

EXPLANATORY MEMORANDUM TO
THE POLICE AND CRIME COMMISSIONER ELECTIONS (AMENDMENT)
ORDER 2020

2020 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument has two purposes. Article 2(3) excludes election expenses to the extent they are reasonably incurred and reasonably attributable to a candidate's disability from the statutory definition of "election expenses" for Police and Crime Commissioner elections in England and Wales. Such expenses will therefore not count towards a candidate's electoral spending limit.
- 2.2 Article 2(4) provides for the title of "police, fire and crime commissioner" to be included in the declaration contained within the third bullet point of the consent to nomination form (Form 7). This ensures that the candidate is not nominated for election for any other police area, including a police area where the election is for a police, fire and crime commissioner.
- 2.3 Article 3 provides for the amendment of election forms for Police and Crime Commissioner elections in Essex, Staffordshire, North Yorkshire and Northamptonshire, so they reflect the fact that the Secretary of State has provided by order under section 4A(1) of the Fire and Rescue Services Act 2004 (2004, c. 21) ("the 2004 Act") that the police and crime commissioner is to be the fire and rescue authority in those police areas.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 **Commencement:** It is envisaged that the instrument will come into force as soon as possible so that candidates affected by the changes can take note of them in good time before the Police and Crime Commissioner elections in May 2020. Article 1(2) therefore provides that the instrument comes into force on the day after the day on which it is made.
- 3.2 The Cabinet Office considers that the commencement provision in article 1(2) is justified in the present case, for the reason set out in paragraph 3.1. Additionally, the instrument does not impose any new duties on candidates and candidates who will be affected by it will have had an opportunity to take note of its effect during its passage through Parliament.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.3 The instrument applies to England and Wales only.
- 3.4 In the view of the Cabinet Office, for the purposes of House of Commons Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, this entire instrument would not be within the devolved legislative competence of any of the Northern Ireland Assembly as a transferred matter, the Scottish Parliament or the National Assembly for Wales if equivalent provision in relation to the relevant territory were included in an Act of the relevant devolved legislature.

4. Extent and Territorial Application

- 4.1 The extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is set out in Section 3 under “Matters relevant to Standing Order Nos. 83P or 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)”.

5. European Convention on Human Rights

- 5.1 The Minister for the Constitution, Chloe Smith, has made the following statement regarding Human Rights:

“In my view the provisions of The Police and Crime Commissioner Elections (Amendment) Order 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Article 2(3) of the instrument creates an exclusion by adding election expenses that are reasonably incurred and reasonably attributable to a disability to the list of matters in Part 2 of Schedule 7 to The Police and Crime Commissioner Elections Order 2012 (“the 2012 Order”). This provision sets out the general exclusions from the spending limits of candidates standing at Police and Crime Commissioner elections.
- 6.2 This will ensure consistency in the UK’s legal electoral spending framework for the exclusion of disability-related expenses from the electoral spending limit of candidates. The Representation of the People (Election Expenses Exclusion) (Amendment) Order 2019 (S.I.2019/352) (“the 2019 Order”) applies the exclusion to Parliamentary elections, including by-elections. In England, it applies to local government elections, Mayor of London elections and London Assembly elections, mayoral elections and combined authority mayoral elections. In Northern Ireland, it applies to Northern Ireland Assembly elections.
- 6.3 The Local Elections (Northern Ireland) (Election Expenses) Order 2019 (S.I. 2019/564) applies this exclusion to local government elections in Northern Ireland. The Scottish Local Government Elections Amendment (No. 2) Order 2016 (S.S.I. 2016/354) applies a similar exclusion to Scottish local council elections and the Scottish Parliament (Elections etc.) Order 2015 (S.S.I. 2015/425) applies a similar exclusion to Scottish Parliament elections.
- 6.4 Article 2(4) provides for the title of “the police, fire and crime commissioner” to be inserted into the declaration contained in the third bullet point of the consent to nomination (Form 7). This form is contained within Part 8 of Schedule 3 of the 2012

Order (rules for the conduct of PCC elections where poll not taken together with poll at another election). The amendment will ensure that the candidate is not nominated for election for any other police area, including a police area where the election is for a police, fire and crime commissioner.

- 6.5 Article 3 provides for the amendment of specified election forms set out in the Police and Crime Commissioner Order 2012 in relation to a police area where, pursuant to an order made under section 4A(1) of the 2004 Act by the Secretary of State, the police and crime commissioner is also the fire and rescue authority for that area. Such orders have been made in the police areas of Essex, Staffordshire, North Yorkshire and Northamptonshire. The amended election forms will refer to the “Police, Fire and Crime Commissioner [insert name of police area]”.

7. Policy background

What is being done and why?

