EXPLANATORY MEMORANDUM TO

THE BOROUGH OF THURROCK (SCHEME OF ELECTIONS) ORDER 2024

2024 No. 543

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Simon Hoare, Parliamentary Under Secretary of State for Local Government at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

2.2 Max Soule, Deputy Director for Local Government Stewardship at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Gemma Penn at the Department for Levelling Up, Housing and Communities Telephone: 030 3444 3677 or email: GRADSubmissions@levellingup.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Order provides a new scheme for the holding of the ordinary elections of councillors of all wards in the borough of Thurrock. The new scheme is for all councillors to be elected and retire together every four years starting in 2025.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, albeit that it only applies in relation to the borough of Thurrock.

5. Policy Context

What is being done and why?

5.1 This Order provides for all Thurrock Council councillors to be elected and retire together every four years, starting in 2025. It forms part of the Government's intervention in Thurrock Council ("the Council"). The Secretary of State considers that the intervention package, including this Order, will address the failings identified by the independent inspection of the Council.

5.2 Following concerns about the Council's financial management and commercial strategy, on 2 September 2022, the Government exercised powers in the Local Government Act 1999 to appoint Inspectors to conduct a Best Value Inspection. The purpose of the inspection was to determine the extent to which the Council were not compliant with their duty of Best Value, which requires authorities to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. Concurrent with the Inspection, the Secretary of State also used his powers from the Local Government Act 1999 to issue Directions to the Council and appoint Commissioners to oversee the recovery of the Council. In March 2023 the scope of the intervention was expanded to strengthen the Council's governance functions and address its capacity challenges.

5.3 The Best Value Inspection report was submitted to the Secretary of State on 19 May 2023 and published on 15 June 2023.[1] The report included the following recommendation:

"Recommendation 6: The Council should move to all-out elections and if the Council does not itself make such arrangements by 31 July 2023 the Secretary of State should consider making an order under Section 86 of the Local Government Act 2000, to secure this. This will help provide the opportunity for greater consistency and longevity in political direction, and an opportunity to enhance the Commissioners' work to embed new ways of working and a fit for purpose operating environment." (p.7-8)

5.4 The Government response to the Best Value Inspection was set out in a Written Ministerial Statement[2] and said:

"Given the pressing need to bring stability to the Council, the Secretary of State has concluded that he wishes to seek representations on using his powers under Section 86 of the 2000 Act, to bring about a move to whole council elections from May 2025. The May 2024 elections of one third of members will go ahead as planned, to ensure residents have the opportunity to have their say. It is important that Thurrock Council can express its view on this proposal before a final decision is made. I have written to the Leader and Commissioners of Thurrock Council today to notify them of the Secretary of State's proposals, and representations should be received, from the Authority or any other interested party by 29 June." (Lee Rowley MP, 15 June 2023)

5.5 Representations were received from the Council, Commissioners, the Basildon and Thurrock Conservative Federation, and a member of the public (see section 7). Having considered these representations, the Minister decided to implement his proposal without modification and wrote to the Council on 5 October 2023 informing them of that decision.

5.6 The Order will come into force on 1 July 2024. The 2024 elections take place under the scheme for election by thirds, including any re-run election in the event that a poll scheduled for 2 May 2024 is countermanded or abandoned.

[1] Thurrock Council: Best Value Inspection report: https://www.gov.uk/government/publications/thurrock-council-best-value-inspection-report

[2] Written Ministerial Statement (HCWS852) 15 June 2023: https://questions-statements.parliament.uk/written-statements/detail/2023-06-15/hcws852

What was the previous policy, how is this different?

5.7 Prior to the making of this Order, the scheme for the ordinary election of councillors to Thurrock Council was election by thirds. This is one of three permitted schemes of elections for principal councils in England: elections are held in a given year and every year after it other than every third year after it. One third of the councillors are elected in each year in which elections are held. Councils electing by thirds may resolve to move to whole council elections: another permitted scheme under which all councillors are elected at the same time every four years.[3] Councils formerly electing by thirds may resolve to revert to that scheme.

5.8 The Secretary of State may also legislate to change a council's scheme of elections; such a change cannot be reversed by resolution of the council and therefore prevails unless any further legislation is made. The practical effect of the Order will be that elections will be held for all councillors on the ordinary day of local election[4] in 2025 and every subsequent fourth year. All councillors serving the Council before that election, regardless of when elected, will retire on the fourth day after the day of the election and the newly elected councillors come into office on that same day (see section 7(9)(b) of the Local Government Act 1972).

