

2020 No. 395

LOCAL GOVERNMENT, ENGLAND

POLICE, ENGLAND AND WALES

**The Local Government and Police and Crime Commissioner
(Coronavirus) (Postponement of Elections and Referendums)
(England and Wales) Regulations 2020**

<i>Made</i> - - - -	<i>3rd April 2020</i>
<i>Laid before Parliament</i>	<i>6th April 2020</i>
<i>Coming into force</i> - -	<i>7th April 2020</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 61 and 63 of the Coronavirus Act 2020(a).

PART 1

General

Citation, commencement, extent and application

1. These Regulations may be cited as the Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020 and come into force on 7th April 2020.

2. These Regulations extend to England and Wales.

3. Regulations 5 to 9 and 11 to 14 apply to England only.

Interpretation

4. In these Regulations—

“the 1972 Act” means the Local Government Act 1972(b);

“the 1992 Act” means the Local Government Act 1992(c);

“the 2000 Act” means the Local Government Act 2000(d);

“the 2007 Act” means the Local Government and Public Involvement in Health Act 2007(e);

(a) 2020 c. 7.
(b) 1972 c. 70.
(c) 1992 c. 19.
(d) 2000 c. 22.
(e) 2007 c. 28.

“the 2009 Act” means the Local Democracy, Economic Development and Construction Act 2009(a);

“the antecedent period” means the period beginning with 16th March 2020 and ending with the day before the day on which these Regulations come into force;

“the 2020 Act” means the Coronavirus Act 2020;

“ordinary day of election” has the meaning given in section 60(5)(b) of the 2020 Act;

“the relevant period” means the period beginning with 16th March 2020 and ending with 5th May 2021.

PART 2

Postponement of by-elections

By-elections of councillors of principal areas

5.—(1) The poll for the election of a councillor to fill a casual vacancy in the office of councillor for any principal area in England that, pursuant to section 89(1) of the 1972 Act (filling of casual vacancies in case of councillors), would otherwise be held, or have been held, on a day during the relevant period is to be held instead on the ordinary day of election in 2021.

(2) If a casual vacancy referred to in paragraph (1) relates to the office of a councillor who—

(a) pursuant to section 7 of the 1972 Act (election of councillors), would regularly have retired on the fourth day after the ordinary day of election in 2021, or

(b) is to retire on that day pursuant to any of the relevant provisions,

the vacancy in the office of councillor is to be filled at the poll at the ordinary election in 2021 and a poll is not to be held to fill the casual vacancy.

(3) In so far as section 89(3) of the 1972 Act applies to a vacancy referred to in paragraph (1) during the relevant period, that section is to be read as if for the words from “unless” to “not held” there were substituted “and”.

(4) Paragraph (1) does not apply in relation to a poll for the election of a councillor that has been held, pursuant to section 89(1) of the 1972 Act, on a day during the antecedent period.

(5) In this regulation—

“principal area” has the same meaning as in section 270 of the 1972 Act (general provisions as to interpretation) and includes the area of the Council of the Isles of Scilly;

“the relevant provisions” means—

(a) section 17 of the 1992 Act (implementation of recommendations by order)(b);

(b) sections 7 (implementation of proposals by order), 10 (implementation of recommendations by order) and 32 (resolution for whole-council elections) of the 2007 Act;

(c) section 59 of the 2009 Act (implementation of review recommendations); and

(d) section 60(2) of the 2020 Act (postponement of elections due to be held on 7 May 2020).

By-elections of parish councillors

6.—(1) The poll for the election of a councillor to fill a casual vacancy in the office of parish councillor that, pursuant to rule 5(3) of the Local Elections (Parishes and Communities) (England

(a) 2009 c. 20.

(b) Section 17 was repealed by Part 3 of Schedule 7 to the Local Democracy, Economic Development and Construction Act 2009 (c. 20) but the effect of orders made under that section has been saved by section 146(2) of that Act.

and Wales) Rules 2006(a) (filling of casual vacancies) (“the 2006 Rules”), would otherwise be held, or have been held, on a day during the relevant period is to be held instead on the ordinary day of election in 2021.

(2) If a casual vacancy referred to in paragraph (1) relates to the office of a councillor who—

(a) pursuant to section 16 of the 1972 Act (parish councillors), would regularly have retired on the fourth day after the ordinary day of election in 2021, or

(b) is to retire on that day pursuant to any of the relevant provisions,

the vacancy in the office of councillor is to be filled at the poll at the ordinary election in 2021 and a poll is not to be held to fill the casual vacancy.

