an imprint.
- 682 Under paragraph 3, a constituency or individual candidate (or election agent of such a candidate) or a party list candidate (or election agent of registered party in relation to that party's list) at elections to Senedd Cymru, may be guilty of an illegal practice if they promote electronic material without an imprint.
- 683 Under paragraph 4, a candidate or election agent at local elections in Scotland, may be guilty of an illegal practice if they promote electronic material without an imprint.
- 684 Under paragraph 5, a candidate or election agent at local election in Northern Ireland, may be guilty of an illegal practice if they promote electronic material without an imprint.
- 685 Under paragraph 6, a candidate (or the candidate's election agent) at a police and crime commissioner election can be guilty of an illegal practice, if they promote electronic material without an imprint.
- 686 Under paragraph 7, an MP within the meaning of the Recall of MPs Act 2015 can be guilty of an illegal practice if they promote electronic material without an imprint.

### Schedule 12: Supply of information etc

- 687 Schedule 12 requires any person to comply with a notice for the supply of information to enable the Electoral Commission or the police to determine whether electronic material has been published in contravention of the electronic imprint regime (paragraph 1(b)).
- 688 As outlined in paragraph 1 of the Schedule, the information required will be identified by the Electoral Commission or police in the notice and must be information that is reasonably required to determine whether electronic material has been published in contravention of the regime or to make contact with the promoter of the material or the person on behalf of whom the material has been published (and who is not the promoter).
- 689 Paragraph 1(2) enables the police or EC to obtain a copy of any electronic material identified in the notice.
- 690 The person in receipt of the notice is under a general duty to comply with the notice within the time period set out within it (paragraph 1(3)).
- 691 The Electoral Commission or police can seek a court order for the requested information (paragraph 2) or a copy of the electronic material (paragraph 3) if the person fails to comply with their request for information. Paragraphs 2 and 3 enable the relevant courts to issue an information or electronic material disclosure order.
- 692 Under paragraph 5 of the Schedule, any authorisation of a person by the Electoral Commission or police must be in writing. This may be sent by post or electronically to the person (clause 54).
- 693 Paragraph 7 of the Schedule outlines the admissibility of information provided by a person in compliance with the requirements of the Schedule.
- 694 The Schedule applies restrictions on the disclosure of information. A person is not required to provide legally professionally privileged information (paragraph 6) or disclose information which would contravene data protection legislation, although paragraph 8(2) of the Schedule provides that disclosure of information under the Schedule does not breach any restrictions on disclosure or data protection legislation.

695 The Electoral Commission must report any notices given under paragraph 1 of the Schedule (clause 53(1)(d)) and any orders (under paragraphs 2 and 3) that were made or applied for (see clause 53(1)(b) and (c)).

696 Paragraph 9 to the Schedule defines a relevant enforcer as the Electoral Commission or a police constable.

## Part 7: General

697 Clause 60 provides for a power to allow amendments to the Bill, or any provisions amended by the Bill in other Acts, as a consequence of the amendment or revocation of amendments to any secondary legislation referenced in the Bill. This would allow, for example, a reference to a statutory instrument that is replaced in future to be updated.

698 Clause 61 explains that Parliament will pay for any costs that a Minister of the Crown incurs as a result of this Bill, and for any increased costs incurred under existing Acts of Parliament if they arise as a result of this Bill. It also explains that any increases in payments made from the Consolidated Fund will be met, if they arise as a result of this Bill and are incurred under existing Acts of Parliament.

699 Clause 62 defines terms used in the Bill.

700 Clause 63 sets out the territorial extent of the Bill, that is the jurisdictions of which the Bill forms part of the law. The effect of this section is described in more detail at the *Territorial Extent and Application* section of these explanatory notes.

## Commencement

701 Clause 64 sets out that the Minister will determine the day on which the Bill will come into force using one or more statutory instruments.

