EXPLANATORY MEMORANDUM TO

THE LOCAL ELECTIONS (ORDINARY DAY OF ELECTIONS IN 2009) ORDER 2008

2008 No. 2857

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1. The Local Elections (Ordinary Day of Elections in 2009) Order 2008 ("the Order") moves the ordinary day of elections to county, district and parish councils in England in 2009 to the same day as the date of the poll at the European Parliamentary election, and makes incidental, supplementary and consequential provision as a consequence of that change.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. This is the first occasion on which the powers conferred by section 37A of the Representation of the People Act 1983 ("the 1983 Act") have been exercised. That section was inserted into the 1983 Act by section 60 of Local Government and Public Involvement in Health Act 2007 (c.28).

3.2. The ordinary day of local elections was moved to the same day as the date of the poll at the European Parliamentary elections in 2004 by the Local Elections (Ordinary Day of Election 2004) Order 2004 (S.I. 2004/222), but the power under which that Order was made, section 103 of the Local Government Act 2003 (c.26), related only to elections in 2004.

4. Legislative Background

4.1. The ordinary day of local elections is usually the first Thursday in May, in accordance with section 37(1) of the 1983 Act. Consequently, in 2009 the ordinary day of local elections would, but for this Order, have been Thursday 7th May.

4.2. The European Parliamentary general elections are held on a day appointed by order by the Secretary of State under section 4 of the European Parliamentary Elections Act 2002. In practice, the day will be appointed to fall within the period determined in accordance with Article 10 of the Act

annexed to the Decision of the European Council concerning the election of the representatives of the Assembly by direct universal suffrage (Decision 76/787/ECSC, EEC, Euratom, as amended)[1] ("the European Act"). Under Article 10 of the European Act, the elections take place every five years, and must start on a Thursday morning and end on the following Sunday; the exact date and times of the election are a matter for the Member State (Article 9 of the European Act). No order has yet been made under section 4 of the European Parliamentary Elections Act 2002 but the election is expected to take place in the period from Thursday 4 June to Sunday 7 June, and the United Kingdom poll is likely to be held on Thursday 4 June 2009. The Government's intention is to make an Order under section 4 before the end of November 2008.

4.3. Section 37A(1) of the 1983 Act provides that an order may change the ordinary day of three classes of local elections: (a) counties, districts and London Boroughs; (b) parishes; and (c) the Greater London Authority, so as to be the same as the date of the poll at the European Parliamentary general election. The effect of sub-section (2) is that an order may move the ordinary day in relation to all of the classes, or to one or two of these classes without moving it in relation to the other classes of elections.

4.4. The Order moves all those ordinary local elections which are due to take place in 2009. These are elections to most county councils and some district councils (which both fall within class (a) of the three classes referred to in paragraph 4.3), as well as to some parish councils (class (b)). The Order does not refer to elections of councillors of London Boroughs (which also fall within class (a)) or Greater London Authority elections (class (c)), as there are not due to be any ordinary elections to those bodies in 2009. As section 39(6) of the Local Government Act 2000 provides for elections for the return of an elected mayor of a local authority in England to take place on the ordinary day of election in the relevant election year, the effect of the Order is to also move the ordinary day of election for elected mayors in England.

4.5. Section 37A(3) of the 1983 Act requires that an order under sub-section (1) of that section must relate to a single year. The Order relates to 2009 only.

4.6. Section 37A(3) also provides that an order to move the ordinary day of local elections must be made at least six months before whichever is the earlier in that year: the local election day, or the date of the poll at the European Parliamentary general election. The local election day is defined by section 37A(4) of the 1983 Act as the first Thursday in May or the day specified in an order made under section 37(1)(b) of the 1983 Act. No order has been made under section 37(1)(b) in relation to 2009. As the European Parliamentary general election in 2009 is due to be held in June, this Order must be made at least six months before 7 May 2009.

[1] A consolidated version of the text of that Act can be found at: http://eur-lex.europa.eu/LexUriServ/site/en/consleg/1976/X/01976X1008-20020923-en.pdf.

Consequently, to comply with section 37A(3), the Order must be made no later than 7 November 2008.

4.7. Section 37A(6) provides that an order under subsection (1) may make incidental, supplementary or consequential provisions or savings, and section 37A(8)(b) provides that the order may disapply or modify the application of an enactment or an instrument made under an enactment.

