

## EXPLANATORY MEMORANDUM TO

### THE LOCAL GOVERNMENT AND POLICE AND CRIME COMMISSIONER (CORONAVIRUS) (POSTPONEMENT OF ELECTIONS AND REFERENDUMS) (ENGLAND AND WALES) REGULATIONS 2020

2020 No. 395

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government 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 These Regulations provide that specified local elections and referendums scheduled to take place after 15 March 2020, or that would otherwise be required before 5 May 2021, are postponed until 6 May 2021. The specified local elections are those to fill casual vacancies in England in principal councils, parish councils, constituency members of the Greater London Authority (GLA), the Mayor of London, elected mayors, combined authority mayors, and, in England and Wales, Police and Crime Commissioners (PCCs). Such casual vacancies occur when an individual is no longer able to fill their elected seat as a result of death, resignation, incapacity or disqualification, and these elections are commonly known as “local by-elections”. The specified referendums are local advisory polls and those relating to local authority governance changes and neighbourhood planning.
- 2.2 The Regulations also make supplementary provision to the Coronavirus Act 2020 (“the 2020 Act”) in relation to postponed elections and actions to be taken by returning officers and others.

#### 3. Matters of special interest to Parliament

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

- 3.1 It was not possible in the case of these Regulations to comply with the 21-day rule according to which relevant instruments are laid before Parliament for at least 21 days prior to coming into force. These Regulations were made as soon as practicable following the Coronavirus Act receiving Royal Assent and come into force on 7 April 2020.
- 3.2 In response to the Covid-19 virus the Government announced on 13 March 2020 that the elections scheduled for 7 May 2020 would be postponed and emergency legislation would be prepared to provide for that postponement and to enable other electoral events to also be postponed. The 2020 Act postpones the 7 May 2020 elections for a year to 6 May 2021. It also extends the term of office of the current incumbent for a year and reduces by a year the term of office of the person elected in the postponed elections from four to three years (so as to avoid further disruption to

the electoral cycle). It provides for other electoral events to be postponed by regulations.

- 3.3 The Written Ministerial Statement on postponement of electoral events on 19 March 2020<sup>1</sup> set the expectation that legislation would be in place for all polls as soon as practicable. These Regulations have retrospective effect as they postpone local elections and referendums that were scheduled to take place after 15 March 2020. This power has been conferred expressly in the enabling provision in primary legislation.<sup>2</sup> They also provide that if such local elections and referendums have taken place between 16 March 2020 and the coming into force of these Regulations, then these Regulations do not apply to those local elections and referendums. The 2020 Act and these Regulations together relieve returning officers and others of any liability for not having taken actions in relation to polls postponed.

*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)*

- 3.4 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England and Wales in respect of regulations 1 to 4, 10 and 15 and England only in respect of regulations 5 to 9 and 11 to 14.

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

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

#### **6. Legislative Context**

- 6.1 Section 61 of the 2020 Act provides that regulations can be made to postpone polls for relevant elections and referendums that have been scheduled or that would otherwise be required.
- 6.2 Relevant elections include those for:
- Councillors for any local government area in England to fill a casual vacancy – such elections are required by section 89 of the Local Government Act 1972. In relation to parish councils a casual vacancy shall be filled in accordance with rules made under section 36 of the Representation of the People Act 1983. These are the Local Elections (Parishes and Communities) (England and Wales) Rules 2006 (S.I. 2006/3305). These provide that an election must be called to fill a casual vacancy if conditions are met, and if those conditions are not met then the vacancy must be filled by co-opting a person to fill the vacancy;

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<sup>1</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-03-19/HCWS174/>

<sup>2</sup> Section 61(2)(a) of the Coronavirus Act 2020 (c. 7)