702 The statutory instruments that the Minister make may bring different parts of the Bill into force on different days.

## Financial implications of the Bill

703 The financial implications arising from the Bill are likely to include the following:

- a. **Voter Identification, postal and proxy voting, assistance for voters with disabilities**
  - new funding to local authorities will be required to enable them to:
    - i. Provide training, administer applications for and produce local Voter Cards for electors who do not have one of the accepted forms of photographic identification;
    - ii. Implement the new rules on postal and proxy voting;
    - iii. Enable Returning Officers to comply with their expanded responsibilities to provide the necessary equipment to make it easier for people with disabilities to vote.
- b. **Registration of overseas electors** - new funding to local authorities will be required to enable them to administer applications from eligible British citizens living overseas to be registered to vote in relevant elections in the UK.

- c. **EU voting and candidacy rights** - new funding to local authorities will be required to enable them to implement the new rules on EU voting and candidacy rights.

704 The Impact Assessment for this Bill has not yet identified any monetizable costs to Government departments relating to these parts of the Bill: undue influence, oversight and functions of the Electoral Commission, registration of parties, regulation of expenditure, disqualification of offenders from holding elective office, and simple majority voting system for PCC and mayoral elections.

705 Further information on the Bill's financial implications will be available when the Spending Review relating to April 2022 and beyond is in place.

## Parliamentary approval for financial costs or for charges imposed

706 The Bill requires a money resolution to cover increased public expenditure under other Acts. This arises mainly from the costs to electoral registration officers, Returning Officers and the Electoral Commission of functions conferred or imposed on them by the Bill. A money resolution was agreed to on 7th September 2021.

707 Functions that are conferred or imposed on electoral registration officers include functions relating to the determination of and issuing of electoral identity documents (see paragraph 2 of Schedule 1); costs in complying with the new rules on postal and proxy voting (see in particular Schedules 3 and 4); and ongoing costs resulting from the expanded overseas electors franchise (clause 12).

708 The Bill also confers and imposes specific functions on the Electoral Commission, including with regard to public awareness activity to support implementation of the voter identification policy, the production of guidance across electoral administration and political finance measures, and enforcement of new or updated political finance laws and digital imprints offences. Further information on estimated costs to the Commission are set out in the Bill's Impact Assessment. Operating costs incurred by the Commission as a result of functions conferred or imposed by the Bill would need to be submitted by the Electoral Commission and approved by the Speaker's Committee as part of their annual Main Supply Estimates.

709 Various provisions of the Bill - including the amendments to the RPA 1983 made by paragraph 12 of Schedule 1, and clause 9 (which requires Returning Officers to provide the necessary equipment to make it easier for people with disabilities to vote), may lead to increased expenses for Returning Officers. And a number of provisions confer or impose functions on the Electoral Commission and may result in increased expenditure for the Commission (see in particular Part 3, and Part 4).

## Compatibility with the European Convention on Human Rights

710 The Government considers that the Bill is compatible with the European Convention on Human Rights ("ECHR"). Accordingly, Lord True, Minister of State at the Cabinet Office, made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect.

