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British in Europe: Elections Act 2022: draft Representation of the People (Overseas Electors etc) (Amendment) Regulations 2023

Overseas British citizens only obtained the right to vote in parliamentary elections in 1985 for 5 years. In 1989, this was extended to 20 years, and then reduced to 15 by the Political Parties, Elections and Referendums Act 2000. The 15-year rule was repealed by the Elections Act 2022 (“EA 2022”). The draft Representation of the People (Overseas Electors etc) (Amendment) Regulations 2023 (“Draft Regulations”) were laid on 23 October to make lifelong voting rights for British citizens a reality, and our concern is to ensure that the system works effectively, so that we can reclaim our right to vote in the next general election (GE).

Key facts and figures about overseas British electors

According to the IOM World Migration report 2022¹, the British diaspora is in the top 20 largest global diasporas at around 4.7 million citizens². Of those, the government estimates that 1.2-1.3 million are currently able to vote but that the repeal of the 15-year rule in accordance with the EA 2022 could re-enfranchise up to 3.3-3.5 million citizens. Around 1.3 million live in the EU, EEA and Switzerland; 75-80% of those are working age or younger with the largest group being that between 30-49.

Our key asks concerning the secondary legislation

- **ID verification:** online and simplified but the proposed limitation to two attestations per attestor will put overseas electors at a disadvantage e.g. family of four will need to find two attestors, family of five, three, etc. and should be reconsidered.
- **Proof of registration or residence:** online, and adapted to documentation that British citizens abroad can actually provide (see our comments below) but note our comments above about the proposed limitation to two attestations per attestor.
- **Applying for absent votes, flexibility is critical:** optimisation and flexibility to switch is key, including an *online* option to switch to a proxy up to 6 days before the election (see below) if the postal vote does not arrive, as postal services cannot be relied on for delivery/return of ballot papers within the tight timetable of a GE. This is our most important ask.
- **Length of registration and absent vote:** *clear information* about the new 3-year rule and renewal as well as linked absent vote validity.
- **Information and communication campaigns:** whole of government exercise and concentrating, in particular, on where British citizens abroad interact with the UK state.
- **Funding to support implementation of the legislation by the next GE by local authorities.**

¹ <https://worldmigrationreport.iom.int/sites/g/files/tmzbd1691/files/documents/Chapter-2%2520Figure%25202.jpg> and <https://publications.iom.int/books/world-migration-report-2022-chapter-3>

² The UK diaspora was also the fourth largest European diaspora in 2020, behind only the Russian Federation (10.8 million), Ukraine (6 million) and Poland (4.8 million)

1. Timeline

We welcome Regulation 1(2) providing that the secondary legislation will come into force by 16 January 2024 so that overseas electors can vote in the next GE.

2. ID verification: the first step to register to vote

We support what in practice will be a four-stage process:-

- a) Provision of National Insurance (NI) details. If no NI number is provided or there is a problem verifying the NI number (automated verification ideally), our view is that applicants should be informed immediately if they need to provide other documents;
- b) Provision of another document e.g. passport or other documents set out in Regulation 26B of both the Representation of the People (England and Wales) Regulations 2001 and the Representation of the People (Scotland) Regulations 2001 (the “2001 Regulations”) as amended by Regulations 5(8) and 9(7) of the Draft Regulations; or
- c) Electoral Registration Officers (EROs) check locally held records; or
- d) Attestation by another suitably qualified elector.

This will simplify the process; especially as overseas electors will be able to upload copies of their documents online with their original application.

We support attestation by any suitably qualified elector, whether UK resident or overseas, *in any UK constituency* as a last option. We oppose the limitation to two attestations per attestor (Regulations 5(8) and 9(7) of the Draft Regulations which add 6ZB to Regulation 26B of the 2001 Regulations). Many overseas citizens will have to rely on a UK resident attestor as overseas citizens are often highly integrated in their country of residence with no contact to other British overseas electors. The fact that the no good standing condition does not apply to overseas elector attestors does not therefore assist significantly. Limiting the number of attestations to two will make it more difficult for families living abroad to register e.g. a family of four will need to find two attestors, a family of five, three, etc.