- 7.1 The 2012 Order sets out the rules of conduct at Police and Crime Commissioner elections. This includes provisions on the regulation of campaigning, including the regulation of candidates’ spending limits and required electoral forms.
- 7.2 Article 2(3) of this instrument ensures that election expenses, which are reasonably incurred and reasonably attributable to a candidate’s disability, do not count towards electoral spending limits for disabled candidates standing at Police and Crime Commissioner elections. Disability-related expenses include, but are not limited to, the cost of providing transport support for mobility impaired candidates, British Sign Language (BSL) interpretation for hearing impaired candidates during election campaigns and the transcription of campaign material into braille for visually impaired candidates.
- 7.3 Matters of expenditure that would be common to both disabled and non-disabled candidates, such as the normal printing of campaign leaflets for distribution to the public, would not fall within the scope of this exemption. However, where a disabled candidate requires specially adapted measures to participate in campaigning on a level basis with a non-disabled candidate, then such an additional expense is likely to fall within the scope of the instrument, providing it satisfies the reasonableness conditions mentioned in paragraph 2.1.
- 7.4 The Government wants to ensure that the diversity of the United Kingdom is sufficiently represented in public offices. Around one in five of the UK population has a disability, but disabled people remain insufficiently represented in our Parliaments, Assemblies and Councils.
- 7.5 Article 2(4) provides for the amendment of the declaration contained in the third bullet point of the consent to nomination (Form 7). The amendment will ensure that both “police and crime commissioner” and “police, fire and crime commissioner” are referenced in the declaration. This will ensure that the candidate is not nominated for election for any other police area, including a police area where the election is for a police, fire and crime commissioner and upholds consistency in the forms.
- 7.6 Article 3 of this instrument provides for the amendment of election forms for Police and Crime Commissioner elections in Essex, Staffordshire, North Yorkshire and Northamptonshire where the police and crime commissioners have the power to undertake fire and rescue authority functions. The effect of these changes is that the

candidate's title on the amended election forms is "the Police, Fire and Crime Commissioner". The electoral forms that will be amended include, among others, the nomination of candidates form, the official poll card and the official proxy poll card.

- 7.7 We anticipate that there will be public support for both these policies. They both make improvements to the electoral framework and process for Police and Crime Commissioner elections.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union/trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument does not consolidate any current legislation.

10. Consultation outcome

- 10.1 The Cabinet Office consulted on this instrument with the Electoral Commission, the Wales Office, the Government Equalities Office and the Home Office.
- 10.2 On article 2(3), the Electoral Commission welcomed the provision and highlighted that it was in line with how disability-related expenses are excluded from candidate spending limits at other elections in the UK. They highlighted that candidates with disabilities should have the right to privacy about their disability and should not be required to report related spending. The Cabinet Office has upheld this approach. The Commission also believe that there should be an exemption in political parties' spending limits for expenses attributable to an individual's disability. This requires further consideration.
- 10.3 The Electoral Commission had an enquiry about amendments to the consent to nomination form (Form 7). They asked whether amendments to the form should reference police, fire and crime commissioner and police and crime commissioner under the third bullet point of the form. Officials confirmed that article 2(4) will accordingly amend the text of the declaration in Form 7 so that the candidate is not nominated for election for any other police area, including a police area where the election is for a police, fire and crime commissioner.

11. Guidance

- 11.1 The Electoral Commission provides regular guidance on what constitutes an electoral expense for candidates. The Commissions plans to include information on this instrument in guidance for the May 2020 Police and Crime Commissioner elections.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the business, charities, voluntary bodies or public sectors is foreseen.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 There are no plans to monitor or review the instrument. Under article 2(3) of the instrument, disabled candidates are not required to report disability-related expenses within their spending returns. As a result, monitoring or reviewing of article 2(3) of the instrument would be difficult to implement and is unnecessary.

14.2 This approach upholds the privacy of disabled candidates, and does not put them in a position in which they feel obliged to disclose their disability. This is in line with the other exclusions for disability-related expenses contained within the 2019 Order and The Local Elections (Northern Ireland) (Election Expenses) Order 2019.

14.3 This is also in line with the legislation for non-party campaigners contained under Schedule 8 to the Political Parties, Elections and Referendums Act 2000 (2000, c. 41).

15. Contact

15.1 Danielle Cudby at the Cabinet Office Telephone: 0207 2713 118 or email: Danielle.Cudby@cabinetoffice.gov.uk can be contacted with any queries regarding articles 2(3) and (4) and 3 of the statutory instrument.

15.2 David O’Gorman at the Cabinet Office Telephone 0207 2718 519 or email: david.ogorman@cabinetoffice.gov.uk can be contacted with any queries regarding articles 2(4) and 3 of the statutory instrument.

15.3 Natalie Bodek at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.

15.4 Chloe Smith, Minister for the Constitution, Cabinet Office, can confirm that this Explanatory Memorandum meets the required standard.