EXPLANATORY MEMORANDUM TO

THE POLICE AND CRIME COMMISSIONER ELECTIONS AND WELSH FORMS (AMENDMENT) ORDER 2022

2022 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This Order makes consequential amendments required in existing regulations (the Police and Crime Commissioner Elections Order 2012, the Police and Crime Commissioner Elections (Welsh Forms) Order 2012, and the Police and Crime Commissioner Elections (Welsh Forms) Order 2021) to reflect the change in the Elections Act 2022 to the voting system for Police and Crime Commissioner (PCC) elections from the supplementary vote system (SV) to the simple majority system, also known as First Past the Post (FPTP). It substitutes or abolishes references to the SV voting system, replacing them with references to FPTP and amends the necessary forms and ballot papers for PCC elections in England and Wales.

3. Matters of special interest to Parliament

3.1 None.

4. Extent and Territorial Application

4.1 The territorial 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 and Wales.

5. European Convention on Human Rights

5.1 The Minister of State for Crime, Policing and Fire has made the following statement regarding Human Rights:

"In my view the provisions of the Police and Crime Commissioner Elections and Welsh Forms (Amendment) Order 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 13(16) to (18) of the Elections Act 2022 amends provision in the Police Reform and Social Responsibility Act 2011 relating to the voting system to be used to elect PCCs. Section 57 of the 2011 Act is amended to remove references to the SV system, and Schedule 9, which provides for the SV system, is abolished in its entirety.

6.2 This Order makes further consequential amendments to give effect to these changes in the relevant secondary legislation, notably the Police and Crime Commissioner Elections Order 2012, the Police and Crime Commissioner Elections (Welsh Forms)

Order 2012, and the Police and Crime Commissioner Elections (Welsh Forms) Order 2021. These orders provide for the conduct of PCC elections in England and Wales.

7. Policy background

What is being done and why?

7.1 PCCs were established by the Police Reform and Social Responsibility Act 2011 to provide locally accountable, directly elected, oversight of the police force in their area. PCCs have statutory responsibilities to set policing and crime objectives and to hold their Chief Constable to account.

7.2 On 16 March 2021, the Home Secretary announced[1] the Government's intention to bring forward legislation to change the voting system for PCCs, all combined authority mayors and the Mayor of London to FPTP when Parliamentary time allowed, as a recommendation from Part One of the Home Office's Review into the role of PCCs. This recommendation was based on the grounds that it will simplify the voting system and make it easier for the public to express a clear preference. On 15 September 2021, the Minister for the Constitution and Devolution announced 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.

7.3 This change implements a long-standing Conservative Party manifesto commitment in favour of the FPTP system. The 2019 Manifesto said, "we will continue to support the First Past the Post system of voting, as it allows voters to kick out politicians who don't deliver, both locally and nationally". Similar commitments favouring FPTP were included in the 2017 Manifesto, "we will retain the first past the post system of voting for parliamentary elections and extend this system to police and crime commissioner and mayoral elections". The 2011 Referendum asked voters whether the system for electing Members of Parliament should be changed from FPTP to the alternative vote system; 67.9 per cent of voters voted to retain first past the post.

7.4 The Elections Act 2022 gave effect to changes the voting system used to elect PCCs to FPTP. Section 13 of the Elections Act 2022 also changes the voting system to be used in elections for combined authority mayors, local authority mayors and the Mayor of London.

7.5 This Order amends the existing secondary legislation regarding the conduct of PCC elections, including the election system to be used where there are three or more candidates, to bring the election rules, forms, and ballot papers into line with the primary legislation, as amended by the Elections Act 2022. Similar changes to the secondary legislation setting out the rules for the conduct of elections for combined authority mayors, local authority mayors and the Mayor of London will be brought forward in parallel with this Order.

7.6 Elections for PCCs were first held in 2012, with two further elections in 2016 and 2021(deferred from 2020 due to the covid-19 pandemic). These elections were conducted using the SV system where there were three or more candidates. Under this system, voters have a first and second preference vote. If a candidate receives more

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

than 50 per cent of the first preference vote 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 this method, like with FPTP, if the top candidates are tied after the count is completed, the Returning Officer decides who is returned by lots.

7.7 Under FPTP, also known as the simple majority system, the candidate who wins the most votes is elected. FPTP is used to elect MPs and local councillors in England and is already used for PCC and mayoral elections where there are only two candidates.

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 This Order amends the Police and Crime Commissioner Elections Order 2012, the Police and Crime Commissioner Elections (Welsh Forms) Order 2012, and the Police and Crime Commissioner Elections (Welsh Forms) Order 2021. As the amendments are limited in scope and self-contained, we do not consider that consolidation of these orders is necessary.

10. Consultation outcome

10.1 A statutory consultation on a draft of the Order was undertaken with the Electoral Commission between 5 July – 1 August 2022 as required under section 7(2)(hc) of the Political Parties, Elections and Referendums Act 2000(c). The Electoral Commission raised several minor queries, including drafting points, about the Order which we have addressed 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.

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 FPTP 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 where appropriate will update this guidance.[2] The Regulations being amended set out the detailed process for the conduct of PCC elections and provide model forms.

[2] Guidance and resources for Returning Officers administering local government elections taking place in England, including local authority mayoral elections: https://www.electoralcommission.org.uk/i-am-a/electoral-administrator/returning-officer/local-elections-england

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 PCC elections.

12.3 An Impact Assessment of the change to the voting system for PCCs and mayors is published on the Parliament website.[3] 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 the 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 FPTP voting 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 James Bennett-Clark at the Home Office (telephone: 07776510019 or email: James.Bennett-Clark12@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Kayleigh Chapman, Deputy Director for the Police Strategy and Reform Unit, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Chris Philp, Minister of State for Crime, Policing and Fire at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

[3] https://bills.parliament.uk/publications/47852/documents/2292