**EXPLANATORY MEMORANDUM TO**

# THE LOCAL AUTHORITY AND COMBINED AUTHORITY ELECTIONS (NOMINATION OF CANDIDATES) (AMENDMENT) (ENGLAND) 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 Her Majesty.

## 2. Purpose of the instrument

2.1 This instrument amends the candidate's consent to nomination forms that apply to county, district, London borough and combined authority mayoral elections. The updates to these forms reference the additional disqualification criteria introduced by the Local Government (Disqualification) Act 2022 to also include individuals who are subject to the notification requirements set out in the Sexual Offences Act 2003 (commonly known as 'being placed on the sex offenders register'); or to a Sexual Risk Order made under section 122A of the Sexual Offences Act 2003. These forms are used by candidates to declare that they are not disqualified from standing for election.

## 3. Matters of special interest to Parliament

3.1 None.

## 4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England only.

## 5. European Convention on Human Rights

5.1 Kemi Badenoch MP, the Minister of State for Equalities and Levelling Up Communities has made the following statement regarding Human Rights:

"In my view the provisions of the Local Authority and Combined Authority Elections (Nomination of Candidates) (Amendment) (England) Regulations 2022 are compatible with the Convention rights."

## 6. Legislative Context

6.1 This instrument updates four instances of prescribed candidate's consent to nomination forms. Two instances are updated in the Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007 (S.I. 2007/1024) and two in the Combined Authorities (Mayoral Elections) Order 2017 (S.I. 2017/67). A consent to nomination form is specified for use by candidates in mayoral and combined authority mayoral elections where the poll is either combined or not combined with another poll.

6.2 Candidates in mayoral and combined authority mayoral elections are presented with the disqualification criteria as set out in legislation and must legally declare that they are not disqualified from standing by signing these consent to nomination forms.

6.3 Updates to the forms are required because the Local Government (Disqualification) Act 2022 adds to the existing disqualification criteria. From 28 June 2022, individuals made subject to the notification requirements set out in the Sexual Offences Act 2003 (c. 42), a Sexual Risk Order made under section 122A of that Act and the equivalent notification requirements and Orders in effect in Jersey, Guernsey and the Isle of Man will be disqualified.

6.4 The amended disqualification criteria created by the Local Government (Disqualification) Act 2022 are inserted at section 81A of the Local Government Act 1972 (c. 70) for mayoral candidates, and at paragraph 9A of Schedule 5B (mayors for combined authority areas: further provision about elections) to the Local Democracy, Economic Development and Construction Act 2009 (c. 20) for combined authority mayoral candidates.

6.5 The Local Government (Disqualification) Act 2022 directly amends the requirement that a copy of the updated disqualification criteria text be appended to the end of the consent to nomination forms for both mayoral elections and combined authority mayoral elections.

6.6 The Local Government (Disqualification) Act 2022 also makes equivalent updates to disqualification criteria for local councillors, parish councillors, members of the London Assembly and the Mayor of London. Corresponding updates to their election rules and candidate's consent to nomination forms are being made alongside this instrument via the Local Authority and Greater London Authority Elections (Nomination of Candidates) (Amendment) (England) Regulations 2022.

## 7. Policy background

***What is being done and why?***

7.1 The Local Government (Disqualification) Act 2022 adds to existing criteria that disqualify individuals from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor.

7.2 Existing legislation disqualifies individuals from office if, in the five years before their election or since election, they have been convicted in the UK, Isle of Man, or Channel Islands and sentenced to three months or more in prison. Prior to updates provided by the Local Government (Disqualification) Act 2022, these existing disqualification criteria date back to 1972 and do not reflect developments such as the use of prevention of harm orders. These orders do not necessarily require a conviction but are used when a Court has judged there is a risk of harm to the public, children and vulnerable adults.

7.3 To stand for election, candidates must declare that they are not disqualified from standing using prescribed consent to nomination forms. Candidates must sign a written declaration that explicitly makes reference to each section of legislation that specifies a disqualification, and copies of those sections must also be appended to the form. Since the Local Government (Disqualification) Act 2022 adds new disqualification criteria, this instrument is required to make sure up to date

disqualification criteria are properly presented to candidates to enable them to correctly declare that they are eligible to stand for election and are not disqualified.

7.4 The Local Government (Disqualification) Act 2022 disqualification criteria are specific and comprehensive. They disqualify individuals subject to the relevant notification requirements or relevant orders imposed in respect of sexual offences in England or the equivalent offences in the devolved nations.

## 8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## 9. Consolidation

9.1 The Department does not intent to undertake a consolidation of the regulations.

## 10. Consultation outcome

10.1 In 2017 the government consulted on updating the disqualification criteria for councillors, mayors and members of the London Assembly to inform the development of the Local Government (Disqualification) Act 2022. In October 2018 the government issued a summary of responses to that consultation and gave a commitment to seek to legislate to ensure that the disqualification criteria would include individuals who are subject to the notification requirements set out in the Sexual Offences Act; or a Sexual Risk Order made under section 122A of the Sexual Offences Act 2003.

10.2 The Electoral Commission has been consulted about this instrument in accordance with section 9HE(4) of the Local Government Act 2000 and paragraph 12(4) of Schedule 5B to the Local Democracy, Economic Development and Construction Act 2009.

10.3 The Electoral Commission responded that candidates may misunderstand if the new disqualification criteria in the Local Government (Disqualification) Act 2022 applied to them or not. They recommended making amendments for greater clarity on the consent to nomination form itself to help to reduce the risk of confusion for candidates. These recommendations were incorporated in full in the final forms.

10.4 Local government and electoral sector stakeholders were also engaged. The Association of Electoral Administrators (AEA) requested clarification on the circumstances when the updated disqualification under the provisions of the Local Government (Disqualification) Act 2022 would apply. Updates to the consent to nomination process provided by this instrument ensure such circumstances are made clear.

## 11. Guidance

11.1 The Electoral Commission issues guidance to electoral administrators and candidates relating to the administration and conduct of elections of combined authority mayors and local mayors and will update the guidance as necessary in advance of future polls.

## 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 there is no impact on business.

## 13. Regulating small business

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

## 14. Monitoring & review

14.1 There are no plans to monitor or review this instrument as its effects are limited to consequential amendments required as a result of the provisions of the Local Government (Disqualification) Act 2022.

## 15. Contact

15.1 Johnny Saisho at the Department of Levelling Up, Housing and Communities, email: johnny.saisho@levellingup.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Chris Widgery, Deputy Director for Local Government Improvement, at the Department of Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kemi Badenoch MP at the Department of Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.