

EXPLANATORY MEMORANDUM TO

THE LOCAL GOVERNMENT AND POLICE AND CRIME COMMISSIONER (CORONAVIRUS) (POSTPONEMENT OF ELECTIONS AND REFERENDUMS) (ENGLAND AND WALES) (AMENDMENT) (ENGLAND) REGULATIONS 2021

2021 No. 52

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.

2. Purpose of the instrument

- 2.1 To enable a governance petition submitted to a council between 16 March 2020 and 8 February 2021 to be treated as having been presented on 9 February. This could, if the petition is valid, enable a referendum to be held within six months of 9 February 2021, which would allow a referendum to be held on 6 May 2021, alongside any local elections taking place on that date. The instrument also enables governance petitions to be presented from 9 February 2021; any activity on compiling petitions should be in accordance with any guidance the Government issues about what activity in a public place might safely be undertaken in the context of the Coronavirus pandemic. It is expected that in practice the principal effect of this statutory instrument will be to allow the London Borough of Croydon to process a petition that has already been gathered and presented to the council, to facilitate the governance referendum taking place at the same time as scheduled elections in the local authority area.

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 England and Wales.
4.2 The territorial application of this instrument is England.

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 Part 1A of the Local Government Act 2000 ('the 2000 Act') provides that every principal local authority in England must operate one of three permitted types of governance arrangements: executive arrangements, a committee system or prescribed arrangements (section 9B of the 2000 Act). Section 9C of the 2000 Act provides that where a local authority operates executive arrangements these must consist of either a mayor and cabinet executive (where the mayor is directly elected by the local government electors in the area) or a leader and cabinet executive (where the leader is elected from among the councillors). Sections 9K to 9OA of the 2000 Act provide powers for changes to be made to the governance arrangements of local authorities, or for a local authority to change from one form of executive arrangement to the other. Section 9M provides for a local authority in certain circumstances to hold a referendum on changing its governance or executive arrangements and Section 9MC provides for regulations to make provision for local residents to petition their local authority to hold such a referendum. The Local Authorities (Referendums) (Petitions) (England) Regulations 2011 (S.I. 2011/2914: "the 2011 Regulations") set out the criteria for a valid governance petition, and the way in which local authorities are to deal with such petitions and any action which the authority must take.
- 6.2 Postponement of local authority elections and by-elections, and local polls in England, until 6 May 2021, was achieved through provisions in the Coronavirus Act 2020 ('the 2020 Act') and subsequent secondary legislation made under the 2020 Act. Section 60 of the 2020 Act provided for the postponement to 6 May 2021 of ordinary elections of councillors of principal and parish councils, the elections of the Mayor of London and elections of local authority elected mayors, combined authority mayors and police and crime commissioners which were due to be held on 7 May 2020. Section 61 of the 2020 Act provided a power to make regulations to postpone to 6 May 2021 by-elections for the above offices and local referendums which would otherwise be held before that date.
- 6.3 The Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020 (S.I. 2020/395) ('the 2020 Regulations') postpone all such by-elections and local referendums to 6 May 2021. Regulation 12(3)(a) of the 2020 Regulations modifies the 2011 Regulations to provide that governance petitions may not be validly presented to a council during the period beginning with 16 March 2020 and ending with 5 May 2021.
- 6.4 These amendments to the 2020 Regulations amend regulation 12 to remove the restriction on presenting petitions from the coming into force of these amendment Regulations on 9 February 2021. They also provide that a petition presented to a local authority on any day during the period beginning with 16 March 2020 and ending with 8 February 2021 is to be treated as having been presented on 9 February 2021.

7. Policy background

What is being done and why?

- 7.1 The residents of a local authority may petition the authority to hold a referendum on changing the authority's governance or executive arrangements. If the petition meets the relevant validity criteria a referendum must be held and, if successful, the council must implement the governance change proposed in the referendum.

- 7.2 In response to the public health emergency presented by the Covid-19 pandemic, the 2020 Act postponed all elections scheduled to take place on 7 May 2020 until 6 May 2021. The 2020 Regulations postponed other electoral events such as local by-elections and governance and neighbourhood planning referendums until the same date. They also provided that governance petitions may not be validly presented to a council during the period beginning with 16 March 2020 and ending with 5 May 2021.
- 7.3 Notwithstanding the current prohibition, a small number of governance petitions have been submitted. In Croydon a petition calling for a referendum introducing a mayor and cabinet system has been submitted and the petitioners have requested that the referendum be held on 6 May 2021. Under the current restrictions such petitions need to be formally resubmitted after 5 May 2021 and thereafter validated. A referendum could not be held, on 6 May 2021 alongside the London mayoral election and would have to be held on a separate date later in the year.
- 7.4 These Regulations enable the Croydon petition, and other such petitions that have been submitted during this period, to be treated as lawfully submitted and validated from 9 February. It would be open to the council to hold the referendum on 6 May 2021, or on any other date within six months of 9 February 2021.
- 7.5 These regulations also provide that, for the purposes of establishing the validity of the petition, the version of the electoral register to be used is the one which had effect on the day on which the petition was delivered to the authority. The date of the electoral register used may have a material impact on the outcome of the validation process since a number of signatories to the petition may have moved since signing and no longer be on the register, which could reduce the number of signatories below the required number and render the petition invalid.
- 7.6 The Government's policy, at the time the 2020 Regulations were made, was that if the Covid-19 situation improved Government would consider relaxing as appropriate certain of the restrictions set out in the 2020 Regulations. This regulation change represents a minor relaxation of that policy even though the pandemic is ongoing, to enable a governance referendum to be held, following the submission of a petition, alongside the local elections on 6 May 2021. This avoids the need for a standalone referendum sometime later in the year which would risk very low turnout and substantial additional financial costs and administrative burden for councils affected.

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 legislation.

10. Consultation outcome

- 10.1 There has been no public consultation on this instrument. The Regulations have a very limited impact, affecting only governance petitions presented from 16 March 2020 to 8 February 2021, and any petitions to be submitted in the period 9 February 2021 to 5 May 2021.

11. Guidance

- 11.1 The amendment to the 2020 Regulations is straightforward; no guidance has been produced to accompany this instrument.

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 it makes a temporary technical change and the Regulations have a very limited impact, affecting only governance petitions submitted, or to be submitted, in the period from 16 March 2020 to 5 May 2021.

13. Regulating small business

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

14. Monitoring & review

- 14.1 Ongoing monitoring will not be necessary.
- 14.2 The Regulations do not include a statutory review clause and have effect for a temporary period.

15. Contact

- 15.1 Kathy Bee at the MHCLG Telephone: 03034444579 or email: Kathy.Bee@communities.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Paul Rowsell, Deputy Director and Head of the Governance, Reform and Democracy Unit, at MHCLG can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Luke Hall MP at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.