6. Legislative and Legal Context

How has the law changed?

6.1 The provisions of the Local Government Act 2000 ("the 2000 Act") setting out the three permitted schemes of election for principal councils in England (section 85) remain in place for all other councils which have not been subject to legislation like this Order, specifying their scheme of elections. Thurrock joins a small list of councils which have been moved to whole council elections by an order under section 86 of the 2000 Act as part of a wider Government intervention in the council. These councils include Doncaster, Rotherham and Liverpool. Provision in secondary legislation[5] for Thurrock specifying election by thirds is revoked.

Why was this approach taken to change the law?

6.2 The option to legislate locks in the change to the Council's scheme of elections, in line with the Inspectors' recommendation. Without legislation, the Secretary of State would have been obliged to rely on the Council undertaking a consultation process and resolving to make the change itself. This process could have been distracting and would not have secured the desired early certainty needed to provide stability to the Council. The legislative route also provides the necessary clarity to the Local Government Boundary Commission for England (LGBCE) who have brought forward their electoral review of the borough so that the new warding arrangements will apply to the first whole council elections in 2025: the planning assumptions for the review are informed by the move to whole council elections.

[3] Under the third permitted scheme half of the councillors are elected in every second year.
[4] "Ordinary day of local elections" means the first Thursday in May (see section 37 of the Representation of the People Act 1983) subject to the power of the Secretary of State by order to specify a different date in certain circumstances.
[5] Article 3(1) of the Borough of Thurrock (Electoral Changes) Order 1997 (S.I. 1997/775).

7. Consultation

Summary of consultation outcome and methodology

7.1 As set out in section 5.5, the Minister carefully considered the representations he received on the proposal of 15 June 2023 to move Thurrock Council to whole council elections every four years from 2025, and to retain the elections for a third of councillors scheduled for May 2024.

7.2 Four representations were received on the proposal, from Thurrock Council, the Commissioners, Basildon and Thurrock Conservative Federation and a member of the public. The Council supported the move to whole council elections and suggested that the LGBCE's planned electoral review be expedited to allow for whole council elections on the new warding arrangements as soon as possible. They set out three options for the 2024 elections: continuing with the current elections by thirds, postponing the 2024 elections for a year until the whole council elections in 2025 and a third option holding whole council elections in 2024, without formally supporting any one over the others. The Commissioners strongly supported the move to whole council elections in May 2025. It was their view that the 2024 elections by thirds should not take place if there are to be whole council elections in 2025. Basildon and Thurrock Conservative Federation supported the move to whole council elections becoming the permanent electoral model in Thurrock and did not propose any changes to the 2024 local elections. They favoured whole council elections in 2025 on new boundaries to "achieve reset". A member of the public supported whole council elections but believed that holding elections by thirds in 2024 would not provide value for money.

7.3 Having considered all the above representations, the Minister remains content that the new scheme of whole council elections from 2025 is the best way forward. The Minister also chose to retain the elections for a third of councillors scheduled for May 2024 to allow residents to have their say. The Minister confirmed his decision in a letter to Thurrock Council on 5 October 2023.[6]

8. Applicable Guidance

8.1 No guidance is necessary to accompany the Order; the Council concerned has been notified of its making.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because no impact on business is anticipated.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the legislation does not affect business, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

[6] https://www.gov.uk/government/publications/thurrock-council-letter-to-the-leader-of-thurrock-council-following-the-commissioners-second-report

9.4 The impact on the public sector is that the Council will hold elections for all councillors in one year out of every four instead of holding elections for one third of councillors in three years out of every four. This is aimed at bringing stability to the Council by enabling it to focus on longer term strategic change as part of the wider Government intervention which should return the Council to compliance with the Best Value duty. The initial cost of holding an election in 2025, which would otherwise be a "fallow" year (a year when no elections are held to a council electing by thirds), should be recouped by longer-term cost-savings although these are not possible to estimate given potential interaction with other polls.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 There is no plan to separately monitor or review this legislation as its purpose is limited to changing the Council's electoral cycle to one of several permitted schemes of elections. The Commissioners have been appointed to support the Council to make the necessary improvements for a period of three years. They will report on progress to the Secretary of State every six months and their reports will be published by the Secretary of State.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").