3. Registration or residence verification: the second step to register

This will in practice also be a four-stage process to establish either previous registration on the electoral roll or residence in the UK:

a) Previous registration on the electoral roll

Electoral Commission guidance recommends that EROs keep electoral registers for 15 years. Some electoral authorities keep copies of older registers and British Library archives have electoral registers going back to 1947. Ideally, all registers should be digitised and access should be free for voter registration purposes.

b) Residence verification by documentary evidence

If a person cannot easily be traced on electoral registers, they will have the option when applying (online and offline) to provide documentary evidence of their previous address.

The original list of proposed accepted documentation set out in government's February 2022 paper was UK-centric. Many overseas citizens were unlikely to have such documents especially those who left between 1991-2010 as shown in our survey provided to the Department of Levelling Up (DLUHC) (see [BiE 2023 survey results](#)). We thus welcomed the identification of UK government departments e.g. DWP, HM Revenue & Customs (HMRC), Driver & Vehicle Licensing Agency (DVLA) with which British citizens engage regularly and supported the inclusion of any correspondence with them on the list.

We thus welcome the acceptance under new Regulation 26D inserted by Regulation 5(9) of the Draft Regulations of *any* document that meets the evidentiary requirement and *any* document listed in 26D as conclusive evidence of previous residence at a relevant address. We also welcome new Regulations 29ZAA and 29ZAB of the 2001 Regulations, allowing for automated verification of information provided in an application with data held by the Department for Work and Pensions (DWP).

c) Residence verification by attestation

This would be an attestation by any suitably qualified elector (UK or overseas) from any constituency in the UK. See our remarks above about the limitations concerning attestors under 2. ID verification.

d) EROs check locally held records

4. Registration period

We welcome the new three-year registration period expiring on the third 1 November after the previous registration. We believe that there is a need for a clear communications campaign around this new registration cycle so that e.g. overseas electors who registered in September 2023 understand that they will not move to the new cycle until they make a renewal and those registering in March 2024 understand that they must register again in November 2026, and not 3 years after they registered.

Once the new registration cycle is in place, we note that a renewal application can be made in the six months before expiry date. We support the proposal for two reminders, the option to send these electronically, and the clear indications on when they should be sent set out in Regulations 4(6) and 9(6) which insert new Reg 22A into the 2001 Regulations.

5. Absent vote: Postal or Proxy vote

We welcome the option to apply for an absent vote at the same time as registering to vote. and the proposed three-year validity tied to the period of registration. A clear communications campaign will be needed to inform overseas electors of the changes as regards period of validity.

(a) Postal votes

The key problem with postal votes is that postal services cannot be relied upon for delivery and return of ballot papers within the tight timetable of an election campaign and past observed delays in the arrival of overseas postal ballots confirm this.

The government in its February 2022 policy paper stated that the postal vote process has been enhanced by a service put in place in 2019 in conjunction with Royal Mail for postal vote packs to be expedited via Heathrow. Transparency is required on both the printing and distribution process for this service: contracting out distribution does not necessarily improve efficiency.

International Business Reply envelopes have been used since 2016 but have not always worked in-country. We suggest that contact is made at least with the postal services of the countries that have the largest populations of overseas Britons well in advance of the next GE. We welcome, however, the reassurance that overseas electors may return the ballot however they wish, including by courier, and that there is no requirement to use the provided envelope.

(b) Proxy votes

A proxy may now **only act for up to 4 overseas electors**. It should therefore be emphasised to overseas electors that a proxy may be resident in *a different constituency* and apply for *a postal vote* to maximise their chances of identifying a suitable proxy.

6. Critical: Flexibility in the absent vote system

The option for overseas electors to amend their method of voting at short notice if their postal vote does not arrive or arrives late should be incorporated into the online system. A domestic voter can take their postal vote to the polling station on Election Day if they cannot post their vote in time. The only equivalent to this for an overseas voter would be the ability to switch to a proxy if the postal ballot does not arrive or arrive in time at an overseas address.

