

**EXPLANATORY MEMORANDUM TO**  
**THE POSTPONED ELECTIONS AND REFERENDUMS (CORONAVIRUS) AND**  
**POLICY DEVELOPMENT GRANTS (AMENDMENT) REGULATIONS 2020**

**2020 No. 926**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument is made under the Coronavirus Act 2020 (CA 2020) and the Political Parties, Elections and Referendums Act 2000 (PPERA) to make provision relating to the postponement of the May 2020 elections and other polls due to the COVID-19 pandemic, and relating to the impact of COVID-19 on the annual canvass.
- 2.2 Existing electoral law does not provide for the postponement of elections as has occurred this year. We need to amend the legal framework for the polls that have been postponed following the COVID-19 pandemic so the law continues to operate as intended.
- 2.3 This instrument will provide certainty and ensure there is a sensible and workable outcome for Returning Officers (ROs), the Electoral Commission (EC) and candidates.

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

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

- 3.1 None.

*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)*

- 3.2 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 the United Kingdom for Parts 1 and 3, and England and Wales for Part 2.
- 4.2 The territorial application of this instrument is the United Kingdom for Parts 1 and 3, and England-only for all of Part 2, except for regulation 10 which applies to England and Wales.

**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 This SI is being made under the CA 2020 and section 12 of PPERA to make provision relating to the COVID-19 pandemic. In particular, it makes provision as a result of the postponement of the May 2020 elections by section 60 of the CA 2020. These elections were for the Greater London Authority (GLA), the London Mayor, other elected mayors, police and crime commissioners (PCCs) and local council elections. Certain local government by-elections and local referendums which should otherwise have taken place between 16th March and 6th April 2020 were postponed by regulations made under section 61 of that Act (see the Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020 (S.I. 2020/395)).
- 6.2 The postponement of elections as a result of COVID-19 has created uncertainties and gaps in electoral law. Existing electoral law does not provide for scenarios where elections are postponed in the way they have been this year and the Government must therefore amend the legal framework for the affected polls to provide for the consequences of this. The power in section 63 of the CA 2020 was taken for this purpose. This SI is essential to ensure electoral law operates in a manner which is sensible and workable for ROs, the EC and candidates.
- 6.3 The amendments that relate to the Policy Development Grants (see 7.1.8 below) are being made using the power in section 12 of PPERA. The Government requires a recommendation from the EC in order to utilise this power. This was received by the Minister of State for the Constitution and Devolution on 16th July 2020.

## 7. Policy background

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

- 7.1 Specifically, this SI makes provision in four areas:
- 7.1.1 **Postal ballots** - This instrument makes provision about postal ballots issued to electors for certain local government by-elections (for vacancies in parish or local council seats) and neighbourhood planning and business referendums; the polls for which were postponed by regulations made under the CA 2020. These are the only polls where postal ballots could have been issued because of the timing of the postponement. These postal ballot papers will have been sent out and some may have been completed and returned.
- 7.1.2 The instrument provides that a postal ballot paper which was returned by a postal voter has no effect for the purpose of the postponed poll for the local by-election or referendum when it eventually takes place. This means the voter will need to cast a new vote at the postponed poll. The instrument then makes provision about what a RO (or Counting Officer (CO) for a referendum) has to do with returned postal votes and other documentation that may have been created before the poll was postponed.
- 7.1.3 The instrument makes provision which follows closely the existing rules when a poll is not held due to the death of a candidate. The officer is not required to open or otherwise process any returned postal vote that hasn't already been dealt with in accordance with the relevant statutory rules. Instead, the instrument requires the RO or CO to seal and forward any returned postal votes and other documentation, such as the marked copies of the postal voters list and the proxy postal voters list, to the registration officer, who will retain the documents for a year before destroying them.

The instrument also makes provision allowing a court (by order) to allow the inspection of such documents in respect of a prosecution.