- Vacancies at the GLA – such elections are required in respect of a constituency member of the Greater London Assembly and for the office of the Mayor of London by sections 10 and 16 of the Greater London Authority Act 1999;
  - Casual vacancies in the office of elected mayors – such elections are required for the office of a local authority elected mayor by The Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2012 (S.I. 2012/336), and for the office of a mayor for the area of a combined authority by The Combined Authorities (Mayors) (Filling of Vacancies) Order 2017 (S.I. 2017/933); and
  - Vacancies in the office of a PCC for a police area – such elections are required by section 51 of the Police Reform and Social Responsibility Act 2011.
- 6.3 Each relevant election must take place within 35 days of the vacancy being declared, unless the vacancy occurs six months before an ordinary election.
- 6.4 Relevant referendums include:
- Local polls under section 116 of the Local Government Act 2003, whereby a council is able to conduct a poll to ascertain local views;
  - Those relating to changing the governance arrangements of a local authority under section 9MB or by virtue of section 9MC of the Local Government Act 2000, either as a result of a council decision or a petition. If a valid petition is received the Local Authorities (Referendums) (Petitions) (England) Regulations 2011 (S.I. 2011/2914) requires a council to hold a referendum within 4 months, unless conditions are met; and
  - Neighbourhood Planning referendums under or by virtue of Schedule 4B to the Town and Country Planning Act 1990 (“the 1990 Act”). The Neighbourhood Planning (Referendums) Regulations 2012 (S.I. 2012/2031), as amended by the Neighbourhood Planning (Referendums) (Amendment) Regulations 2013 (S.I. 2013/798), the Neighbourhood Planning (Referendums) (Amendment) Regulations 2014 (S.I. 2014/333) and the Neighbourhood Planning (Referendums) (Amendment) Regulations 2016 (S.I. 2016/934) make provision for the conduct and timing of neighbourhood planning referendums.
- 6.5 Section 63 of the 2020 Act provides that consequential provision may be made about the term of office of incumbent office holders or those elected at a postponed election. Such provision is needed where terms of office are specified in orders made under section 17 of the Local Government Act 1992, sections 7, 10 and 53 of the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”), section 59 of the Local Democracy, Economic Development and Construction Act 2009, or by council resolution under section 32 of the 2007 Act.
- 6.6 Section 63 of the 2020 Act also provides that supplementary provision can be made about acts or omissions in connection with an election, referendum or recall petition prior to its postponement, including provision disapplying any enactment imposing criminal liability in respect of such acts or omissions. Such provision is needed to disapply section 63 (breach of official duty) of the Representation of the People Act 1983 (“the 1983 Act”) and article 19 of the Police and Crime Commissioner Elections Order 2012 (S.I. 2012/1917) to ensure that returning officers may not be subject to criminal liability for breach of duty in relation to elections that were due to be held in

the period after 24 April (section 59 of the 2020 Act removes liability for elections due to be held from 15 March to 24 April).

- 6.7 In addition, supplementary provision pursuant to section 63 of the 2020 Act is needed to provide clarity that section 39 (local elections void) of the 1983 Act does not apply in relation to the postponed elections, and that where a vacancy in the office of a PCC for a police area already existed prior to the postponement of the ordinary day of election by the 2020 Act, that vacancy is to remain unfilled until the postponed election date on 6 May 2021.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The Covid-19 pandemic is a severe public health emergency. On 13 March 2020 the Prime Minister announced that the scheduled elections on 7 May would be postponed by 12 months to 6 May 2021. This decision to postpone was taken following advice from the Government's medical experts in relation to the response to the Covid-19 virus. Additional risks include to polling station safety, the possible demands on local authority electoral staff to support other key services, and the impracticality or potential impossibility of campaigning activity.
- 7.2 On 19 March 2020, Chloe Smith, the Minister of State for the Cabinet Office, announced by Written Ministerial Statement that, as well as bringing forward measures within the Coronavirus Bill to postpone the scheduled elections, provisions would be made to enable the postponement of other electoral events over the course of the year, such as by-elections.
- 7.3 These Regulations postpone electoral events such as local by-elections and governance and neighbourhood planning referendums that had already been scheduled and provide that any local electoral events that would otherwise be required to be held before and on 5 May 2021 are postponed until 6 May 2021. They also make some supplementary provisions to deal with immediate issues, such as where there are current vacancies for PCCs that would have been filled through elections on 7 May 2020 if these had not been postponed. Further provision will be required to deal with other matters (for example in relation to postal votes received for elections that have been postponed and candidate nominations) and the Government is committed to working closely with the sector in developing the further necessary regulations.
- 7.4 Part 2 of the Regulations provides that local by-elections that had been scheduled to take place to fill casual vacancies in principal councils and parish councils after 15 March 2020 are postponed until 6 May 2021. If such a by-election took place before the coming into force of these Regulations the result of that election will remain valid. Local by-elections that would otherwise be necessary to fill casual vacancies in principal councils, parish councils, the GLA, offices of local authority elected mayors, combined authority mayors and PCCs are also postponed until 6 May 2021. Supplementary provision is also made to provide clarity that where a vacancy in the office of a PCC for a police area already existed prior to the postponement of the ordinary day of election by the 2020 Act, that vacancy is to remain unfilled until the postponed election date on 6 May 2021. In such cases the role of the PCC is filled by an acting Commissioner appointed by the Police and Crime Panel for the area.
- 7.5 Part 3 of the Regulations postpones local polls and referendums. Councils are able to hold local polls to ascertain views on local matters. Such polls are discretionary, and

the Regulations provide if a council adopts a resolution for a local poll to be held within the period beginning with 16 March 2020 and ending with 5 May 2021 then it must take place on 6 May 2021.