Switching to a proxy vote by online application should be possible if the postal vote does not arrive. It is possible to apply for a proxy for a specific election at the latest at least 6 days before election day under Representation of the People Act 2000 Schedule 4 paragraph 4(2) together with Regulation 56(3) of the 2001 Regulations and this option should be available **online** to overseas electors.

7. Funding for local authorities to implement the legislation in time for the next GE

This is in particular given the large numbers of overseas citizens who will be re-enfranchised.

8. Information and communication campaigns

In our view, the Secretary of State's powers under Schedule 7 of the EA 2022 should be used to organise an extensive communications campaign to inform overseas electors of their new rights, relevant deadlines, rules on absent votes and on the registration period. This should be a whole of government exercise and focused, in particular, where British citizens overseas interact with the UK state, e.g. HM Passport Office, DWP, HMRC, through e.g. banners on web pages or automatic footers on emails sent out to overseas citizens (not costly/onerous).

9. The Representation of the People (Overseas Electors etc.)(Amendment) (Northern Ireland) Regulations 2023

While this briefing paper relates to the Draft Regulations, our remarks apply equally to the draft Northern Ireland Regulations where appropriate.

British in Europe

October 27 2023

Response from the Department for Levelling Up, Housing and Communities

ID verification: online and simplified but the proposed limitation to two attestations per attestor will put overseas electors at a disadvantage e.g. family of four will need to find two attestor, family of five, three etc. And should be reconsidered.

- The Statutory Instrument makes improvements to the identity verification process for overseas applicants by enabling documentary evidence to be used, where an OE applicant's identity cannot be verified via a Date of Birth and National Insurance Number check against DWP records. It also amends the existing identity verification requirements to update attestations requirements including who can provide an attestation, and the number of attestations a single attestor can provide within a qualifying period.
- As now, overseas applicants' details, including their name, date of birth and National Insurance Number, will be checked against DWP data.
- Where a match against DWP data is not possible, applicants will be able provide documentary evidence, such as a passport. This is a new step which is intended to improve the process for administrators and applicants and bring the process for overseas applicants into alignment with the process for domestic applicants.
- We expect a significant majority of applicants will be able to have their identity verified via the methods outlined above. These methods should reduce the need to rely on attestations, which will only be used when all other methods of identity verification have been attempted and exhausted.
- We have taken steps to ensure that the attestation route is accessible to all electors, for example, by allowing those registered as domestic electors, as well as overseas electors, to provide attestations for overseas applicants.
- The cross-cutting attestation limit will apply, whereby an individual will only be able to provide attestations for two individuals within an electoral year, or since the attestor's entry was added to the register in that local authority area. This limit is a necessary and proportionate measure which applies to both domestic and overseas applicants and balances accessibility with integrity.

Proof of registration or residence: online, and adapted to documentation that British citizens abroad can actually provide (see our comments below) but note our comments above about the proposed limitation to two attestations per attestor.

- Electoral registration officers will need to verify an applicant's connection to their qualifying address. This statutory instrument creates processes for this that do not rely on EROs consulting historic copies of electoral registers, such as using the result of the automated match against DWP records, checking other locally-held records, using any documentary evidence provided by the applicant, or requesting an attestation.
- As noted by BIE, applicants whose previous address cannot be verified via a register check or DWP data matching will be able to submit documentary evidence, in some cases at the point of application, the aim of which is to prevent delays and ease administrative burdens. Documentary evidence can be submitted electronically.
- We considered feedback from stakeholders on the different types of documentary evidence an overseas applicant may have available to them and have enabled EROs to consider forms of documentary evidence beyond the list set out in legislation, provided that the evidence contains the applicant's name and qualifying address.

- An attestation of previous residence will be available to applicants if other methods of verification have been attempted and exhausted. We anticipate that the number of applicants to whom this applies will be low. An attester may provide an attestation for the purpose of address verification for up to two individuals. This limit is separate to the limit for identity verification attestations but, both limits have been imposed as a necessary and proportionate integrity measure.