- 7.1.4 **Candidates** - some of the elections that were due to take place in 2020 (as set out in section 6.1) were postponed after the point that individuals whose intention to stand as candidates was declared became candidates under electoral law. This applied to the GLA and London Mayoral elections and certain local government by-elections. The application of a number of rules relating to the candidacy of these individuals is unclear due to the unusual circumstances of postponed polls. This instrument ensures the rules are clear and appropriate for those circumstances.
- 7.1.5 The instrument ensures that candidates do not remain as candidates until May 2021 when the postponed polls are scheduled to be held; though it does not of course prevent them standing again for the rescheduled election in the usual way. The instrument ensures that they are no longer candidates and are treated as though they had never been candidates for the postponed polls. This ensures that there are no ongoing obligations for candidates at the London Mayoral, GLA and relevant by-elections and that the candidacy process starts again as usual in 2021. Otherwise, they would be subject to spending and donations controls for a much longer period of time than usual, as well as a spending limit that is intended for 6 weeks only.
- 7.1.6 The SI also deals with the rules on donations to candidates. Normally these would have to be dealt with in candidate returns, but the provision discussed above removes the requirement for returns. As a result, any donations received will instead be covered by the rules for donations to ‘regulated donees’ under Schedule 7 to PPERA, meaning they may need to be reported to the EC (which will be the case where the recipient of the donation is already a holder of elected office).
- 7.1.7 When those donations are reported to the EC, the recipients will likely have missed their deadlines under the regulated donee regime due to this requirement becoming necessary retrospectively. This instrument extends the deadlines for reporting these donations to ensure no one commits an offence as a result of the elections postponement.
- 7.1.8 **Returning Officer (RO) expenses** - Returning Officers will have incurred various expenses in preparation for the May 2020 PCC elections. The usual legislation dealing with reimbursement for such expenses does not apply since the polls did not take place. This instrument makes similar provision to ensure that the Cabinet Office can reimburse relevant costs necessarily incurred by Returning Officers for the efficient and effective running of the polls up to the point when the elections were postponed.
- 7.1.9 **Policy Development Grants (PDGs)** - PDGs are a grant scheme available to registered political parties who have two or more MPs in the House of Commons. Two changes are being made to the Scheme for allocating PDGs.
- 7.1.10 The PDG formula uses electoral register data to calculate each party’s allocations. Usually the annual canvass takes place in the latter half of the year and a new electoral register must be published by 1st December, except where there has been an election between 1st July and 1st December, in which case the register must be published by 1st February in the following year. For 2020, due to COVID-19, electoral registration officers are being permitted to carry out the canvass later than usual, and the intention is that in all cases the registration officers will be required to publish the new register on or before 1st February 2021. At the time of writing, that

change is being made by a statutory instrument currently before Parliament in draft for approval (the Representation of the People (Electoral Registers Publication Date) Regulations 2020). However, the amendments being made to the PDG legislation are not dependent on that other SI.

- 7.1.11 The delay of the annual canvass as a result of COVID-19 means the final allocations of the PDG, which are based on the registers published before 1st February, would be based on a mix of new and old electoral data rather than the most recent registers only. This can also happen when an election has taken place between 1st July and 1st December. This instrument ensures that the PDG formula always captures the most up to date electoral registers by changing the publication date captured to “on or before 2nd February”.
- 7.1.12 Second, three weeks prior to each PDG grant year, the EC must publish the proportion of people registered to vote in England, Scotland, Wales and Northern Ireland. These figures are used in the PDG allocation formula. The SI will delay this date by three weeks to allow the EC more time to collate data and reduce the risk of them missing their legal obligation to publish data by the date set out in law.
- 7.1.13 These amendments being made by this instrument to the PDG rules will be permanent changes as they reduce risks faced by the EC in administering the grant in every subsequent year.

## **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 Part 2 of the instrument makes free-standing provision and does not amend existing legislation. Part 3 makes minor changes to the legislation about PDGs and consolidation of that legislation is not considered necessary at present, though that will be kept under review.

## **10. Consultation outcome**

- 10.1 The instrument has a narrow focus and a public consultation was not necessary. However, Government officials have consulted with the EC to ensure the instrument comprehensively addresses problems raised by the postponed elections for candidates and the impact of COVID-19 on the annual canvass. The Government has notified representatives of the Parliamentary Parties Panel of this instrument and has written to the Chair of the Public Administration and Constitutional Affairs Committee.
- 10.2 The EC also issued recommendations to the Government for changes to the PDGs as this is necessary for the Government to utilise the SI power under section 12 of PPERA.

## **11. Guidance**

- 11.1 The EC is able to provide guidance under section 10 of PPERA to ROs, parties, and others.

## **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 there is no impact on businesses.

**13. Regulating small business**

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

**14. Monitoring & review**

- 14.1 Section 12 of PPERA requires the EC to keep the terms of the PDG under review and to make recommendations to the Secretary of State or Minister for the Cabinet Office for any variations to the scheme which they consider appropriate.
- 14.2 For the remaining parts of the SI, the EC has a duty under section 6 of PPERA to keep under review general matters that relate to elections and are able to submit a report to the Secretary of State. The Government will consider any recommendations made.
- 14.3 The regulation does not include a statutory review clause.

**15. Contact**

- 15.1 Christopher Neate at the Cabinet Office, Telephone: 0207 271 8922 or email: [christopher.neate@cabinetoffice.gov.uk](mailto:christopher.neate@cabinetoffice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Becca Crosier, Deputy Director for Elections Division, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Chloe Smith, Minister of State for the Constitution and Devolution, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.