EXPLANATORY MEMORANDUM TO

THE COMBINED AUTHORITIES (MAYORS) FILLING OF VACANCIES ORDER 2017 (AMENDMENT) REGULATIONS 2024

2024 No. 132

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. Purpose of the instrument

2.1 These Regulations establish the rules by which vacancies are declared in the office of combined county authority mayor and the procedure for by-elections.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

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

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. European Convention on Human Rights

5.1 Jacob Young MP, Parliamentary Under Secretary of State for Levelling Up, has made the following statement regarding Human Rights:

"In my view the provisions of the Combined Authorities (Mayors) Filling of Vacancies Order 2017 (Amendment) Regulations 2024 are compatible with the Convention rights."

6. Legislative Context

6.1 The Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act") enables secondary legislation to establish combined authorities and their mayors. The rules for declaring vacancies and holding by-elections for combined authority mayors are set out in the Combined Authorities (Mayors) Filling of Vacancies Order 2017 (S.I. 2017/69; "the 2017 Order") made under paragraph 3 of Schedule 5B to the 2009 Act. The rules governing the election of combined authority mayors are set out in the Combined Authorities (Mayoral Elections) Order 2017 (S.I. 2017/67; "the Mayoral Elections Order").

6.2 The Levelling-up and Regeneration Act 2023 ("the 2023 Act") provides for the establishment of combined county authorities and their mayors. The 2023 Act replicates provision related to mayoral elections in the 2009 Act, including a power to make provision for the filling of vacancies at paragraph 3 of Schedule 2 of the 2023

Act. These regulations provide for the 2017 Order to apply to combined county authorities as they do to combined authorities. Separate regulations will provide for the Mayoral Elections Order to apply to combined county authority mayoral elections.

7. Policy background

What is being done and why?

7.1 Before the 2023 Act, the main vehicle for devolving powers and funding to local areas in England outside London was the combined authority. A combined authority is a model comprising all principal councils within its area and primarily designed for urban areas. The 2023 Act enables the establishment of a new model known as a combined county authority, comprising as constituent authorities upper tier local authorities only; this is considered more appropriate for non-metropolitan areas with two-tier local government. In all other respects the two models are the same including that they may have a directly elected mayor. This principle of parity also applies to the rules for the election of mayors and for by-elections to fill vacancies in the office of mayor.

7.2 On 30 August 2022 the government announced[1] a devolution deal with four councils in the East Midlands which could see the establishment of the first mayoral combined county authority in 2024.

7.3 These Regulations establish the rules by which vacancies are declared in the office of combined county authority mayor, the procedure for filling such vacancies through by-elections and the terms of office for those elected. These provisions are required in advance of the first planned election of a combined county authority mayor in May 2024 to ensure that any subsequent vacancies can be dealt with.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 The Order amends the Combined Authorities (Mayors) Filling of Vacancies Order 2017. As the amendments are limited to extending the application of the Order to combined county authorities and are self-contained, we do not consider that consolidation of the 2017 Order is necessary.

10. Consultation outcome

10.1 These regulations extend the application of the 2017 Order to combined county authorities. The 2017 Order itself replicates provisions from other elections, including local mayoral elections and Police and Crime Commissioners, carrying across best practice. There are no substantively new provisions within these regulations, and there is a policy of parity between combined authorities and combined county authorities, so it was not considered necessary or appropriate to undertake a formal consultation. However, a draft of the legislation was shared with the Electoral Commission and with officers in the East Midlands, who appreciated advance sight of the draft legislation but did not have any comments.

[1] https://www.gov.uk/government/publications/east-midlands-devolution-deal

11. Guidance

11.1 The Electoral Commission publishes comprehensive guidance for electoral administrators on all aspects of running elections (but not specifically on any local government by-elections)[2]. We do not consider any further guidance is necessary to accompany these Regulations. The Department for Levelling Up, Housing and Communities continues to work with colleagues in the East Midlands mayoral combined county authority area and will likewise do so with any other area which comes forward with a proposal for a mayoral combined county authority.

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 A full Impact Assessment has not been prepared for this instrument because no impact on business, charities or voluntary bodies is anticipated. There will be no change in relation to the public sector where a mayoral by-election is triggered for a combined county authority or combined authority. This is because there can only be one combined authority or combined county authority for a local government area and the same rules as to notice periods and term of office are to apply to both types of mayoral by-election.

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 government keeps all electoral legislation under review to ensure it continues to support electors' participation in elections and effective electoral administration.

15. Contact

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

15.2 Paul Rowsell, Head of the Governance, Reform and Democracy Unit and Deputy Director at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jacob Young MP at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

[2] Guidance and resources for Returning Officers administering local government elections taking place in England, including combined authority mayoral elections https://www.electoralcommission.org.uk/i-am-a/electoral-administrator/returning-officer/local-elections-england