4.8. Article 3 of the Order disapplies section 16(1) of the Representation of the People Act 1985 (c.50) in relation to elections in 2009. That section provides (amongst other things) that when the date of the poll at a European Parliamentary general election is the same as the ordinary day of local elections, any poll at an election of parish councillors to be held on that date shall be postponed for three weeks. The effect of this Order is therefore that parish elections can be held on the same day as other local elections and the European Parliamentary general election in 2009.

4.9. The effect of Article 4 of the Order is that the retirement date of a councillor or elected mayor due to retire in 2009, or coming into office in that year, will continue to be the fourth day after the ordinary day of elections, even though the date of the ordinary day of elections has been moved. This provision is made because councillors and elected mayors usually have a 4 year term of office, but the consequence of moving the ordinary day is that those retiring in 2009 are likely to serve a slightly longer term of office, while those coming into office that year are likely to serve a slightly shorter term.

4.10. Article 5 of the Order makes provision in relation to the holding of by-elections prior to the ordinary day of elections in 2009. Under section 89(3) of the Local Government Act 1972 (c.70) and rule 5 of the Local Elections (Parishes and Communities) (England and Wales) Rules 2006 (S.I. 2006/3305), a by-election will not usually be held where a casual vacancy arises in the office of councillor within 6 months before the date on which the councillor would regularly have retired. As the retirement date of councillors is affected by moving the ordinary day of elections (see paragraph 4.9 above), Article 5 provides clarity as to when the period during which no by-election will be held by substituting the reference to six months before the retirement date with a period beginning on 7 November 2008.

4.11. Article 6 of the Order modifies Schedule 12 of the Local Government Act 1972, so that in 2009 the annual meetings of joint authorities and police authorities (some of whose members will be appointed by local authorities which are holding elections in 2009) and parish councils can be held later than would otherwise be the case. This will ensure that the new councillors are in place before the annual meeting must be held.

4.12. Article 7 of the Order makes provision supplementary to moving the ordinary day of elections in 2009, to modify the basis on which European Parliamentary elections are administered in 2009. At present, European

Parliamentary elections are administered on the basis of local counting areas which are determined by reference to Parliamentary constituencies (see the definition of "local counting area" in regulation 2 of the European Parliamentary Elections Regulations 2004 (S.I. 2004/293)). The administration of European Parliamentary elections is a function of the person who is acting returning officer in relation to Parliamentary elections (see section 6(5A) of the European Parliamentary Elections Act 2002 (c.24) and regulation 6(2) of the European Parliamentary Elections Regulations 2004). Article 7 modifies these provisions so that European Parliamentary elections will be administered in 2009 by reference to local authority areas, and the local returning officer for those elections will be the person who administers local elections for that area.

5. Territorial Extent and Application

5.1. This instrument applies to England.

5.2. The Welsh Ministers have a similar order-making power in section 37B of the 1983 Act, but are not expected to make an order to move elections in 2009, as there are no ordinary local elections in Wales that year.

6. European Convention on Human Rights

6.1. The Minister for Local Government has made the following statement regarding Human Rights:

In my view the provisions of the Local Elections (Ordinary Day of Elections in 2009) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1. In 2009 there will be elections to the majority of County Councils in England and a small number of district councils, as well as four mayoral elections and elections to a number of parish councils (see Annex A for a list of local government elections in 2009). This Order moves the date of the local elections to take place on the same date as the European Parliamentary general elections in 2009.

Benefits of elections being held on the same day

7.2. The Government has taken a number of steps since 1997 to improve participation in the democratic process. It considers that making elections convenient for electors to vote in is an important part of increasing participation.

7.3. The holding of elections on the same day is not new. In 2004, the local, Greater London Authority and European Parliamentary general elections were held on the same day with the intention of increasing voter convenience. The turnout in the European Parliamentary general elections was significantly higher than in previous years, at 38.5 per cent compared to 24 per cent in 1999. The Electoral Commission concluded in its follow-

up report that combination of the elections was an important factor in the improved turnout.

7.4. The European Parliamentary elections are scheduled for Thursday 4 June 2009. If the local elections are not moved from Thursday 7 May 2009 to that date then, as the timetable for the European Parliamentary elections runs for 25 working days prior to polling day, there would be an overlap in the timetable for that election with the closing stages of the local elections.

7.5. There is a risk that this may cause confusion for electors who may receive poll cards for the European elections prior to voting in the local elections, and create complexities for administrators who will be required to publish the notice of the election and deal with nominations from candidates for the European elections in the week leading up to polling day for the local elections.

