EXPLANATORY MEMORANDUM TO

THE COMBINED AUTHORITIES (MAYORAL ELECTIONS) (AMENDMENT) ORDER 2022

2022 No. [XXXX]

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 The Elections Act 2022 changes the voting system for combined authority mayors from the supplementary vote system to the simple majority vote system. This Order amends provisions in the Combined Authorities (Mayoral Elections) Order 2017, setting out the rules and forms governing the conduct of such elections to bring them into line with the changes to the primary legislation.

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 Lee Rowley MP, Parliamentary Under Secretary of State, Department for Levelling Up, Housing and Communities, has made the following statement regarding Human Rights:

"In my view the provisions of the Combined Authorities (Mayoral Elections) (Amendment) Order are compatible with the Convention rights."

6. Legislative Context

6.1 Combined authority mayoralties are established via area-specific Orders made under provision added to the Local Democracy Economic Development and Construction Act 2009 ("the 2009 Act") by the Cities and Local Government Devolution Act 2016. The voting system to be used to elect combined authority mayors is set out in Schedule 5B to the 2009 Act. Originally under the 2009 Act combined authority mayoral elections were conducted using the simple majority vote system where there were two candidates and the supplementary vote system where there were three or more candidates.

6.2 Section 13 of the Elections Act 2022 ("the 2022 Act") amends the 2009 Act to change the voting system for combined authority mayors to the simple majority vote system regardless of the number of candidates. The 2022 Act also changes the voting system to be used in elections for local authority mayors, the Mayor of London and Police and Crime Commissioners (PCCs).

6.3 The Rules governing the conduct of combined authority mayoral elections are set out in the Combined Authorities (Mayoral Elections) Order 2017 (S.I. 2017/67; "the 2017 Order"). Schedule 1 contains the Rules for a stand-alone mayoral election and Schedule 3 contains the Rules for a mayoral election held in combination with another poll. Schedule 2 applies other electoral legislation, with modifications, to facilitate the conduct of combined authority mayoral elections.

6.4 This Order amends the 2017 Order in relation to elections for combined authority mayors which are contested by three or more candidates to ensure consistency with the changes made to the 2009 Act by the 2022 Act. Amendments are made to Schedules 1, 2 and 3 and principally involve removal of references to first and second preference votes and counts thereof, and of the distinction between elections contested by two candidates and by three or more candidates. Amendments are also made to the ballot paper and postal voting statements in Schedules 1 and 3. Similar changes to the secondary legislation setting out the rules for the conduct of elections for local authority mayors, the Mayor of London and PCCs will be brought forward in parallel with this Order.

7. Policy background

What is being done and why?

7.1 A combined authority is a body corporate established by Order under section 103 of the 2009 Act covering an area comprising the whole of two or more local government areas in England. Its members represent each local authority within its area and its constitution may specify non-constituent members, for example, the Local Enterprise Partnership and neighbouring local authorities. Combined authorities were initially able to take on a limited range of regeneration, economic development and transport functions. Since 2016 it has been possible for the Secretary of State to confer a broader range of statutory functions including wider local authority and other public authority functions exercised by ministers or other public bodies, such as the Mayor of London and PCCs. The Secretary of State may make an Order under section 107A of the 2009 Act providing for there to be a mayor for the area of a combined authority. There are currently nine such mayors.

7.2 Elections for combined authority mayors are conducted using the supplementary vote system where there are more than two candidates. Under this system voters have a first and second preference vote. If a candidate receives more than 50 per cent of the first preference votes they are elected. If no candidate reaches a majority at the first stage all but the two candidates with the most votes are eliminated and the second preference votes of the eliminated candidates are allocated to the remaining candidates. The candidate with the most (first preference plus second preference) votes is elected. Under the simple majority vote system, the candidate who wins the most votes is elected. Under both voting systems, if the top candidates are tied after the count is completed, the Combined Authority Returning Officer decides who is returned by lots.