(3) Paragraph (1) does not apply in relation to a poll for the election of a councillor that has been held, pursuant to rule 5(3) of the 2006 Rules, on a day during the antecedent period.

(4) In this regulation—

“the relevant provisions” means—

(a) section 17 of the 1992 Act;

(b) sections 7, 10 and 53 (power of council to alter years of ordinary elections of parish councillors) of the 2007 Act; and

(c) section 60(2) of the 2020 Act.

By-elections of directly elected local authority mayors

7.—(1) The poll for an election to fill a casual vacancy in the office of an elected mayor that, pursuant to regulation 9(1) of the 2012 Regulations (filling of casual vacancies), would otherwise be held on a day during the relevant period is to be held instead on the ordinary day of election in 2021.

(2) If a vacancy referred to in paragraph (1) relates to the office of an elected mayor for which—

(a) pursuant to regulation 7 of the 2012 Regulations (elections after the second election), an election would have been held on the ordinary day of election in 2021; or

(b) pursuant to section 60 of the 2020 Act, an election is to be held on that day,

the vacancy is to be filled at the ordinary election on that day and a poll is not to be held to fill the casual vacancy.

(3) In this regulation—

“the 2012 Regulations” means the Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2012(b);

“elected mayor” has the same meaning as in section 9H(1) of the 2000 Act (elected mayors, etc)(c).

By-elections of combined authority mayors

8.—(1) The poll for an election to fill a vacancy in the office of a combined authority mayor that, pursuant to regulation 3(2) of the 2017 Order (filling of vacancies in the office of elected mayor), would otherwise be held on a day during the relevant period is to be held instead on the ordinary day of election in 2021.

(2) If a vacancy referred to in paragraph (1) relates to the office of a combined authority mayor for which—

(a) S.I. 2006/3305.

(b) S.I. 2012/336.

(c) Section 9H was inserted by paragraph 1 of Part 1 to Schedule 2 to the Localism Act 2011 (c. 20).

- (a) pursuant to, or by virtue of, paragraph 2 of Schedule 5B to the 2009 Act (timing of elections)(a), an election would have been held on the ordinary day of election in 2021; or
- (b) pursuant to section 60 of the 2020 Act an election is to be held on the ordinary day of election in 2021,

the vacancy is to be filled at the ordinary election in 2021 and a poll is not to be held to fill the casual vacancy.

(3) In this regulation—

“the 2017 Order” means the Combined Authorities (Mayors) (Filling of Vacancies) Order 2017(b);

“combined authority mayor” means a mayor in relation to whose office an order has been made under section 107A(1) of the 2009 Act (power to provide for election of mayor)(c).

By-elections to the Greater London Authority

9.—(1) The poll for an election to fill a vacancy in the office of an Assembly member of the Greater London Authority returned for an Assembly constituency that, pursuant to section 10 of the 1999 Act (filling a vacancy in an Assembly constituency), would otherwise be held on a day during the relevant period is to be held instead on the ordinary day of election in 2021.

(2) The poll for an election to fill a vacancy in the office of Mayor of London that, pursuant to section 16 of the 1999 Act (filling a vacancy), would otherwise be held on a day during the relevant period is to be held instead on the ordinary day of election in 2021.

(3) If a vacancy referred to in paragraphs (1) or (2) relates to an office for which, pursuant to section 60 of the 2020 Act, an election is to be held on the ordinary day of election in 2021 the vacancy is to be filled at the ordinary election on that day and a poll is not to be held pursuant to sections 10 or 16 of the 1999 Act to fill the vacancy.

(4) In this regulation “the 1999 Act” means the Greater London Authority Act 1999(d).

Police and crime commissioner by-elections

10.—(1) The poll for an election to fill a vacancy in the office of police and crime commissioner for any police area in England and Wales(e) that, pursuant to section 51 of the 2011 Act (election to fill vacancy in office of commissioner), would otherwise be held on a day during the relevant period is to be held instead on the ordinary day of election in 2021.

(2) If a vacancy referred to in paragraph (1) relates to an office for which, pursuant to section 51 of the 2011 Act or section 60 of the 2020 Act, an election is to be held on the ordinary day of election in 2021 the vacancy is to be filled at the ordinary election on that day and a poll is not to be held pursuant to section 51 of the 2011 Act to fill the vacancy.

