

# ELECTIONS BILL

## EXPLANATORY NOTES ON LORDS AMENDMENTS

### What these notes do

- These Explanatory Notes relate to the Lords Amendment to the Elections Bill as brought from the House of Lords on 25 April 2022.
- These Explanatory Notes have been prepared by the Department for Levelling Up, Housing and Communities in order to assist the reader of the Bill, and to help inform debate on the Lords amendment. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes, like the Lords amendments themselves, refer to HL 96, the Bill as first printed for the Lords.
- These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendment.
- Lords Amendments 1 to 14, 21, 24 to 28, 30 to 33, 37 and 38, 40 to 48, 50 to 85, 87 to 102, 105 to 110, 112 to 126 were tabled in the name of the Minister.
- Lords Amendments 15 to 19 were tabled by Lord Holmes and were supported by the Government.
- Lords Amendments 20, 103, 104 and 111 were tabled by Lord Hayward and were supported by the Government.
- Lords Amendments 22 and 23 were tabled by Lord Judge and were opposed by the Government.
- Lords Amendments 29, 39 and 49 were tabled by Lord Hodgson and were supported by the Government.
- Lords Amendments 34 to 36 were tabled by Baroness Noakes and were supported by

the Government

- Lords Amendment 86 was tabled by Lord Willetts and was opposed by the Government.
- In the following Commentary, an asterisk (\*) appears in the heading of any paragraph that deals with a non-Government amendment.

*These Explanatory Notes relate to the Lords Amendments to the Elections Bill as brought from the House of Lords on 25 April 2022 (Bill 305)*

# Commentary on Lords Amendments

## Lords Amendments to Part 1: Administration and Conduct of Elections

### Clause 7: Requirement of secrecy

#### Lords Amendments 1 to 7 and 112 to 116

- 1 Lords Amendments 1 to 7, moved by the government, would make changes to clause 7 of the Bill which extends the requirements currently in place to protect the secrecy of voting for persons voting in polling stations to postal and proxy voting. The amendments would clarify the scope of the prohibition on seeking to find out for whom a postal voter has voted. The amendments provide that it is an offence for a person to seek information about whom a postal voter has voted at the time they are about to, are completing or have just completed their ballot paper or to communicate such information obtained at that time. The amendments would also ensure that no criminal liability arises where information is sought from, or given by, a postal voter at an election for the purposes of an opinion poll or exit poll. The amendments would also make technical changes to ensure consistency with the way in which local government elections are referred to currently in the Representation of the People Act 1983 ('RPA 1983').
- 2 Lords Amendments 112 to 116, moved by the government, would make similar changes to Schedule 6 to ensure that the restriction is also clarified in respect of local elections in Northern Ireland.

### Clause 8: Undue influence

#### Lords Amendments 8, 13, 14 and 117

- 3 Section 115 RPA 1983 sets out the corrupt practice of undue influence. Lords Amendments 8, 13 and 14, moved by the government, would ensure that the modernised corrupt practice of undue influence (as set out in Clause 8 as new section 114A) would apply to reserved and excepted elections only. Section 115 RPA 1983 would continue to apply in relation to devolved local government elections in Scotland and Wales.
- 4 Lords Amendment 117, moved by the government, would make a consequential amendment to Schedule 6 and would ensure that new section 114A RPA 1983 would

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apply in respect of elections to the Northern Ireland Assembly.

## Lords Amendments 9 to 12 and 14

- 5 Lords Amendment 14, moved by the government, would ensure consistency of terminology in the way that local government elections are described, and would ensure that the corrupt practice of undue influence set out in new section 114A RPA 1983 (as provided by Lords Amendment 8) applies to the same types of local government elections as section 115 RPA 1983 currently applies to.
- 6 Amendments 9, 10, 11 and 12, moved by the government, are a consequence of Lords Amendment 14 and would remove references to ‘electors and proxies’ in new section 114A to better reflect differences in procedure amongst the various local government election types to which new section 114A would apply.

## Schedule 5: Undue influence - further provision

### Lords Amendments 88, 90, 92, 94, 95, 97, 98, 100 and 102

- 7 Lords Amendments 88, 90, 92, 94, 95, 97, 98, 100 and 102 to Schedule 5, moved by the government, would ensure that any incapacity to be elected for five years arising from a person being reported by an election court as personally guilty of or arising from a person being convicted of, the modernised corrupt practice of undue influence (new section 114A RPA 1983, as inserted by clause 8) in relation to a reserved or excepted election, would not apply fully to devolved elected offices. Conversely, the amendments would also ensure any incapacity arising from a person being reported by an election court as personally guilty of, or arising from a person being convicted of, the corrupt practice of undue influence (section 115 RPA 1983) in relation to a devolved election, would not apply fully to reserved and excepted elected offices.

