

EXPLANATORY MEMORANDUM TO
THE COMBINED AUTHORITIES (MAYORAL ELECTIONS) ORDER 2017
2017 No. 67

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument makes provision for the conduct of elections for directly-elected mayors of combined authorities, including setting nomination arrangements, deposits and spending limits for candidates, and rules relating to the conduct of the poll itself, for example, polling stations and provisions for counting votes.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 This entire instrument applies only to England.
- 3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter or the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament or the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.
- 3.4 The Department has reached this view because it considers that the primary purpose of the provisions in the instrument relate to local government, which is within the devolved legislative competence of the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales. The primary purpose of the subject-matter of the instrument is not within Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); the primary purpose of the subject matter of the instrument is not within Schedules 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act); the primary purpose of the subject-matter of the instrument is not within Schedule 7 to the Government of Wales Act 2006 and is not otherwise outside the legislative competence of the National Assembly for Wales (see section 108 of that Act).

4. Legislative Context

- 4.1 Part 6 of the Local Democracy, Economic Development and Construction Act 2009 (the 2009 Act) sets the framework for the establishment of combined authorities in England. A combined authority for an area of two or more local authorities is established by an order under Part 6 and has such functions (including functions relating to economic development and regeneration and transport) as are conferred by the order. A number of combined authorities have been established under Part 6 including the Greater Manchester Combined Authority and the Tees Valley Combined Authority. Part 6 of the 2009 Act was substantially amended by the Cities and Local Government Devolution Act 2016 – in particular to provide for elected mayors for combined authorities, to broaden the range of functions that might be conferred on a combined authority and to provide for overview and scrutiny arrangements.
- 4.2 Schedule 5B to the 2009 Act makes provision for the election of mayors for combined authorities. Among other things it provides that where there are three or more candidates, the elected mayor will be returned under the supplementary vote system (see paragraphs 4 and 5 of Schedule 5B). Paragraph 12 gives the Secretary of State or Chancellor power to make further provision as to the conduct of elections for mayors and the questioning of such elections. This Order is made using that power.
- 4.3 The first elections for mayors of combined authorities will take place in May 2017. This includes the mayoral elections established under the Greater Manchester Combined Authority (Election of Mayor with Police and Crime Commissioner Functions) Order 2016 (S.I. 2016/448) and the Tees Valley Combined Authority Order 2016 (S.I. 2016/449). This is in addition to any future orders providing for further combined authority mayoral elections in other areas.
- 4.4 Many of the provisions in the Order replicate, for combined authority mayoral elections, provisions that have already been made for the conduct of local authority mayoral elections by the Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007 (S.I. 2007/1024), amended as appropriate.
- 4.5 Within the Order, the power to make provision “about the limitation of election expenses” is exercisable “only on, and in accordance with, a recommendation of the Electoral Commission.”¹ Additionally, before making an Order under this paragraph, the Secretary of State must consult the Electoral Commission. The Electoral Commission have been formally consulted on the content of this Order, and are content with the provisions which relate to the limitation of election expenses.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is set out in Section 3 under “Other matters of interest to the House of Commons”.

6. European Convention on Human Rights

- 6.1 Andrew Percy, Parliamentary Under Secretary of State at the Department of Communities and Local Government has made the following statement regarding Human Rights:

¹ Except where the Secretary of State or the Chancellor of the Duchy of Lancaster considers that it is expedient to exercise that power in consequence of changes in the value of money.