## Related documents

711 The following documents are relevant to the Bill and can be read at the stated locations:

- *Erlam & Ors v Rahman & Anor* [2015] EWHC 1215 (QB) - <https://www.bailii.org/ew/cases/EWHC/QB/2015/1215.html>
- *Securing the Ballot - Report of Sir Eric Pickles' review into electoral fraud*; Sir Eric Pickles, August 2016 <https://www.gov.uk/government/publications/securing-the-ballot-review-into-electoral-fraud>
- *A Democracy that Works for Everyone: A Clear and Secure Democracy*, Government response to Sir Eric Pickles' review of electoral fraud, December 2016 <https://www.gov.uk/government/publications/a-democracy-that-works-for-everyone-a-clear-and-secure-democracy>
- *A Democracy that Works for Everyone: British citizens overseas - response to feedback*, February 2018 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/680357/Draft\\_response\\_to\\_Overseas\\_Electors\\_policy\\_statement\\_v2\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/680357/Draft_response_to_Overseas_Electors_policy_statement_v2_1_.pdf)
- *Call for Evidence: Access to elections*, September 2017 <https://www.gov.uk/government/consultations/access-to-elections-call-for-evidence>
- *Call for Evidence: Access to Elections*, Government response, August 2018 <https://www.gov.uk/government/consultations/access-to-elections-call-for-evidence>
- *Protecting the Debate: Intimidation, Influence and Information*, May 2019 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/799873/Protecting-the-Debate-Government-Response-2019.05.01.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/799873/Protecting-the-Debate-Government-Response-2019.05.01.pdf)
- *Transparency in digital campaigning: technical consultation on digital imprints* <https://www.gov.uk/government/consultations/transparency-in-digital-campaigning-technical-consultation-on-digital-imprints>
- *Protecting the integrity of our elections: Voter identification at polling stations and the new Voter Card* <https://www.gov.uk/government/publications/voter-identification-at-polling-stations-and-the-new-voter-card/protecting-the-integrity-of-our-elections-vodigital-imprintster-identification-at-polling-stations-and-the-new-voter-card>

## Annex A – Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Legislative Consent Motion sought?
<b>Part 1 (Administration and Conduct of Elections)</b>					
Clause 1 (Voter identification)	Yes	Yes	Yes	Yes	No
Clause 2 (Power to make regulations about registration, absent voting, etc)	Yes	Yes	Yes	Yes	No
Clause 3 (Restriction of period for which person can apply for postal vote)	Yes	Yes	Yes	No	No
Clause 4 (Handling of postal voting documents by political campaigners)	Yes	Yes	Yes	Yes	No
Clause 5 (Handing in postal voting documents)					
Clause 6 (Limit on number of electors for whom a proxy can vote)					
Clause 7 (Requirement of secrecy)					
Clause 8 (Undue influence)	Yes	Yes	Yes	Yes	Yes (S, W)
Clause 9 (Assistance with voting for persons with disabilities)	Yes	Yes	Yes	Yes	No
Clause 10 (Local elections and Assembly elections in Northern Ireland)	No	No	No	Yes	No
Clause 11 (Simple majority system to be used in elections for certain offices)	Yes	In part	No	No	No
<b>Part 2 (Overseas electors and EU citizens)</b>					
Clause 12 (Overseas electors and EU citizens)	Yes	Yes	Yes	Yes	No
Clause 13 (Voting and candidacy rights of EU citizens)	Yes	Yes	No	Yes	No
<b>Part 3 (The Electoral Commission)</b>					
Clause 14 (Strategy and policy statement)	Yes	Yes	Yes	Yes	Yes (S, W)
Clause 15 (Examination of duty to have regard to strategy and policy statement)	Yes	Yes	Yes	Yes	No
Clause 16 (Membership of the Speaker's Committee)					
Clause 17 (Criminal proceedings)	Yes	Yes	In part	Yes	No

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<b>Part 4 (Regulation of expenditure)</b>					
Clause 18 (Notional expenditure: use of property etc on behalf of candidates and others)	In part	In part	In part	Yes	Yes (S, W)
Clause 19 (Codes of practice on expenses)	In part	Yes	In part	In part	Yes (S, W)
Clause 20 (Authorised persons not required to pay expenses through election agent)	In part	In part	In part	In part	Yes (S, W)
Clause 21 (Declaration of assets and liabilities to be provided on application for registration) Clause 22 (Prohibition on entities being registered political parties and recognised third parties at same time) Clause 23 (Section 22: transitional provision)	Yes	Yes	Yes	Yes	No
Clause 24 (Restriction on which third parties may incur controlled expenditure) Clause 25 (Third parties capable of giving notification for purposes of Part 6 of PPERA) Clause 26 (Recognised third parties: changes to existing limits etc) Clause 27 (Joint campaigning by registered parties and third parties)	Yes	Yes	Yes	Yes	Yes (S, W)
<b>Part 5 (Disqualification of offenders for holding elective office etc)</b>					
Clause 28 (Disqualification orders) Clause 29 (Vacation of office etc) Clause 30 (Candidates etc) Clause 31 (Holders of relevant elective offices) Clause 32 (Campaigners)	Yes	Yes	Yes	Yes	Yes (S)
Clause 33 (Election etc of a person to the House of Commons who is subject to a disqualification order)	Yes	Yes	Yes	Yes	No
Clause 34 (Power to amend Schedule 8) Clause 35 (Interpretation of Part) Clause 36 (Minor and consequential amendments)	Yes	Yes	Yes	Yes	Yes (S)
<b>Part 6 (Information to be included with electronic material)</b>					
Clause 37 (Definitions relating to electronic material and publication) Clause 38 (Definitions relating to parties etc)	Yes	Yes	Yes	Yes	No

