

## EXPLANATORY MEMORANDUM TO

### THE POLICE AND CRIME COMMISSIONER ELECTIONS ORDER 2012

2012 No. [XXXX]

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

#### 2. Purpose of the instrument

2.1 The Police and Crime Commissioner Elections Order 2012 (the “Order”) sets out the rules for the conduct of the police and crime commissioner elections to be held on 15 November 2012, and every four years thereafter, as well as for the questioning of such elections and the consequences of any irregularities. The Order makes provision for the registration of voters; how votes may be cast; activities which are prohibited and will involve the commission of criminal offences if carried out in relation to the election; regulation of the campaign, including limits on spending by candidates and how such spending is to be reported; and the regulation of donations made in connection with the election. The Order also sets out the format of legal proceedings which may be brought to question any election, and makes provision on various miscellaneous and supplemental matters such as the validity of acts of a person elected as a police and crime commissioner despite any determination by an election court that his or her election was void.

#### 3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

#### 4. Legislative Context

4.1 The Order is made in exercise of powers contained in the Police Reform and Social Responsibility Act 2011 (the “2011 Act”) to set out the rules for the conduct of elections of police and crime commissioners and for the questioning of such elections and the consequences of irregularities. It is intended that further subordinate legislation will be made in relation to other aspects of the electoral process; there will, for example, be statutory instruments setting out the duties and functions of returning officers, as well as the charges which they may properly incur in respect of carrying out their work; designating police area returning officers, who will have overall responsibility for the conduct of the election in any one police area; designating appropriate officers of local authorities under section 75(1) of the 2011 Act; and setting out the prescribed format of the declaration of acceptance of office to be made by a person elected as a police and crime commissioner.

#### 5. Territorial Extent and Application

5.1 This instrument applies to England and Wales, and Scotland also in relation to the public and judicial office specified in article 78.

## **6. European Convention on Human Rights**

6.1 The Home Secretary has made the following statement regarding Human Rights:

In my view the provisions of the Police and Crime Commissioner Elections Order 2012 are compatible with the Convention rights.

## **7. Policy background**

7.1 In June 2010, the Government announced its intention to replace police authorities with directly elected police and crime commissioners (“PCCs”) in England and Wales by 2012. This Order sets out the rules for the conduct of elections of PCCs established under the provisions of the 2011 Act.

7.2 Much of the Order follows – by applying, with or without modifications where necessary, for this particular type of new election - existing law governing elections. For example, the process for registering as a candidate is very similar to that for local elections, as are the requirements for voting itself. As with other elections, schools and other public building may be used free of charge for the polls and for candidates to use for public meetings. Elections offences – such as bribery, personation and making false statements – follow the existing body of law for election offences. As with existing elections, PCC elections are to be combined with most other types of elections where the polls take place on the same day, and are capable of being combined with some other types of poll such as a referendum held in England under Part 1A of the Local Government Act 2000.

7.3 Provisions of the Order in respect of registration of electors set out that a person is entitled to vote if they are registered to do so, but that does not mean their vote cannot be rejected following a scrutiny. They also set out the various duties and functions of a registration officer and of their respective local authorities, and how their decision may be appealed.

7.4 The Order provides further, detailed rules as to the conduct of the election. It allows for voting in a PCC election to be by proxy or postal ballot and applies existing electoral offences in respect of this type of voting. The Order sets out, in paragraph 1 of Schedule 3 in respect of a PCC election which is not combined with another type of election, the deadlines for various events, such as submitting nomination papers to the returning officer no later than noon on the 19<sup>th</sup> day before the date of the election. The Order sets out the requirements for candidature, such as that any nomination paper must be subscribed by 100 electors and a deposit of £5,000 must be provided, forfeited to the crown if that candidate does not receive more than 5% of the total number of first preference votes cast. Schedule 3 also specifies, for example, that a candidate who seeks to be nominated in more than one police area, and does not withdraw from all but one area, is deemed to have withdrawn all nominations. Where a second round of counting is required, the police area returning officer must direct local returning officers to count the second preference votes as soon as is practicable, and the local returning officer must comply and inform the counting agents of the candidates still in the contest of when and

where the count will take place. The Order also sets out the various forms and notices that should be used as part of the election process. Schedule 4 provides for the circumstances in which PCC elections are to be combined with Parliamentary, local government, European Parliamentary and other types of elections when these polls are held on the same day.