### Lords Amendments 89, 91, 93, 96, 99 and 101

- 8 Lords Amendments 89, 91, 93, 96, 99 and 101, moved by the government, would correct cross-references in Schedule 5 to refer to the correct section (new section 114A RPA 1983, as inserted by clause 8).

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

### **Lords Amendments 15\* to 19\***

- 9 Lords Amendments 15 to 17 would make changes to clause 9 of the Bill which changes the way assistive equipment is provided to support voters with disabilities in the polling station. The amendments would make clear that the equipment provided to support disabled voters should enable, or make it easier, for them to vote independently and secretly where possible. “Secretly” here would refer to which candidate(s) or options(s) an individual has voted for, not the fact that they have voted.
- 10 Lords Amendment 18 would add a requirement for the Electoral Commission to provide guidance to support Returning Officers in carrying out the new duty to provide assistive equipment for disabled voters introduced by clause 9. It would also add a requirement for the Electoral Commission to consult with relevant organisations when producing the guidance. Finally, it would place a duty on Returning Officers to have regard to the guidance produced by the Electoral Commission to support the provision of assistive equipment in polling stations.
- 11 Lords Amendment 19 would introduce a requirement for the Electoral Commission to report on the steps taken by Returning Officers to assist voters with disabilities to vote at relevant elections. This would include UK Parliamentary elections, Police and Crime Commissioner elections and Northern Ireland Assembly elections, where the Electoral Commission is required to report, and UK Parliamentary and Police and Crime Commissioner by-elections where the Electoral Commission has discretion over reporting.

## **New clause: Candidate nomination paper: commonly used names**

### **Lords Amendments 20\*, 103\*, 104\* and 111\***

- 12 Lords Amendment 20 would insert a new clause that would amend the existing provisions concerning the use of commonly used names by candidates at Parliamentary elections. The amendment would extend the scope of the existing provisions to allow a person to include on their nomination paper and the ballot paper any name that they commonly use as a forename or surname. For example, under the amendment a candidate would be able to choose to use their middle name if that is a

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‘commonly known’ name for the candidate. The amendment would make related changes to the notes that appear on the nomination paper.

- 13 Lords Amendments 103, 1046 and 1113 would make similar changes to Schedule 6 to ensure that the changes would apply in respect of local elections in Northern Ireland.

## **New clause: Home address form: statement of local authority area**

### **Lords Amendment 21**

- 14 Lords Amendment 21, moved by the government, would insert a new clause that amends the existing provisions concerning the details about candidates that appear on ballot papers at Parliamentary elections. The amendment would enable candidates at Parliamentary elections to choose to have the name of the local authority area in which their home address is located included on the ballot paper and other election documents, as an alternative to displaying either their home address or the constituency in which their home address is located. The amendment would amend the form of the ballot paper for Parliamentary elections to provide an example of a candidate stating the local authority in which their home address is located instead of their home address.

## **Part 3: Electoral Commission provisions**

### **Clauses 14 and 15**

#### **Lords Amendments 22\* and 23\***

- 15 The Lords voted to remove clauses 14 and 15 entirely from the Bill.
- 16 Clause 14 would have amended Part 1 of the Political Parties, Referendums and Elections Act 2000 (‘PPERA’) by inserting new sections that make provision for the introduction of a ‘Strategy and Policy Statement’ (‘the Statement’) which would have provided guidance to which the Electoral Commission (‘the Commission’) must have regard.
- 17 Clause 15 would have amended PPERA by inserting new section 13ZA. This would have resulted in expanding the functions of the Speaker’s Committee on the Electoral

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Commission to include a power to examine the Commission's compliance with their duty to have regard to the Strategy and Policy Statement that would have been introduced by Clause 14.

## **Part 4: Regulation of Expenditure**

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

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

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

#### **Lords Amendments 24 to 28, 30 to 33**

- 18 Lords Amendments 24 to 28 and 30 to 33, moved by the Government, would ensure that measures on notional expenditure in clauses 18, 19, and 20 do not apply to Scottish and Welsh elections except where the regulated election period for such elections overlaps with the regulated period for reserved elections. This would ensure that the measures apply to reserved matters only.
- 19 Lords Amendments 24 and 32, moved by the government, would also clarify that the amendments to sections 90C and 73 RPA 1983 made by clauses 18 and 20 will only apply only to UK Parliamentary elections and elections in England under the Local Government Act.