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<p>Clause 39 (Requirement to include information with electronic material)</p> <p>Clause 40 (Electronic material to which section 39 applies: paid-for material)</p> <p>Clause 41 (Purposes referred to in section 40)</p> <p>Clause 42 (Electronic material to which section 39 applies: other electronic material)</p> <p>Clause 43 (Purposes referred to in section 42)</p> <p>Clause 44 (Electronic material relating to more than one candidate or future candidate)</p> <p>Clause 45 (Exceptions to section 39)</p> <p>Clause 46 (Offence of breaching section 39)</p> <p>Clause 47 (Order to take down electronic material in breach of section 39)</p> <p>Clause 48 (Enforcement by the Commission)</p> <p>Clause 49 (Notice to take down electronic material in breach of section 39)</p> <p>Clause 50 (Further provision about notice under section 49)</p> <p>Clause 51 (Supply of information)</p> <p>Clause 52 (Guidance)</p> <p>Clause 53 (Information in Commission's annual report)</p> <p>Clause 54 (Notices)</p>					
Clause 55 (Proceedings for an offence under this Part)	In part	In part	In part	In part	No
Clause 56 (Offences committed by bodies corporate)	Yes	Yes	Yes	Yes	No
Clause 57 (Offences committed by unincorporated associations etc.)	In part	In part	In part	In part	No
<p>Clause 58 (Regulations under this Part)</p> <p>Clause 59 (Meaning of "the Commission")</p>	Yes	Yes	Yes	Yes	No
<b>Part 7 (General)</b>					
<p>Clause 60 (Power to amend references to subordinate legislation etc)</p> <p>Clause 61 (Financial provisions)</p> <p>Clause 62 (Interpretation etc)</p>	Yes	Yes	Yes	Yes	No

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Clause 63 (Extent)					
Clause 64 (Commencement)					
Clause 65 (Short title)					
Schedule 1 (Voter identification)	In part	In part	In part	In part	No
Schedule 2 (Power to make regulations about registration, absent voting and other matters)	In part	In part	In part	In part	No
Schedule (Restriction of period for which person can apply for postal vote)	Yes	Yes	Yes	No	No
Schedule 4 (Proxy voting: limits and transitional provision)	In part	In part	In part	In part	No
Schedule 5 (Undue influence: further provision)	In part	In part	In part	In part	Yes (S, W)
Schedule 6 (Local elections in Northern Ireland and elections to the Northern Ireland Assembly)	No	No	No	Yes	No
Schedule 7 (Overseas electors)	Yes	Yes	Yes	In part	No
Schedule 8 (Voting and candidacy rights of EU citizens)	In part	In part	No	In part	No
Schedule 9 (Offences for purposes of Part 5)	Yes	Yes	Yes	Yes	Yes (S)
Schedule 10 (Disqualification orders: minor and consequential amendments)	In part	In part	In part	In part	Yes (S)
Schedule 11 (Illegal practices)	In part	In part	In part	In part	No
Schedule 12 (Supply of information etc)	Yes	Yes	Yes	Yes	No

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# ELECTIONS BILL

## EXPLANATORY NOTES

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