Draft Order laid before Parliament under section 117(2) of the Local Democracy, Economic Development and Construction Act 2009, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2017 No.

LOCAL GOVERNMENT, ENGLAND

The Combined Authorities (Mayors) (Filling of Vacancies) Order 2017

Made - - - -

Coming into force in accordance with article 1

The Secretary of State makes the following Order in exercise of the powers conferred by sections 114(1) and 117(1A) of, and paragraph 3 of Schedule 5B to, the Local Democracy, Economic Development and Construction Act 2009(**a**).

A draft of this instrument has been laid before, and approved by a resolution of each House of Parliament pursuant to section 117(2) of the Local Democracy, Economic Development and Construction Act 2009(**b**).

Citation and commencement

1. This Order may be cited as the Combined Authorities (Mayors) (Filling of Vacancies) Order 2017 and shall come into force on the day after the day on which it is made.

Interpretation

2. In this Order—

"the 2009 Act" means the Local Democracy, Economic Development and Construction Act 2009;

"combined authority" means a combined authority established under section 103(1) of the 2009 Act(**c**);

"combined authority returning officer" has the same meaning as in article 2 of the Combined Authorities (Mayoral Elections) Order 2017(**d**);

"election petition" means a petition presented in pursuance of Part 3 of the Representation of the People Act 1983(**e**);

(**a**) 2009 c. 20. Section 114 was amended by section 23 of, and paragraph 26 of Schedule 5 to, the Cities and Local Government Devolution Act 2016 (c. 1). Schedule 5B was inserted by section 2 of, and Schedule 1 to, the Cities and Local Government Devolution Act 2016. Section 117 was amended by paragraph 24 of Schedule 5 to the Cities and Local Government Devolution Act 2016.
(**b**) Section 117(2) was substituted by section 13 of the Localism Act 2011 (c. 20).
(**c**) Section 103 was amended by sections 12 and 14 of the Cities and Local Government Devolution Act 2016.
(**d**) S.I. 2017/ XXXX.
(**e**) 1983 c. 2.

"local government elector" means a person registered as a local government elector in the register of electors in accordance with section 2 of the Representation of the People Act 1983(**a**); and

"proper officer" has the meaning given by section 270(3) of the Local Government Act 1972(**b**).

Filling of vacancies in the office of elected mayor

3.—(1) This Order applies where a vacancy in the office of elected mayor of a combined authority occurs before expiry of the mayor's term of office due to—

(a) the death or resignation of the mayor;

(b) the mayor's election being declared void; or

(c) the office being declared vacant.

(2) Where the vacancy occurs at least six months before the expiry of the mayor's term of office, it shall be filled at a by-election to be held on the day determined in accordance with article 6.

(3) Otherwise, it shall be filled at the election to be held on the day determined by reference to paragraph 2 of Schedule 5B to the 2009 Act.

Date on which vacancy occurs

4. For the purposes of this Order, a vacancy is to be taken to have occurred on—

(a) in the case of resignation, the date of the receipt of the notice of resignation by the person to whom the notice is required to be delivered(**c**);

(b) in the case of death, the date of death;

(c) in the case of the mayor's election being declared void on the determination of an election petition, the date of—

(i) the expiry of the ordinary period allowed for making an application with respect to the report or certificate of the election court, or

(ii) if an application is made, the date on which it is finally disposed of or abandoned or fails because it is not prosecuted;

(d) the date on which the mayor's office is declared to have been vacated by the combined authority(**d**), in any of the following circumstances—

(i) the mayor ceasing to be qualified to be a member of the combined authority;

(ii) the mayor ceasing to be a member of the combined authority by reason of failure to attend meetings((**e**)); or

(iii) the mayor becoming disqualified for any other reason;

(e) where the mayor's office is declared to have been vacated by the High Court in proceedings for disqualification (**f**), the date of—

(i) the expiry of the ordinary period allowed for making an appeal or application with respect to the decision of the High Court, or