(3) If, on 24th March 2020, a vacancy existed in the office of police and crime commissioner for any police area, that vacancy is to remain unfilled until the ordinary day of election in 2021 and is to be filled at the election on that day.

(4) In this regulation “the 2011 Act” means the Police Reform and Social Responsibility Act 2011(f).

(a) Schedule 5B was inserted by Schedule 1 to the Cities and Local Government Devolution Act 2016 (c.1).

(b) S.I. 2017/69.

(c) Section 107A was inserted by section 2(1) of the Cities and Local Government Devolution Act 2016 (c. 1).

(d) 1999 c. 29.

(e) Section 1 of the Police Act 1996 (c. 16) makes provision for England and Wales to be divided into police areas.

(f) 2011 c. 13.

PART 3

Postponement of local polls and referendums

Local polls under the Local Government Act 2003

11.—(1) Where a poll under section 116 of the Local Government Act 2003(a) (local polls) (“the 2003 Act”) is to be conducted during the relevant period the poll is instead to be conducted on the ordinary day of election in 2021.

(2) Paragraph (1) does not apply in relation to a poll that has been held, pursuant to section 116 of the 2003 Act, on a day during the antecedent period.

Local authority governance change referendums

12.—(1) A referendum under section 9MB of the 2000 Act (requirement to hold and give effect to referendum)(b) that would otherwise be held, or have been held, during the relevant period is to be held instead on the ordinary day of election in 2021.

(2) A referendum that, pursuant to regulation 16 of the 2011 Regulations (timing of referendum in consequence of valid petition), would otherwise be held, or have been held, during the relevant period is to be held instead on the ordinary day of election in 2021.

(3) In relation to a referendum mentioned in paragraph (2) regulation 9 of the 2011 Regulations (validity of petitions) is to be read during the relevant period as if—

- (a) in paragraph (1)(c) at the end there were inserted “or within the period beginning with the 16th March 2020 and ending with 5th May 2021”; and
- (b) the relevant period were to be disregarded for the purposes of calculating the period of 12 months mentioned in paragraph (5).

(4) Paragraphs (1) and (2) do not apply in relation to a referendum that has been held on a day during the antecedent period.

(5) In this regulation “the 2011 Regulations” means the Local Authorities (Referendums) (Petitions) (England) Regulations 2011(c).

Neighbourhood planning referendums

13.—(1) A referendum that, pursuant to regulation 2A of the Neighbourhood Planning (Referendums) Regulations 2012(d) (date by which referendum must be held), would otherwise be held, or have been held, during the relevant period is to be held instead on the ordinary day of election in 2021.

(2) Paragraph (1) does not apply to a referendum that has been held on a day during the antecedent period.

PART 4

Supplementary provisions

Supplementary provision: terms of office of councillors

14.—(1) This regulation applies if—

(a) 2003 c. 26.
(b) Sections 9MB and 9MC were inserted by section 21 of, and Schedule 2 to, the Localism Act 2011 (c. 20).
(c) S.I. 2011/2914.
(d) S.I. 2012/2031 amended by S.I. 2016/934.

- (a) pursuant to an order or resolution made under any of the relevant provisions a poll for the ordinary election of councillors is to be held on the ordinary day of election in 2020; and
 - (b) pursuant to section 60 of the 2020 Act the poll is instead to be held on the ordinary day of election in 2021.
- (2) Where this regulation applies—
- (a) a councillor who would otherwise, pursuant to the relevant order or resolution, retire on the fourth day after the ordinary day of election in 2020 is instead to retire on the fourth day after the ordinary day of election in 2021; and
 - (b) a councillor elected on the ordinary day of election in 2021 is to retire on the day specified in the relevant order, or pursuant to the relevant order or resolution, and not on the fourth day after the ordinary day of election in 2024 (unless that is the day of retirement of the councillor pursuant to the order or resolution).
- (3) In this regulation “the relevant provisions” means—
- (a) section 17 of the 1992 Act;
 - (b) sections 7 (implementation of proposals by order), 10 (implementation of recommendations by order), 32 (resolution for whole-council elections) and 53 (power of council to alter years of ordinary elections of parish councillors) of the 2007 Act; and
 - (c) section 59 of the 2009 Act (implementation of review recommendations).

Disapplication of certain provisions relating to elections

15.—(1) This regulation applies in relation to the poll for a relevant election or relevant referendum if the poll—

- (a) is required to be held on a day falling within the period beginning with 25th April 2020 and ending with 5th May 2021, but
- (b) pursuant to section 60 of the 2020 Act or these Regulations, is not held in that period.