7.6. The costs of the elections for electoral administrators will be reduced by holding elections on one day rather than having two elections within a four week period. There will also be savings for the political parties in election campaigns being held simultaneously rather than separately for the local and European Parliamentary elections.

7.7. The Government therefore believes that the benefits of holding the local and European Parliamentary elections on the same day are:

- it will be more convenient for voters to have to visit the polling station once only, rather than twice within a period of 4 weeks, meaning that more voters are likely to participate in the election;
- it will result in the election periods for the local and European elections running together and avoid the start of the European election period overlapping with the end of the local election period;
- it will reduce costs incurred by local authorities, returning officers and political parties in distributing election material, contacting voters, canvassing and holding the polls themselves;
- those responsible for voter awareness campaigns, particularly local authorities, will be able to concentrate their efforts in increasing awareness of one single election day.

Practical issues of holding more than one election on the same day

7.8. There are a number of practical issues that the Government has had to consider in making this Order. In particular, holding more than one election on the same day has implications for counting arrangements, returning officers' responsibilities, funding arrangements, committee cycles and information for voters. It is therefore important that if the elections are to be held together the necessary administrative and operational measures are in place to make the successful delivery of the elections possible. Following the wide consultation which the Government has undertaken, it is confident that these measures will be in place.

Consultation to move local elections in 2009

7.9. The Secretary of State's consultation on moving the ordinary day of local elections[2] was issued on 20 May 2008. The consultation invited the views of the Electoral Commission and other stakeholders, including local authorities and the Association of Electoral Administrators, but was open to anyone to respond to. The consultation specifically sought views on the following questions:

- Whether the local elections in 2009 should be moved from 7 May to 4 June, so that they are held on the same day as the European Parliamentary elections?
- Whether, if we move county and district council elections, we should also move the date of parish council elections?
- What practical issues may arise as a result of combining effectively local (and where applicable, parish) elections with the European Parliamentary election?
- What action could be taken to address these practical issues - whether by local authorities, Government or the Electoral Commission?

7.10. The consultation closed on 11 August 2008. The provisions made in the Order are closely based on the representations we received during the consultation period to the questions above.

7.11. In response to the question of whether the Government should move the date of the local elections in 2009 from 7 May to the same day as the European Parliamentary elections (4 June), over 76% of those who responded to the question were in favour, although some (22%) placed conditions on their support. In response to the question of whether the date of parish council elections should also be moved, over 87% of those who responded to the question were in favour. A more detailed breakdown of the views of respondents is set out below.

7.12. Twenty-nine out of the 34 principal councils holding elections in 2009 responded. Of those councils that are holding elections in 2009 and stated a position on the question of moving local elections, 82% (18 out of 22) supported the proposal. .

7.13. We also received responses from a further 136 principal councils that do not have elections in 2009, although 121 of these authorities were district councils in counties where the county council has elections. A clear majority of these other principal councils were in support of moving the ordinary day of elections and wanted the European elections to take place on local government boundaries for ease of administration (for which see paragraph 7.21).

7.14. The Electoral Commission stated their support for moving local elections as it would be less confusing for voters and candidates than holding two within a short space of time. They also felt it would facilitate greater administrative efficiency and reduce costs for local authorities and political parties.

[2] http://www.communities.gov.uk/documents/localgovernment/pdf/812363.pdf.

7.15. The Association of Electoral Administrators also supported moving local elections, providing that the European Parliament elections are administered on local authority boundaries (see paragraph 7.21). They raised concerns about the capacity of software suppliers to meet the needs of electoral administrators, but felt that an early decision to move the date of the local elections and the work that the Government has begun to do to bring the parties together to address issues of software and print problems that arose in recent elections should minimise the risks to delivery (see paragraph 7.24).

7.16. The Conservative Party responded to say that they do not oppose moving elections in 2009. The national Liberal Democrat Party did not respond, but a number of the local and regional Liberal Democrat groups, mainly from those areas where elections are due to take place in 2009, wrote to express their support for moving the day of elections. There was a mixed response from the smaller parties.

7.17. The Local Government Association stated that moving elections to the same day would be more convenient for voters as they would only have to visit the polling station once for two elections, and anticipated an improved voter turnout. They saw the advantage of awareness raising campaigns by local authorities and political parties being focussed on one single Election Day. They thought there would be a potential reduction in costs for local authorities, returning officers and political parties in distributing election material, contacting voters, canvassing and holding the polls.