Applying for absent votes, flexibility is critical: optimisation and flexibility to switch is key, including an online option to switch to a proxy up to 6 days before the election (see below) if the postal vote does not arrive, as postal services cannot be relied on for delivery/return of ballot papers within the tight timetable of a GE. This is our most important task.

- This Statutory Instrument does not make changes to the absent voting process, but measures legislated for separately in the Representation of the People (Postal and Proxy Voting Etc) (Amendment) Regulations 2023 make improvements to the process of absent voting, for example, by enabling electors to make absent vote applications online via a new digital service. It is already possible for a postal ballot pack to be cancelled once it has been sent out in certain circumstances and within the prescribed deadline for doing so. If an OE is concerned that their postal ballot will not arrive in time, they may apply to cancel their postal vote arrangement within the set deadline. If they do so before the deadline for applications to change from a postal vote to a proxy vote (11 working days before the date of the poll), they could choose to appoint a proxy vote instead. We continue to encourage OEs to consider their circumstances when setting up their absent vote arrangement and whether, if possible, a proxy would be a more appropriate option if they have concerns about postal services in the country where they live.
- Furthermore, the three-year fixed point renewal process will enable OEs to remain registered for a longer period of time, with an absent vote arrangement in place ahead of a General Election. If a registered OE already has an absent vote arrangement at the point at which a General Election is called, their postal ballot can be issued as soon as nominations close. This will mean the OE has as much time as possible to receive their ballot and return it from overseas.

Length of registration and absent vote: clear information about the new 3-year rule and renewal as well as linked absent vote validity.

Information and communication campaigns: whole of government exercise and concentrating, in particular, on where British citizens abroad interact with the UK state

- An awareness raising strategy will look to maximise the opportunity to reach and inform newly enfranchised British citizens overseas of their voting rights and how to exercise them.
- The Electoral Commission have a statutory duty to raise awareness and to provide information and guidance to electors on elections and on how to vote, and the Commission will be undertaking a targeted communications campaign, working with partners to engage with British nationals overseas. The UK Government will amplify this activity through Government communication channels where value can be added. DLUHC is working to identify effective opportunities to use existing data and communication channels to achieve this and will also continue to engage with interest groups and other organisations who will have a part to play in communicating the changes.
- Schedule 7 of the Elections Act gives the Secretary of State a discretionary power to use government data to contact newly enfranchised British citizens overseas to inform them of their voting rights and how to exercise them. DLUHC are currently exploring what data on British nationals overseas the government holds, and assessing the likely reach, cost, timeframe and benefit this activity would provide.

Funding to support implementation by the next GE by local authorities

- Additional costs incurred by local government for the registration of newly enfranchised overseas electors will be covered under the new burdens doctrine. UK Parliamentary election conduct costs are paid from the Consolidated Fund.
- Where changes to electoral administration by the Elections Act create a new financial burden for a local authority, they will be met by the Government in line with the New Burdens Doctrine. Each Elections Act new burden cost has been exhaustively modelled with the help of local authorities and other elections sector stakeholders, and the new burdens modelling and its underpinning methodology has been set out in a note shared with the sector. Elections Act new burdens funding is provided to local authorities using a hybrid approach of un-ringfenced upfront grant payments and retrospective justification led bids (JLBs) to fund any justifiable funding gaps.
- Upfront grants enable a proportion of the new burden allocation to be released in advance of the cost impact on a local authority via a single grant payment. Any additional cost impact, for example, driven by higher than expected volumes of the newly enfranchised taking up the offer to register as overseas electors, can be recovered via the Justification Led Bid process with top up funds.
- Future new burdens funding for the overseas electors measure will be provided via an upfront grant in spring 2024 followed by a Justification Led Bid round in autumn 2024. Additional conduct costs due to the introduction of the measure will be paid for from the Consolidated Fund.

1 November 2023