(2) Section 39 of the Representation of the People Act 1983 (local elections void, etc)(a) does not apply, and is treated as never having applied, in relation to the poll.

(3) Section 63 of that Act (breach of official duty)(b) does not apply, and is treated as never having applied, in relation to any act or omission in connection with the poll.

(4) In relation to a poll for the election of a police and crime commissioner, article 19 of the Police and Crime Commissioner Elections Order 2012 (breach of official duty)(c) does not apply, and is treated as never having applied, in relation to any act or omission in connection with the poll.

(5) In determining for the purposes of this regulation whether a poll has been held, postal votes are to be ignored.

(6) In this regulation—

“local government area” has the same meaning as in section 203(1) of the Representation of the People Act 1983;

“relevant election” means—

- (a) an election of a councillor for any local government area in England to fill a casual vacancy;
- (b) an election to fill a casual vacancy in respect of a constituency member of the Greater London Assembly;
- (c) an election to fill a vacancy in the office of Mayor of London;

(a) 1983 c. 2. Section 39 has been amended by section 19 of the Representation of the People Act 1985 (c. 50) and by section 17 of, and Schedule 3 to, the Greater London Authority Act 1999,

(b) section 63 was substituted by section 24 of, and Schedule 4 to, the Representation of the People Act 1985.

(c) S.I. 2012/1917.

- (d) an election to fill a casual vacancy in the office of an elected mayor under Part 1A of the 2000 Act;
- (e) an election to fill a vacancy in the office of mayor for the area of a combined authority under Part 6 of the 2009 Act;
- (f) an election to fill a vacancy in the office of a police and crime commissioner for a police area; and

“relevant referendum” means—

- (a) a referendum under section 9MB of the 2000 Act (requirement to hold and give effect to referendum);
- (b) a referendum by virtue of section 9MC of the 2000 Act (referendums following petition);
- (c) a referendum under section 52ZG or 52ZN of the Local Government Finance Act 1992 (referendums in relation to council tax)(a);
- (d) a referendum under or by virtue of Schedule 4B to the Town and Country Planning Act 1990 (process for making neighbourhood development orders)(b).

Signed by authority of the Secretary of State for Housing, Communities and Local Government

Simon Clarke
Minister of State

3rd April 2020

Ministry of Housing, Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations postpone the days on which certain by-elections and local referendums are to be held during the period from 16th March 2020 to 5th May 2021 (“the relevant period”).

Regulation 5 postpones to the 6th May 2021 (“the ordinary day of election in 2021”) any by-elections which would be held to fill vacancies in the office of councillor in any county, district or London Borough Council in England. Regulation 6 postpones parish council elections during the relevant period to the ordinary day of election in 2021. Regulations 7 and 8 postpone by-elections due to be held in that period for a local authority directly elected mayor and a combined authority mayor to 2021. Regulation 9 likewise postpones by-elections for the Mayor of London or constituency member of the Greater London Assembly. Regulation 10 postpones Police and Crime Commissioner by-elections.

Regulation 11 provides for a local advisory poll called during the relevant period to be conducted on the ordinary day of election in 2021. Regulation 12 provides for postponement of any referendum on a local authority change of governance and extends the period for collation of signatures on a referendum petition. Regulation 13 postpones neighbourhood planning referendums held in accordance with Schedule 4B to the Town and Country Planning Act 1990 (c. 8).

Regulation 14 makes supplementary provision to ensure that transitional election cycles to a local authority which have been specifically provided for in orders made by the Local Government Boundary Commission for England (or a principal council in respect of one of its parish councils) or in structural change orders made by the Secretary of State are preserved.

Regulation 15 makes provision to relieve returning officers and others of liability under certain provisions of the Representation of the People Act 1983 in relation to polls which were required to be held, but were not held, in the period after 24th April 2020.

(a) 1992 c. 14. Sections 52ZG and 52ZN were inserted by section 72(1) of, and Schedule 5 to, the Localism Act 2011 (c. 20).

(b) 1990 c. 8. Schedule 4B was inserted by section 116(2) of, and Schedule 10 to, the Localism Act 2011.

A full regulatory impact assessment has not been prepared as this instrument will have no impact on the costs of business and the voluntary sector.

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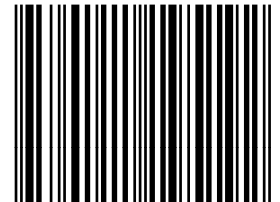
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