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

#### **Lords Amendments \*34 to \*36**

- 20 Lords Amendments 34 to 36, which are supported by the Government, would make technical changes to the assets and liabilities declaration introduced by clause 21. These amendments would clarify that the threshold over which a party is required to provide the declaration of their assets and liabilities is met if a party's assets or liabilities exceed £500. Therefore, the treasurer of a political party registering with the

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Electoral Commission would be required to confirm whether to the best of their knowledge and belief, they have either assets or liabilities that are greater or less than £500 (rather than a combination of the two, as was the case when introduced).

## **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**

### **Lords Amendments 37 and 38, 40 to 43, 46 to 48**

- 21 Lords Amendments 37 and 38, 40 to 43 and 46 to 48, moved by the Government, would ensure that the measures relating to third-party campaigning do not apply to the regulated periods (defined by section 94(10) PPERA) before elections the responsibility for which are devolved matters in relation to Scotland and Wales. These amendments would apply the clauses only to regulated periods to which any limit is imposed by references to paragraphs 3, 7 and 9 to 11 of Schedule 10 PPERA. This would ensure that the measures apply to reserved matters only.
- 22 The regulated period before devolved elections fall within the devolved legislative competence of the Scottish Parliament or Senedd Cymru, except where regulated periods for UK Parliamentary elections overlap/are combined with those periods; this is also the case for any related offences under section 94(2) and (4) of PPERA. It is possible that this combination of regulated periods could happen retrospectively, if an early general election is called. In this scenario, paragraphs 9 to 11 of Schedule 10 PPERA provide that the entire combined period would be reserved.
- 23 Lords Amendments 37 to 42 would apply the restriction on which third parties may incur controlled expenditure to only reserved regulated periods. Third parties that are not eligible to register with the Electoral Commission under section 88(2) PPERA but incur controlled expenditure during a devolved regulated period may be liable for an offence under new subsections (4) and (5) of section 89A PPERA if the regulated period is combined with another reserved election. This clause would continue to apply to

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reserved regulated periods as introduced.

- 24 Lords Amendment 43 would apply this principle to clause 25, meaning that the Secretary of State's ability to add, remove or amend the description of a category of campaigner in section 88(2) PPERA would apply only in relation to third-party campaigning during reserved regulated periods. The Secretary of State would not be able to change the list of campaigner categories in regard to devolved election campaigning.
- 25 Lords Amendments 46 to 48 would apply this principle to clause 26. As a result, only third-party campaigners incurring controlled expenditure during a reserved regulated period will be required to give a notification to the Electoral Commission at a lower level of spending than currently required (subject to the 'lower tier expenditure limit' set at £10,000). Third parties incurring controlled expenditure in excess of £10,000 spread across Scottish and Welsh regulated periods without notifying/registering with the Electoral Commission, could be liable for an offence under section 94(4) PPERA if the regulated period subsequently combines with a reserved regulated period.

## **Clause 25: Recognised third parties: changes to existing limits etc**

### **Lords Amendments 44 and 45**

- 26 Lords Amendments 44 and 45, moved by the government, seeking to limit the provision introduced by clause 25 to allow for the amendment of the list of eligible categories of third party campaigners in section 88(2) PPERA. Lords Amendment 44 specifies that the Secretary of State may only remove or amend the description of a category in section 88(2) on the recommendation of the Electoral Commission. Lords Amendment 45 would remove an unnecessary associated power to make consequential amendments when the list of categories in section 88(2) is amended.
- 27 These amendments would add additional controls and reassurances around the power to remove or amend categories of campaigner, 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, introduced by clause 25.

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## **After Clause 26: New Clause (code of practice on controls relating to third parties)**

### **Lords Amendments \*49, and \*29, \*39**

- 28 Lords Amendment 49, which is supported by the Government, would replace the Electoral Commission's discretionary power to prepare a code of practice on the application of expenditure controls for third party campaigners contained within PPERA with a duty to produce a statutory code; introduce a consultation and process and procedure relevant to the production of the code; and create a defence for third parties, who can demonstrate they have complied with the code, charged with offences under Part 6 PPERA.
- 29 Lords Amendment 29, which is supported by the Government, would remove a change to the procedure for bringing in a code of practice under Schedule 8A PPERA as a consequence of Amendment 49.
- 30 Lords Amendment 39, which is supported by the Government, would remove a defence which is no longer necessary as a consequence of Amendment 49.