6.2 “In my view the provisions of the Combined Authorities (Mayoral Elections) Order 2017 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 The Government committed in its manifesto to “devolve far-reaching powers over economic development, transport and social care to large cities which choose to have elected mayors” and to “legislate to deliver the historic deal for Greater Manchester, which will devolve powers and budgets and lead to the creation of a directly elected Mayor for Greater Manchester”. Subsequently, agreements were reached with a number of further areas to devolve powers and budgets, and to provide for directly elected combined authority mayors.
- 7.2 This Order makes provision for the conduct of elections for combined authority mayors, and sets the rules by which these elections are to be conducted. This Order is being made now in order to allow these elections to take place in May 2017, as set out in, for example, the Greater Manchester Combined Authority (Election of Mayor with Police and Crime Commissioner Functions) Order 2016 (SI 2016/448), and the Tees Valley Combined Authority Order 2016 (S.I. 2016/449).
- 7.3 The policy background on the creation of Combined Authority Mayors can be found in the Explanatory Memorandum to SI 2016/448.
- 7.4 As explained above, provisions in this Order replicate, for combined authority mayoral elections, provisions that have already been made for the conduct of local authority mayoral elections by the Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007 (S.I. 2007/1024), amended as appropriate. The key amendments (and policy background for them) are below.
- 7.5 First, the provision for candidate deposits has been amended, changing the required deposit that candidates are required to lodge with the combined authority in order to stand for election to £5000 (rather than the £500) in the 2007 Regulations. This increased figure is commensurate with the increased size of the areas for which these mayors will be responsible and the significantly greater scope of their powers. It is also consistent with the deposit required for candidates wishing to be considered for election as Police and Crime Commissioners and is lower than the amount required for candidates wishing to be considered for election as Mayor of London (£10,000). Provisions relating to forfeiture of deposits are identical to the 2007 Regulations, other than forfeiture is now to the combined authority rather than to the local authority in question.
- 7.6 Second, the provision for nomination arrangements has been amended. This is the number of signatures that candidates are required to collect in order to be validly nominated for election. Within this Order, we require candidates to secure a minimum of 100 subscriptions, with at least ten from the area of each constituent authority (in two-tier areas, each district). In cases with more than ten constituent authorities, candidates will still require at least ten from each area, so will require more than 100 total subscriptions. This is a significant increase from the requirements in the 2007 Regulations, which requires candidates to secure 28 subscriptions. As with deposits, this increased requirement is commensurate with the increased constituency size and responsibilities of combined authority mayors and mirrors the approach taken for the Mayor of London (where candidates are required to secure at least ten subscriptions

from each borough, plus the City of London.) The requirement to obtain a number of subscriptions from each constituent area ensures that candidates secure support from the range of diverse areas within any combined authority and prevents for example, candidates being nominated who secure support from only the metropolitan sections of the combined authority area and disregard the more rural areas.

- 7.7 Third, the provision for candidate spending limits has been amended. This is the provision which limits the amount of money candidates are able to spend on election expenses during the election campaign. In the 2007 Regulations, candidates are limited to £2,362, plus 5.9 pence per registered elector in the local authority area. These provisions are mirrored within this Order, allowing candidates £2,362 per constituent area (in two-tier areas, each district), plus 5.9 pence per registered elector within the Combined Authority area. This provision (with the majority of the funding being measured per capita) ensures that appropriate candidate spending limits are set across the range of mayoral combined authorities, which vary significantly in size. Total candidate spending limits under this provision also, when appropriately scaled for numbers of electors, align closely with the spending limit for candidates campaigning for election as Mayor of London.
- 7.8 Finally, we have included provision within this Order for the creation of a “Combined Authority Returning Officer” (CARO), appointed by the combined authority. This is similar to the provision creating a Police Area Returning Officer (PARO) for Police and Crime Commissioner elections, and ensures that there is an appropriate individual appointed to oversee the election as a whole. In both of these roles the respective returning officers are personally responsible for publishing the notice of elections, administering the nomination process, ensuring that candidates comply with the requirements regarding the content of their election addresses, collating and calculating the number of votes given for each candidate and calculating the result and declaring the result.

Consolidation

- 7.9 There is nothing to consolidate.

8. Consultation outcome

- 8.1 The Secretary of State consulted the Electoral Commission, local authorities and representative bodies before making this Order.
- 8.2 Draft copies of the Order were shared with the Electoral Commission, the Association of Electoral Administrators (AEA), and electoral administrators in each of the currently proposed mayoral combined authority areas. Responses were received from three organisations – the Electoral Commission, the AEA, and Greater Manchester Combined Authority (GMCA).
- 8.3 The Electoral Commission provided a number of recommendations. In addition to a number of minor drafting amendments or corrections, the Commission recommended a number of substantive changes to the draft Order.
- 8.4 The majority of these recommendations were subsequently incorporated within the Order, with the exception of a small number of more general recommendations (such as the abolition of the requirement for candidates to lodge deposits in order to be validly nominated for election). These recommendations are not contained within this

draft Order, as to do so would make the Order inconsistent with what happens elsewhere, and with wider electoral law.