7.3 The Government believes that the simple majority vote system is a more straightforward way of electing representatives than the supplementary vote system and that it is well-understood by voters. Simple majority voting, which is also known as "first past the post", is used to elect MPs and local councillors in England and also applies in PCC and other mayoral elections where there are only two candidates. Conservative Party Manifestos have included commitments supporting "first past the post" in 2015, 2017 and 2019. Moving to this system for combined authority mayors makes it easier for the public to express a clear preference: the person elected is the one directly receiving the most votes. This reduces complexity for both voters and electoral administrators.

7.4 In March 2021, the Home Secretary announced[1] the Government's intention to bring forward legislation to change the voting system for all combined authority mayors, the Mayor of London and PCCs to first past the post when Parliamentary time allowed as one element of Part One of the Home Office's Review into the role of PCCs. In September 2021 the Minister for the Constitution and Devolution announced[2] that the Government would include the proposed legislation in the Elections Bill and confirmed that the change of voting system would, for consistency, also apply to elections for local authority mayors.

7.5 The provisions making changes to the voting system are in section 13 of the 2022 Act. This Order amends the 2017 Order which sets out how elections for combined authority mayors are to be conducted to ensure the elections rules and forms (e.g. ballot paper) are consistent with the recently-amended primary legislation.

7.6 The changes to the voting system for combined authority mayors set out in the 2022 Act, and the changes to the rules for the conduct of those elections in this Order, will apply to any election or by-election taking place on or after the ordinary day of election in 2023, which will be 4 May. Currently the next scheduled elections for combined authority mayors are in 2024.

7.7 The Order also makes some minor amendments to various references to the combined authority returning officer to ensure consistency.

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 (Mayoral Elections) Order 2017. As the amendments are limited in scope and self-contained, we do not consider that consolidation of the 2017 Order is necessary.

10. Consultation outcome

10.1 A statutory consultation on a draft of the Order was undertaken with the Electoral Commission between 4 July – 1 August 2022 as required under paragraph 12(4) of Schedule 5B to the Local Democracy, Economic Development and Construction Act 2009. The Electoral Commission raised several minor queries about the Order which

[1] 16 March 2021 Written Ministerial Statement HCWS849: https://questions-statements.parliament.uk/written-statements/detail/2021-03-16/hcws849

[2] 15 September 2021 Written Ministerial Statement HCWS289: https://questions-statements.parliament.uk/written-statements/detail/2021-09-15/hcws289

we have addressed, including drafting points which are reflected in the final version of the Order.

10.2 It was not considered appropriate to consult publicly as the Order contains only essential technical changes to the processes and forms set out in secondary legislation which are necessary to ensure legislative consistency with changes to the voting system recently agreed by Parliament and set out in the amended 2009 Act.

10.3 As to the change to the voting system effected by the primary legislation, the Government explained during the passage of that legislation that it was committed in its manifesto to supporting the first past the post system, which reflected the will of the British people in the 2011 referendum. The Government therefore undertook no consultation in advance of that legislation.

11. Guidance

11.1 The Electoral Commission publishes comprehensive guidance for electoral administrators on all aspects of running elections and will update this guidance[3]. The Order being amended sets out the detailed process for the conduct of combined authority mayoral elections and provide model forms.

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 expected to be minimal, with a small-scale simplification for electoral administrators in the process for counting votes for combined authority mayors.

12.3 A full Impact Assessment has not been prepared for this instrument because of the minimal impact anticipated. An Impact Assessment of the change to the voting system for PCCs and mayors is published on the Parliament website[4]. It concludes that modest cost-savings are to be anticipated as venue hire and staff costs are reduced where a second count is no longer required. Cost data from 2016 PCC elections suggest around 5 per cent saving per vote counted which, when applied to projected PCC and mayoral elections over a 10 year period, yields a best estimated cost-saving of £7.3m in economic terms. Additional costs for staff and voter familiarisation are assumed to be negligible as the simple majority vote system should be familiar from other local elections and general elections. Non-monetised benefits identified are simplification within the voting system and potential reduction in spoiled ballots.

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.

---

[3] 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

[4] https://bills.parliament.uk/bills/3020/publications

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

15.3 Lee Rowley MP, Parliamentary Under Secretary of State, Department for Levelling Up, Housing and Communities, can confirm that this Explanatory Memorandum meets the required standard.