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

### **Lords Amendment 50**

- 31 Lords Amendment 50, moved by the Government, would remove clause 27, which creates new section 94BA PPERA (as inserted by clause 27(4)) requiring 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)).
- 32 Lords Amendment 50 was tabled in the name of the Minister.

## **Part 5: Disqualification of Offenders for Holding Elective Office etc.**

### **Clause 30: Candidates etc**

### **Clause 31: Holders of relevant elective offices**

### **Clause 32: Campaigners**

### **Clause 35: Interpretation of part**

#### **Lords Amendments 51 to 61**

33 Lords Amendments 51 to 61, moved by the government, would ensure that the disqualification arising from an order, imposed in accordance with clause 28 as a result of a person being found guilty of an intimidatory offence (as listed in Schedule 9) which was aggravated by hostility related to candidates, holders of relevant elective offices or campaigners, would apply to all elective offices in the UK except for devolved Scottish elected offices.

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

### **Clause 38: Definitions relating to parties etc**

#### **Lords Amendments 62 and 63**

34 Lords Amendments 62 and 63 would ensure that relevant Scottish elective offices (which would be defined in clause 35 as a result of Lords Amendment 60) remain within the scope of the definitions for 'candidate' and 'future candidate' in clause 38, and that the digital imprint provisions would therefore continue to apply to all relevant elections for elective offices on a UK-wide basis, including Scottish elections for elective offices. This is required because clause 38 applies definitions from clause 35 to Part 6 which would be amended by Lords Amendments 58 to 61 by removing Scottish elective offices from the definition of 'candidate' and 'future candidate' provided in clause 35.

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

### **Lords Amendment 64**

35 Lords Amendment 64, moved by the government, would clarify that the first condition required for material to be in scope of the digital imprint regime in relation to paid-for electronic material is material of which the sole or primary purpose can reasonably be regarded as intended to achieve any of the purposes referred to in clause 41. This would result in excluding paid-for material where the sole or primary purpose is not one of the purposes referred to in clause 41, such as where the sole or primary purpose of material is an artistic purpose.

### **Lords Amendments 65 and 66**

36 Lords Amendments 65 and 66, moved by the government, would clarify that the second condition required for material to be in scope of the digital imprint regime in relation to paid-for electronic material is material which has been paid to be published as an advertisement. This would exclude payments associated with the creation of electronic material. The effect of these Amendments would also be that payments and costs associated with setting up, operating or maintaining a website or mobile application upon which material is published as an advertisement would not be considered to be payments ‘to publish as an advertisement’ for the purposes of the second condition.

## **Clause 41: Purposes referred to in section 40**

### **Lords Amendments 67 to 70**

37 Lords Amendments 67 to 70, moved by the government, would clarify that only paid-for electronic material that seeks to give support to, or withhold support from, candidates, future candidates, or elected office-holders *in their capacity as such* would be within the scope of the relevant provisions within Part 6. This would ensure that paid-for electronic material supporting such individuals in a personal capacity for example would not be within scope of the provisions.

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## Lords Amendment 71

38 Lords Amendment 71, moved by the government, would remove the exclusion of polls held under section 64 of the Government of Wales Act 2006 from the meaning of “referendum” within clause 41. This would ensure that paid-for electronic material about these referendums would fall within the scope of Part 6. As a result, all UK statutory referendums would be in scope of the provisions in Part 6.

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

### Lords Amendment 72

39 Lords Amendment 72, moved by the government, would provide for a third condition required for material to be “other electronic material” for the purposes of Part 6, which is that neither the promoter of the material, nor the person on behalf of whom the material is published, has paid for the material to be published as an advertisement. As such, the amendment would remove any potential overlap between the scope of paid-for electronic material and the scope of other electronic material for the purposes of Part 6.

## Clause 45: Exceptions to section 39

### Lords Amendments 73 to 77

40 Lords Amendments 73 to 77, moved by the government, would ensure that the republication exceptions set out in clause 45(1) applies both to material that has been republished by the same person and by another person.

## Clause 46: Offence to breaching section 39

### Lords Amendment 78

41 Lords Amendment 78, moved by the government, would provide an additional defence to an offence under clause 46(1) which is specific to the republication of electronic material. This would ensure that a person could rely on this defence when republishing electronic material if they reasonably believed the material was originally

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caught by, and published in compliance with, clause 39 and the person did not materially alter the material when republishing. For example, this would provide a defence for a person who unknowingly reshared material with a false or inaccurate imprint.