- 7.6 Councils can decide to hold a referendum to determine whether they should change their governance arrangements, or they can be petitioned to hold such a referendum. The Regulations provide that where a governance referendum has been, or would be, scheduled within the period beginning with 16 March 2020 and ending with 5 May 2021, the referendum must take place on 6 May 2021 instead. The Regulations also provide that the period beginning with 16 March 2020 and ending with 5 May 2021 is disregarded for the purposes of calculating the period of 12 months within which signatures must be collected for a valid governance petition and that valid petitions may not be presented to a council during this period.
- 7.7 Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area. Before a neighbourhood development plan or neighbourhood development order (including a community right to build order) can come into force as part of the development plan for the area, it must undergo an independent examination and be voted on by the local community in a referendum. Where the neighbourhood area has been designated as a business area there must be an additional referendum for the businesses. A relevant council (defined at paragraph 14(3) of Schedule 4B to the 1990 Act) must make arrangements for the referendum or referendums to take place in so much of their area as falls within the referendum area. The existing legislative framework gives relevant councils some discretion on when referendums are scheduled, provided they are held within certain time periods.
- 7.8 The Regulations provide that where a neighbourhood planning referendum has been, or would be, scheduled within the period beginning with 16 March 2020 and ending with 5 May 2021, the referendum should take place on 6 May 2021 instead. If such a referendum took place between 16 March and the coming in to force of these Regulations the result of that referendum will remain valid.
- 7.9 Part 4 of the Regulations makes supplementary provision. The 2020 Act has extended by a year the term of office of councillors/mayors due to retire in 2020. It then reduces by a year the term of office for all those councillors/mayors to be elected in elections that were to be held on 7 May 2020 and are now postponed to 6 May 2021. The Local Government Boundary Commission for England (LGBCE) regularly makes orders following electoral reviews to implement those reviews and make electoral changes – for example, to ward boundaries and the number of councillors. The Government has recently made two structural change orders to reorganise local government in Buckinghamshire and Northamptonshire, which also make electoral changes in these areas. There are other orders that have made structural changes that have made changes to electoral cycles, and councils also have powers, in certain circumstances, to resolve to change their election cycles or those of parish councils.
- 7.10 These Regulations provide that where terms of office have been set out in such orders or as a result of council resolution, then these terms still apply to those councillors to be elected in the postponed elections, to avoid disruption to the electoral cycle. The terms of office of those councillors due to retire in May 2020 (whose terms are not extended by the Act as those terms are not determined by the provisions to which section 60(2) applies) are also extended by a year to May 2021.

7.11 Finally, these Regulations disapply certain provisions that otherwise apply to local elections. These are, in particular, necessary to ensure that any actions or omissions of returning officers and others in relation to a poll that was due to be held outside the period covered by section 59 of the 2020 Act, but was not held, cannot result in criminal prosecution for breach of duty.

## **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.

## **9. Consolidation**

9.1 This instrument does not consolidate any legislation.

## **10. Consultation outcome**

10.1 These Regulations have been drafted following engagement with representatives from local government including the electoral community and the LGBCE.

## **11. Guidance**

11.1 The Government intends to update existing planning guidance on neighbourhood planning<sup>3</sup> to reflect the changes made to the neighbourhood planning referendums process under these Regulations. The Government does not propose to issue guidance on the remaining content of the Regulations. Ministers and officials from the Cabinet Office, Home Office and the Ministry of Housing, Communities and Local Government will continue to engage with local government over the implementation of these Regulations.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 The impact on the public sector is that local authorities will have more flexibility as to how they can respond and deploy their resources in response to the pandemic as they will not be supporting electoral events. The neighbouring planning measures in the Regulations will delay the coming into force of some neighbourhood plans.

12.3 An Impact Assessment has not been prepared for this instrument. The Regulations have effect for a temporary period (the period from 16 March 2020 to 5 May 2021) in order to minimise the risks to public health arising from Covid-19.

## **13. Regulating small business**

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

## **14. Monitoring & review**

14.1 The approach to monitoring of this legislation is to engage with local government to review what further regulations are needed. In addition, the Government will keep these Regulations under review to consider whether they should be amended or revoked, in particular if the circumstances of the pandemic allow for some or all of

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<sup>3</sup> <https://www.gov.uk/guidance/neighbourhood-planning--2>

these polls – perhaps local by-elections and neighbourhood planning referendums – to be held before 6 May 2021.

- 14.2 The Regulations do not include a statutory review clause and have effect for a temporary period.

**15. Contact**

- 15.1 Ruth Miller at the Ministry of Housing, Communities and Local Government Telephone: 030 3444 2547 or email: [ruth.miller@communities.gov.uk](mailto:ruth.miller@communities.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Paul Rowsell, Head of the Governance Reform and Democracy Unit at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Simon Clarke, Minister of State at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.