7.18. A small majority of the county associations of local councils which make up the membership of the National Association of Local Councils (NALC) opposed moving the ordinary day of local elections. However, NALC stated that if the elections to principal authorities were moved then neighbourhood, parish and town council elections should take place on the same day, as recommended by the Councillors Commission and the Commission for Rural Communities in their recent reports.

7.19. The main benefits identified by consultees for moving the ordinary day so as to combine the local and European Parliamentary elections were:

- It would be more convenient for voters to fill in their ballot papers only once either by post or by visiting the polling station.
- Combining elections would avoid an overlap between the two electoral periods.
- Combining elections would facilitate greater administrative efficiency, and reduce costs for local authorities, returning officers and political parties in distributing election material, contacting voters, canvassing and holding the polls themselves.

7.20. The consultation responses identified a number of issues which the Government should address if it moved the ordinary day of elections in 2009, including the following points.

7.21. A significant number of respondents (all 120 respondents who commented on this issue) stated that the European Parliamentary elections should be administered by reference to local government areas rather than parliamentary constituency boundaries. As the local elections will be administered on local government boundaries, administering the European Parliamentary elections on the basis of parliamentary constituency boundaries on the same day would significantly increase the complexity for electoral administrators.

7.22. We have made provision to address the issues raised about the administration of European Parliamentary elections in Article 7 of the Order. These issues relate to wider policy concerns about the basis on which European Parliamentary elections are administered, which are being addressed in the Political Parties and Elections Bill, for which see further paragraphs 7.31 to 7.33 below.

7.23. Some respondents pointed out that administering elections has become increasingly complex (e.g. increase in postal voting) and this raises risks to the capacity of the local authorities and their suppliers. However, the Government has taken steps to facilitate the smooth administration of elections by working with suppliers and local government to address, and provide solutions to, issues which face electoral administrators. In particular, it has worked to ensure that there are solutions to the issues of cross boundary postal vote identifiers (where data about postal voters needs to be shared between returning officers and electoral registration officers at elections administered on boundaries which are not coterminous), and sufficient capacity in the market for printing services. A printing company which is a member of the Ministry of Justice's electoral delivery group has stated that holding both the local and the European elections on the same day would not cause a problem for printers on the basis that local government boundaries are used as this will eliminate the problems of sharing data across boundaries.

7.24. Furthermore, holding the elections together will result in electoral administrators having to perform certain tasks only once, rather than twice. For example polling cards for both elections can be sent out together. If the elections are not held on the same date the administration of the elections would be complicated by the fact that polling cards for the European election would have to be sent out shortly before polling day in the local elections.

7.25. Therefore the Government considers that moving the date simplifies the process, avoids duplication and reduces risks of confusion, and that suppliers and local authorities should have the capacity to manage local and European Parliamentary elections held on the same day in 2009.

7.26. A number of respondents requested that consequential amendments be made regarding other legislation which is affected by moving the date of local elections. The Local Government Association stated that provisions

needed to be made to amend the dates of local authority annual meetings, amend the terms of office of councillors and to extend the period by which by-elections are precluded in the months leading up to an election, as was provided for in the Order which moved the ordinary day of elections in 2004. The Association of Police Authorities also pointed out that Police Authorities will be affected by the proposals to change the local election date in 2009, in that are required to hold their annual general meetings before the end of June each year, and formally appoint any new members nominated to the police authority by local councils at these meetings. If the date of the local elections were to change, this would delay the date on which councils would be able to nominate police authority members, which would in turn affect the ability of police authorities to hold their annual general meetings within the prescribed time limit. We have addressed these issues in articles 4, 5 and 6 of this Order.

7.27. Some respondents pointed out the risk that local issues would be conflated with debate relating to Europe, creating voter confusion, and argued that combining elections boosts turnout for the European poll rather than increasing turnout for the local elections. However, many respondents, including the Electoral Commission, stressed that awareness raising literature published by local authorities and the political parties that clearly distinguishes the two elections will minimise the risk of confusion.

7.28. There were also concerns about voter confusion in understanding the difference between the different voting systems and ballot papers, in particular in areas where elections for Mayors use the second preference system. However, in its response, the Electoral Commission considered that provided that separate ballot papers are used, and that effective local public awareness work is undertaken to explain that some voters will be able to vote for more than one candidate, then the risk of confusion would be minimised. This risk was also highlighted by the Equality and Human Rights Commission (EHRC) whose remit includes championing the rights of those with disabilities, but the EHRC also stated that this risk could be minimised by ensuring separate ballot papers and awareness raising literature is available in different formats and to proxy voters. Paragraph 16(2) of Schedule 3 to the Local Elections (Principal Areas) (England and Wales) Rules 2006 (S.I. 2006/3304) provides that the colour of the ballot paper at a local election shall be different to that for any other election held on the same day.