## **Clause 48: Enforcement by the Commission**

### **Lords Amendment 79**

42 Lords Amendment 79, moved by the government, would clarify the Electoral Commission's enforcement powers towards paid-for electronic material which relate to referendums. The amendment would specify that the Commission has enforcement powers only for material which relates to a referendum to which Part 7 of PPERA applies, and where the paid-for electronic material is published during the referendum period for that referendum. All other paid-for material relating to referendums would be enforced by the police.

## **Before Clause 60: Post-legislative scrutiny**

### **Lords Amendment 80**

43 Lords Amendment 80, moved by the government, would require the Secretary of State to prepare, publish and lay before Parliament a review of the operation of this legislation, not less than 4 and not more than 5 years after it receives Royal Assent

## **Clause 63: Extent**

### **Lords Amendment 81**

44 Lords Amendment 81, moved by the government, would correct a small error in the way in which the legal extent of paragraphs 25 and 26 of Schedule 1 is described.

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# Amendments to Schedules

## Lords Amendments to Schedule 1: Voter Identification

### Lords Amendments 83, 84, \*86 and 87

- 45 Lords Amendment 83, moved by the government, is an amendment that would clarify that a poll card sent to an anonymous elector should indicate that the elector can only use their poll card together with the anonymous elector's document with the matching electoral number to prove their identity. This is because these are the only documents that the anonymous elector will be able to use to vote in a polling station, and so it could be misleading or confusing to list the other identity documents that would be accepted for other electors. Poll cards sent to any other electors would continue to set out the full list of identity documents that a non-anonymous elector may use at the polling station.
- 46 Lords Amendment 84, moved by the government, is a further clarifying amendment which would amend what information is on the large notice of forms of accepted identification that will be displayed in all polling station in England, Wales and Scotland. It would be amended to clarify that anonymous electors can only use their poll card together with the anonymous elector's document with the matching electoral number to prove their identity.
- 47 Lords Amendment 86 is a non-Government amendment that would add an additional list of documents that would be accepted as a form of identification for electors voting at the polling stations, many of which are non-photographic.
- 48 Lords Amendment 87, moved by the government, is a technical amendment that would remove 'current' from 'current electoral number' as this is redundant - that it is an elector's current number is implicit in the definition of electoral number.

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## Lords Amendments 82, 85, 105, 110, 118 to 120

- 49 Paragraph 11 of Schedule 1 to the Bill and paragraph 7 of Schedule 6 will make provision for the Chief Electoral Officer to provide dates of birth lists of electors and those acting as proxies to polling stations. The lists will be used for the purpose of checking the date of birth on voter identification against that on record where the polling clerk or Presiding Officer decides this is necessary.
- 50 Amendments 82, 85, 105, 110, and 118 to 120, moved by the government, would make technical amendments to the above paragraphs to ensure that where a voter is registered to vote in both NI and GB, and is also appointed as a NI proxy, the date of birth used for those individuals on the dates of birth lists for proxies will be the date of birth provided when they registered to vote in Northern Ireland. This would give clarity to the Chief Electoral Officer as to which date of birth should be used on the list.
- 51 Amendment 120 would make a technical amendment to paragraph 38 of Schedule 6 to ensure that the dates of births for proxies appointed for a particular assembly election can be included on the dates of birth proxy lists. Proxies for a particular assembly election are appointed under different provisions to those appointed for an indefinite period.

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

### **Lords Amendments 106 to 109**

52 Lords Amendments 106 to 109, moved by the government, would make changes to Schedule 6 so that the changes made to clause 9 by Lords Amendments 15 to 18 also apply to local elections in Northern Ireland.

## **Lords Amendments to Schedule 8: Voting and candidacy rights of EU citizens**

### **Lords Amendments 121 to 124**

53 Amendments 121 to 124, moved by the government, would make technical changes to the transitional provisions which allow holders of office to continue to hold office until the end of their term following the changes to EU voting and candidacy rights coming into force. The amendments remove references to members of a district council in Northern Ireland. This is not needed as the new definitions of qualifying EU citizens and EU citizens with retained rights in paragraph 8 of Schedule 8 do not affect the holding of office as a councillor in Northern Ireland.

## **Lords Amendments to Schedule 10: Disqualification orders: minor and consequential amendments**

### **Lords Amendments 125 and 126**

54 Lords Amendments 125 and 126, moved by the government, would ensure that the disqualification arising from an order, imposed in accordance with clause 28 does not apply in respect of devolved Scottish elected offices.

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## Financial Effects of Lords Amendments

55 None of the Lords Amendments entail significant new public expenditure.

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