7.5 The Order creates criminal offences in respect of specified illegal activities which could take place in relation to a PCC election. These provisions follow existing election offences and ensure that these apply equally to PCC elections. Part 3 of the Order covers the election campaign itself and ensures that the provisions of the Political Parties, Elections and Referendums Act 2000 apply to PCC elections in respect of the registration and regulation of political parties. Articles 31 to 51 of the Order make provision in respect of candidate election expenses. Other than for personal expenses (set out in article 32), or where the limits are increased owing to an earlier election being countermanded or abandoned, the election expenses incurred by or on behalf of a candidate must not exceed the amount specified in Table 2 of article 35 which corresponds to the particular police area being contested at the election. Where expenses are incurred in excess of the maximum permitted sum, a candidate or an election agent will be guilty of an illegal practice if he or she incurs or authorises the incurring of such expenses, or knew or ought reasonably to have known that such expenses would be incurred. Schedule 7 to the Order lists matters which fall to be considered as election expenses, as well as general exclusions such as publications (other than advertisements) concerning the election which are contained in newspapers or periodicals. The Order also includes provision in relation to permitted publicity, such as election broadcasts and the use of schools and public places for public meetings.

7.6 Departures from existing electoral practice include allowing for the co-ordination of the poll over the larger electoral region in relation to which the PCC poll will be conducted. Another difference is how candidates will be able to engage with the public. Rather than providing a free mailing (for a General Election this costs in the region of £30m), the Government will provide a website in accordance with Schedule 8 to the Order. Every candidate will have the right to an entry on the website. The Order provides the Government with no ability to edit these addresses, or to refuse publication, but police area returning officers will be able to edit the information, to remove any offensive or illegal content for example. The website will allow the public to search by candidate name, postcode, or police area, or such other criteria as the Secretary of State may consider appropriate. On request by any person, the Secretary of State will send a paper copy of the information contained on the website to that person free of charge. Both the website address and the relevant contact phone number will appear on the poll cards delivered to every elector.

## **8. Consultation outcome**

8.1 A formal consultation on the contents of the Order ran from 15 February 2012 until 15 March 2012. We consulted with the Electoral Commission and with other interested stakeholders such as the Association of Electoral Administrators.

8.2 The comments received were largely technical in nature, although the Electoral Commission's comments also set out their concerns about the tight timescales for these elections, and concerns about the use of a website for candidate information. They also raised concerns about the potential for confusion if these elections coincided with Mayoral elections.

8.3 The Electoral Commission asked the Government to consider putting campaign expenditure limits in the legislation by way of a numerical limit rather than a formula. The Government was persuaded by their arguments and has drafted the legislation accordingly.

8.4 Other changes made in response to consultation include changing the timescale for the delivery of candidate election addresses to allow police area returning officers more time to undertake their duties in this regard, ensuring that ballots will be verified face-up, and allowing an option to include a map showing the location of the relevant polling station on poll cards.

## **9. Guidance**

9.1 It is intended that guidance will be issued by the Electoral Commission concerning the contents of the Order for the benefit of both candidates and election agents, and returning officers.

## **10. Impact**

10.1 This Order does not apply to businesses, charities or voluntary bodies.

10.2 The impact on the public sector will be the various requirements placed on police area returning officers and local returning officers. All these costs will be met by the Home Office.

10.3 An Impact Assessment was prepared for the 2011 Act.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 Under the provisions of the 2011 Act, the Electoral Commission will publish a report on the conduct of the elections held in November 2012.

## **13. Contact**

13.1 Alex Doyle or Neil King at the Home Office (tel: 020 7035 4858 or email: [PCCElections@homeoffice.gsi.gov.uk](mailto:PCCElections@homeoffice.gsi.gov.uk)) can answer any queries regarding this instrument.