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(**a**) Section 2 was amended by section 1 of the Representation of the People Act 2000 (c. 2).
(**b**) 1972 c. 70.
(**c**) The procedure for resignation of a member of a combined authority may be specified in an order made under section 104 of the Local Democracy, Economic Development and Construction Act 2009 – see, for example paragraph 1(9) of Schedule 1 to S.I. 2014/865.
(**d**) See section 86 of the Local Government Act 1972 as amended by paragraph 14 of Schedule 6 to the Local Democracy, Economic Development and Construction Act 2009.
(**e**) See section 85 of the Local Government Act 1972.
(**f**) See section 92(2)(a)(i) of the Local Government Act 1972.

(ii) if an appeal or application is made, the date on which it is finally disposed of or abandoned or fails because it is not prosecuted.

Notice of a vacancy

5. The combined authority in which the office of mayor exists must give public notice of a vacancy and must take steps to give public notice in accordance with section 232 (public notices) of the Local Government Act 1972(**a**) as follows—

(a) in a case where the combined authority declares the office to be vacant, immediately after the declaration;

(b) in any other case, as soon as practicable after the date on which, by virtue of article 4, the vacancy is treated as occurring.

Filling of vacancies: by-elections

6.—(1) Subject to paragraph (2), an election to fill a vacancy referred to in article 3(1) shall be held—

(a) in a case in which the vacancy arises because of the mayor's election being declared void or the mayor's office is declared to have been vacated, before the end of the period of 35 days beginning with the day on which the vacancy is be taken to have occurred (as determined in accordance with article 4);

(b) in any other case, before the end of the period of 35 days beginning with the day on which notice in writing of the vacancy has been given to the proper officer of the combined authority by two local government electors for the area.

(2) The day of election under paragraph (1) shall be fixed by the combined authority returning officer; and in computing a period for the purposes of that paragraph, the following shall be disregarded—

(a) a Saturday or Sunday;

(b) Christmas Eve, Christmas Day, Good Friday or a day which is a bank holiday under section 1 of, and Schedule 1 to, the Banking and Financial Dealings Act 1971(**b**) in England; and

(c) any day appointed as a day of public thanksgiving or mourning.

(3) Where, between the giving of notice of the poll and the completion of the poll, a day is declared to be a bank holiday or a day of public thanksgiving or mourning, paragraph (2) shall not operate to invalidate any act which would have been valid apart from that paragraph.

Term of office of person filling vacancy

7. A person (P) elected at a by-election to fill a vacancy shall hold the office of elected mayor until the date on which the person in whose place P is elected would regularly have retired, and P shall then retire.

Signed by authority of the Secretary of State for Communities and Local Government

Name
Parliamentary Under Secretary of State
Date Department for Communities and Local Government

(**a**) Section 232 was amended by section 119 of and Schedule 6 to the 2009 Act.
(**b**) 1971 c. 80.

EXPLANATORY NOTE

(This note is not part of the Order)

Part 6 of the Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act") provides for the establishment of combined authorities for the areas of two or more local authorities in England. Combined authorities are bodies corporate which may be given power to exercise specified functions.

The Secretary of State may provide for there to be a mayor for the area of a combined authority where the constituent councils of the combined authority (each district council or county council whose area is within the area of the combined authority) and any existing combined authority consent under section 107B(3) of the 2009 Act. Paragraph 3(d) of Schedule 5B to the 2009 Act provides for the filling of vacancies in the office of a mayor of a combined authority.

Articles 3 and *4* make provision for the filling of vacancies. *Article 5* provides for notice requirements of a vacancy. *Article 6* provides for the date of a by-election arising from a vacancy. *Article 7* provides for the term of office of a person filling a vacancy at a by-election.

A full regulatory impact assessment has not been prepared as this instrument will have no impact on the costs of business and the voluntary sector.

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ISBN 978-0-11-115180-8

£4.25

UK2016112519 12/2016 19585

http://www.legislation.gov.uk/id/ukdsi/2017/9780111151808