EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES (MAYORAL ELECTIONS) (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 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 directly-elected local authority mayors in England from the supplementary vote system to the simple majority vote system. These Regulations amend provisions in the Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007, 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 (note that the original instrument applies in England and Wales).

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 Local Authorities (Mayoral Elections) (Amendment) (England) Regulations are compatible with the Convention rights."

6. Legislative Context

6.1 Most local authorities in England operate a 'leader and cabinet' model of governance where the council leader is selected from the councillors, but in some areas a 'mayor and cabinet' model has been adopted, by council resolution or following a local governance referendum, where a directly-elected mayor replaces the council leader. There are currently 16 such local authority mayors in England but the number changes regularly as mayoralties are established and abolished.

6.2 Directly-elected local authority mayors in England were introduced by the Local Government Act 2000 ("the 2000 Act") which was subsequently amended by the Local Government and Public Involvement in Health Act 2007. The voting system to be used to elect local authority mayors is set out in section 9HC and Schedule 2 to the 2000 Act. Originally under the 2000 Act, local authority mayoral elections were conducted using the simple majority vote system in instances where there were two candidates and the supplementary vote system in instances where there were three or more candidates.

6.3 Section 13 of the Elections Act 2022 ("the 2022 Act") amends the 2000 Act to change the voting system for local authority mayors in England 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 combined authority mayors, the Mayor of London and Police and Crime Commissioners (PCCs).

6.4 The Rules governing the conduct of local authority mayoral elections are set out in the Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007 (S.I. 2007/1024; "the 2007 Regulations"). The 2007 Regulations provide for the conduct of elections of mayors of county, district and London borough councils (in England) and county and county borough councils (in Wales). 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 modification, to facilitate the conduct of local authority mayoral elections.

6.5 These Regulations amend the 2007 Regulations in relation to elections for local authority mayors in England which are contested by three or more candidates to ensure consistency with the changes made to the 2000 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 combined authority mayors, the Mayor of London and PCCs will be brought forward in parallel with these Regulations.

7. Policy background

What is being done and why?

7.1 Elections for local authority mayors in England are conducted using the supplementary vote system when 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 Returning Officer decides who is returned by lots.

7.2 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 local 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 the voter and electoral administrator.

7.3 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.

7.4 The provisions making changes to the voting system are in section 13 of the 2022 Act. These Regulations amend the 2007 Regulations setting out how elections for local authority mayors in England are to be conducted to ensure the elections rules and forms (e.g. ballot paper) are consistent with the recently-amended primary legislation.

7.5 The changes to the voting system for local authority mayors set out in the 2022 Act, and the changes to the rules for the conduct of those elections in these Regulations, 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. There are currently four such elections scheduled.

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 Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007. As the amendments are limited in scope and self-contained, we do not consider that consolidation of the 2007 Regulations is necessary.

10. Consultation outcome

10.1 A statutory consultation on a draft of the Regulations was undertaken with the Electoral Commission between 4 July – 1 August 2022 as required under paragraph section 9HE(4) of the Local Government Act 2000. The Electoral Commission raised several minor queries about the Regulations which we have addressed including drafting points which are reflected in the final version of the Regulations.

10.2 It was not considered appropriate to consult publicly as the Regulations contain only essential technical changes to the processes and forms set out in secondary legislation

[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

which are necessary to ensure legislative consistency with changes to the voting system recently agreed by Parliament and set out in the amended 2000 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 Regulations being amended sets out the detailed process for the conduct of local 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 local 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.

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.

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[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

15.2 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.