- 8.5 The Government is of the view that any substantive changes of a more general nature should be properly considered across the full spectrum of electoral law, and, if appropriate, these changes should then be made in a uniform manner. The Government also believes that it would be inappropriate to make piecemeal changes to important general principles of electoral law through secondary legislation which relates to specific elections.
- 8.6 Within their response, the Electoral Commission also welcomed the provisions within the Order enabling a combined authority mayoral election to be combined with other polls. They also recommended that Government consider the implications and risks associated with such combination, and make available this assessment when the draft Order is laid.
- 8.7 Government believes that allowing for combination of polls provides a number of benefits.
- 8.8 First, combining these polls in this way has the potential to enhance voter turnout, as voters are able to vote in more than one election on the same day, and on the same visit to the polling station. Second, combination of polls also produces costs savings in administering the polls, as the authorities concerned only incur certain costs once, rather than twice (or more) as they would if the elections were held on separate days.
- 8.9 This must of course be weighed against the increased complexity that any combination of polls creates, both for electoral administrators, and for voters.
- 8.10 It is common in England for more than one poll to be held on the same day, for example, it is the practice for UK Parliamentary General Elections to be combined with local government elections in England. Government is confident that electoral administrators will be able to effectively administer combined authority mayoral elections and other polls that they may be combined with.
- 8.11 The provisions on the combination of polls will minimise any risk of voter confusion as they will ensure that voters will cast their vote at the same polling station for the polls. Returning Officers will be able to issue a single poll card to electors for the polls, and may issue to postal voters one postal ballot pack with two different sets of voting papers inside, instead of two separate packs for each election. Guidance will also be provided to voters to help them complete their ballot papers when voting in more than one poll on the same day.
- 8.12 Government is therefore of the view that any implications and risks associated with the combination of polls are effectively mitigated.
- 8.13 The Association of Electoral Administrators (AEA) provided a number of minor drafting amendments and corrections, in addition to raising a substantive question as to whether the Order should include provision for objections to be made to nominations, as this provision is not included in regulations governing other local government elections.
- 8.14 The provisions on objection to nominations within the Order replicate those contained within the Police and Crime Commissioner Elections Order 2012 (SI 2012/1917). They provide for the Combined Authority Returning Officer (CARO) to fix the place at which nominations are to be delivered, specify who may be present at the delivery of nomination papers, and enable these persons to inspect any nomination paper and

make an objection to any candidate's nomination. There is no provision for nomination papers to be open to public inspection.

- 8.15 Given the significantly increased powers and responsibilities of combined authority mayors (as distinct from local authority mayors), it is appropriate to incorporate the objections provisions from the Police and Crime Commissioner elections within this Order.
- 8.16 Finally, Greater Manchester Combined Authority (GMCA) also provided a number of substantive comments, in addition to minor drafting amendments and corrections.
- 8.17 First, GMCA suggested that the decision as to whether election addresses are sent to either individual registered electors, or to households, rest with the combined authority. The Order provides that electoral addresses must be sent to each individual registered elector.
- 8.18 The Government believes that requiring delivery of electoral addresses to individual registered electors provides the largest possible profile for these elections, ensuring that electors are able to access information, and potentially improving participation. This is a view shared by the Electoral Commission in their recommendation, and therefore the GMCA recommendation was not accepted.
- 8.19 Second, GMCA expressed concern that the candidate expense limits set within the Order, when calculated, are lower than the spending limit currently available to the Police and Crime Commissioner for Greater Manchester. As explained in paragraph 8.7 above, the candidate expense limits set within this Order mirror the provisions currently in place for local authority mayors scaled appropriately across a range of differently sized authorities and also, when appropriately scaled, align closely with the funds available to candidates campaigning for election as Mayor of London. This recommendation was therefore not accepted.

9. Guidance

- 9.1 The Electoral Commission will continue to issue guidance relating to the conduct of elections. They will issue specific guidance on the new arrangements for combined authority mayoral elections.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 This instrument makes provision for the conduct of elections for directly-elected mayors of combined authorities, and therefore creates costs which need to be met in conducting those elections. These costs are to be met by the combined authorities for whom the mayor is being elected.
- 10.3 There is no impact on the wider public sector.
- 10.4 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

- 12.1 The Cabinet Office keeps all electoral legislation under review to ensure it continues to support electors' participation in elections and effective electoral administration.

13. Contact

- 13.1 Rosemary Fletcher at the Department for Communities and Local Government
Telephone: 0303 444 18312834 or email: rosemary.fletcher@communities.gov.uk can answer any queries regarding the instrument.