7.29. Some concerns were expressed by councils in the areas where there are to be new unitary councils by virtue of Orders made under Part 1 of the Local Government and Public Involvement in Health Act 2007. The new unitary councils are established on 1 April 2009, and 5 of the new councils are due to have elections in 2009. In those areas, moving the ordinary day of election means that there will be a nine week period until that election, rather than the shorter five week period that there would be if local elections were not moved. During that time the council will have an appointed Implementation Executive or shadow executive (made up of representatives of all the predecessor councils). Respondents who raised

this point were concerned that the appointed executive would be in place for longer than was originally anticipated. However, equally, some pointed out the benefits of the new councils having additional time to prepare for the elections. Moreover, the Government believes that the arrangements for these councils, including their Implementation Executives or shadow executives, will provide adequate and appropriate leadership for the extended period before the elections.

Guidance

7.30. If this Order is made, the Department will write to those councils that will be holding elections in 2009 and those stakeholders that responded to the consultation process informing them of this. The Department will also announce the change of date on its website, where it will provide a link to this Order.

Political Parties and Election Bill

7.31. As set out in paragraphs 7.21 and 7.22 above, many respondents to the consultation to move the ordinary day of local elections in 2009 stated that the European Parliamentary elections should be administered on a similar basis to local elections rather than Parliamentary elections, and the Order makes provision for this. However, the basis on which European Parliamentary elections are currently administered is problematic for wider reasons, and the Government is therefore seeking a general amendment to the relevant statutory provisions.

7.32. The administration of European Parliamentary elections by reference to parliamentary constituencies requires local electoral administrators to work across local authority boundaries (as parliamentary constituencies may cover more than one local authority area). The Government considers that it would assist effective administration if all future European Parliamentary elections were administered on the basis of local authority areas. Clause 13 of the Political Parties and Election Bill therefore substitutes a new definition of "local returning officer" for that in section 6(5A)(a) of the European Parliamentary Elections Act 2002. The effect of the new definition is that the local returning officers for European Parliamentary elections held in England, Wales and Scotland will be the persons who are returning officers for local authority elections rather than the persons who are returning officers for UK Parliamentary elections.

7.33. As the Political Parties and Elections Bill remains subject to the Parliamentary process, the Government considers that it is important to include Article 7 in the Order so as to provide certainty for electoral administrators as to the basis on which elections will be administered in 2009 in England.

8. Impact

8.1. An Impact Assessment has not been prepared for this instrument. It has no impact on business, charities or voluntary bodies.

8.2. The financial implications associated with the changes made by Part 2 of the 2007 Act (which inserts section 37A into the 1983 Act) are set out in the Regulatory Impact Assessment (RIA) which accompanied the Local Government and Public Involvement in Health Bill. There are no new burdens on local authorities arising from moving the date of local government elections to the date of European elections, rather the move should result in savings for the administration of those elections for local authorities and for the Government. It is difficult to provide an accurate estimate of what the total savings will be although the Government's initial considerations indicate that savings in the region of £10 million could be achieved. The Electoral Commission has informed us that they estimate holding the elections on the same date will save them £1.3million from their communications budgets.

9. Contact

Steve Evison at the Department for Communities and Local Government can answer any queries regarding the instrument:

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Annex A

Elections to principal councils in 2009

Bedford Borough Council (new unitary authority)
Bristol City Council
Buckinghamshire County Council
Cambridgeshire County Council
Central Bedfordshire Council (new unitary authority)
Cornwall Council (new unitary authority)
Cumbria County Council
Derbyshire County Council
Devon County Council
Dorset County Council
East Sussex County Council
Essex County Council
Gloucestershire County Council
Hampshire County Council
Hertfordshire County Council
Isle of Wight Council
Kent County Council
Lancashire County Council
Leicestershire County Council
Lincolnshire County Council
Norfolk County Council
North Yorkshire County Council
Northamptonshire County Council
Nottinghamshire County Council
Oxfordshire County Council
Shropshire Council (new unitary authority)
Somerset County Council
Staffordshire County Council
Suffolk County Council
Surrey County Council
Warwickshire County Council
West Sussex County Council
Wiltshire Council (new unitary authority)
Worcestershire County Council

Elections for Mayors in 2009

Doncaster
Hartlepool
North Tyneside
Stoke