EXPLANATORY MEMORANDUM TO

THE COMBINED AUTHORITIES (MAYORAL ELECTIONS) ORDER 2017 (AMENDMENT) REGULATIONS 2024

2024 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 These Regulations amend the Combined Authorities (Mayoral Elections) Order 2017 so that the conduct rules and related provision for elections of combined authority mayors also apply to elections for combined county authority mayors, and that certain updates are made to those rules.

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 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 (Mayoral Elections) 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 governing the election of combined authority mayors are set out in the Combined Authorities (Mayoral Elections) Order 2017 (S.I. 2017/67) ("the 2017 Order") made under paragraph 12 of Schedule 5B to the 2009 Act. 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).

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 powers to make provision for the conduct and questioning of mayoral elections at paragraph 12 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 Combined Authorities (Mayors) Filling of Vacancies Order 2017 to apply to vacancies for combined county authority mayors.

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 as constituent authorities 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. A principle of parity has therefore been adopted across the two models to ensure that the same legislative framework applies. This principle of parity includes the rules for the conduct of mayoral elections.

7.2 On 30 August 2022 the government announced[1] a devolution deal with the four upper-tier councils in the East Midlands which could see the establishment of the first mayoral combined county authority in 2024. These Regulations are required in advance of the first planned mayoral election in May 2024 to establish the rules for the conduct of, and questioning of, combined county authority mayoral elections.

7.3 These Regulations amend the 2017 Order so that the provisions for the conduct and questioning of mayoral elections apply to combined county authorities as well as to combined authorities. Provision replicating that for the appointment of a CARO (combined authority retuning officer) by a combined authority is made for the appointment of a combined county authority returning officer ("CCARO") to oversee a combined county authority mayoral election (new article 6A).

7.4 The constitutional difference between the two models requires some small changes, including new provision for the appointment of returning officers set out in modifications to section 35 of the Representation of the People Act 1983 which clarify that in a two-tier area of a combined county authority the duty to appoint an officer to be the returning officer for the election sits with the district council (regulation 12(2)(c)(ii) which amends paragraph 1(5) of Schedule 2 to the 2017 Order).

7.5 There is also a new provision that enables the appointment of a CCARO before a combined county authority is established (new article 10) and, to retain the principle of parity, a second new provision which allows the same early appointment for a mayoral combined authority (new article 9). The desirability of these provisions was identified following discussion with officers from the East Midlands who were concerned that if the secondary legislation establishing their new combined county

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

authority were to be delayed, it could constrict the time available for the preparation of elections.

7.6 The Regulations apply various numerical and financial requirements in the 2017 Order to combined county authority mayoral elections including the nomination requirement (100 local government electors including at least 10 from each constituent council area) and candidate deposits (£5,000). The Secretary of State considers it expedient to uprate the figures for candidate expense limits for combined authority mayors in line with the change[2] in the value of money since they were set in 2017, so the formula becomes: £3,040 (previously £2,362) multiplied by the total number of constituent councils plus 8 pence (previously 5.9 pence) per registered elector. This formula and these figures are applied to combined county authority mayoral candidates following a recommendation from the Electoral Commission[3] that the spending limit formula and figures for the new combined county authority mayoral elections should be specified on the same basis as the limits for the existing combined authority mayoral elections. This maintains parity between the two models both in terms of the formula approach and the actual figures. The combined authority limit was based on the figures for local authority mayoral candidates set in the equivalent legislation for such elections[4]. To maintain this wider parity, the Government intends to bring forward a separate statutory instrument to uprate the local authority figures on the same basis.

7.7 The Regulations also replicate for combined county authority mayoral elections provision made about combined authority mayoral elections in two sets of regulations made under the Elections Act 2022. These relate to voter identification[5] (Part 3 of the Regulations) and to the transition to the new candidate eligibility requirements for EU citizens where this change occurs between the date of a countermanded or abandoned poll and its re-run[6] (Part 5 of the Regulations). It is intended to make the Representation of the People (Overseas Electors etc) (Amendment) Regulations 2023 in advance of the Regulations.

7.8 The Regulations in addition make some minor drafting corrections to the 2017 Order.

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 Regulations amend the Combined Authorities (Mayoral Elections) Order 2017. The amendments primarily are limited to extending the application of the 2017 Order to combined county authority mayoral elections. We do not therefore consider, at this stage, that consolidation of the 2017 Order is necessary.

[2] Using CPI figures published August 2023. The Secretary of State's power to do this is at paragraph 12(5) of schedule 5B to the 2009 Act.
[3] Required under paragraph 12(5) to Schedule 2 to the 2023 Act.
[4] The Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007 (S.I. 2007/1024)
[5] The Voter Identification Regulations 2022 (S.I. 2022/1382).
[6] The Representation of the People (Overseas Electors etc) (Amendment) Regulations 2023 (Not yet made, laid before Parliament on 23 October 2023).

10. Consultation outcome

10.1 A statutory consultation on a draft of the Regulations was undertaken with the Electoral Commission between 15 August – 25 September 2023 as required under paragraph 12(4) of Schedule 2 to the 2023 Act and, in relation to new combined authority provision for the early appointment of a combined authority returning officer and the change to the expense limits for combined authority mayoral candidates, paragraph 12(4) of Schedule 5B to the 2009 Act. The Electoral Commission's response did not identify any material changes required to the drafting of the legislation but commented on the need for legislation to be laid in a timely way to ensure that electoral administrators had early clarity as to the rules for the election in May 2024 particularly as it coincides with a number of changes to the electoral system flowing from the Elections Act 2022. The Department shares this view which is reflected in the 2023 Act provision for early commencement of the relevant powers. Regarding the setting of the candidate spending limits, the Commission noted the Government's intention to use its powers to uprate candidate spending limits in line with inflation. While the Commission did not consider it had received representations from candidates to suggest that the pre-existing spending limits constrain campaigning ability, it recommended that if combined authority expenditure limits were to be uprated, the limits for new combined county authorities should be aligned.

10.2 We have also engaged with officers from the East Midlands area throughout the development of these Regulations and would like to put on record our appreciation of their constructive input to the development of the draft legislation.

10.3 The Government undertook extensive consultation ahead of making the 2017 Order as set out at section 8 of the explanatory memorandum to the 2017 Order[7]. It was not considered appropriate to consult more widely on the new Regulations given the principle of parity and because, therefore, the Regulations primarily extend the application of existing provisions for combined authority mayoral elections to combined county authority mayoral elections.

11. Guidance

11.1 The Electoral Commission publishes comprehensive guidance for electoral administrators and candidates on all aspects of running elections and will update this guidance[8]. 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. There will be no change in relation to the public sector where a mayoral election is held. This is because there can only be one combined authority or combined county authority for a local government area and the same conduct rules are to apply to both types of mayoral election. The

[7] https://www.legislation.gov.uk/uksi/2017/67/pdfs/uksiem_20170067_en.pdf

[8] 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

costs of mayoral elections are to be met by the combined authorities or combined county authorities for whom the mayor is being elected.

12.3 A full Impact Assessment has not been prepared for this instrument because no impact on business, charities or voluntary bodies is anticipated.

13. Regulating small business

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

14. Monitoring & review

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

16. Contact

16.1 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.

16.2 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.

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