

EXPLANATORY MEMORANDUM TO
THE LOCAL AUTHORITIES (CONDUCT OF REFERENDUMS) (ENGLAND)
REGULATIONS 2007

2007 No.

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations provide for the conduct of referendums to be held under the Local Government Act 2000. The referendums relate to the question as to whether a county, district or London borough in England should adopt executive arrangements.

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

3.1 None.

4. Legislative Background

4.1 These Regulations revoke and replace the Local Authorities (Conduct of Referendums) (England) Regulations 2001 (SI 2001/1298) (“2001 Regulations”); and incorporate, as appropriate, changes resulting from the Electoral Administration Act 2006 (c.22).

4.2 The Secretary of State has consulted the Electoral Commission on a draft of these Regulations in accordance with section 45(8A) of the Local Government Act 2000; and in particular on the intelligibility of the questions which may be asked at such referendums in accordance with section 45(8B) of that Act. He has laid a Report, in pursuance of section 45(8B) (b), stating the views expressed by the Commission before each House of Parliament. He has also sought and had regard to the views of the Electoral Commission on the matter of the limitation of referendum expenses, as required by section 45(8D) of that Act.

5. Extent

5.1 These Regulations apply to England.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State, Bridget Prentice, MP has made the following statement regarding Human Rights:

In my view the provisions of the Local Authorities (Conduct of Referendums) (England) Regulations 2007 are compatible with the Convention Rights.

7. Policy background

7.1 The procedural rules for conducting a referendum under the Local Government Act 2000 are currently provided for in the 2001 Regulations. As a result of the changes introduced by the Electoral Administration Act 2006 (c.22) which received Royal Assent on 11 July 2006 we have reviewed these arrangements.

7.2 These Regulations, including the new limits of referendums expenses, will apply to any referendum held on or after the date on which these Regulations come into force.

7.3 The principal changes made in these Regulations are to implement the changes made by the Electoral Administration Act 2006. However, in re-enacting these Regulations we have set out the procedural rules for running such referendums in full. This will ensure ease of access and use by counting officers and electoral administrators. It is worth noting that the option of a referendum being conducted by means of an all-postal ballot has been removed (in consequence of a new provision on the collection and checking of personal identifiers for postal voters introduced by The Electoral Administration Act 2006).

7.4 As a result of our approach for re-enacting a fresh set of Regulations the Government consulted the Electoral Commission both generally and on two specific matters, as required by section 45(8B) and (8D) of the Local Government Act 2000 (as amended by the Political Parties, Elections and Referendums Act 2000). The first of these was on the intelligibility of the referendum questions as set out in Schedule 1. The second was on the limit set for referendum expenses. As highlighted above, a report setting out the views expressed by the Commission on the intelligibility of the referendum questions has been laid before each House of Parliament.

7.5 The Electoral Commission were consulted on the other detailed provisions contained in these Regulations on 2 January 2007. The rules for the conduct of such referendums are based on the rules contained in the Local Elections (Principal Areas) (England and Wales) Rules 2006 (SI 2006/3304) ("the 2006 Rules"). Throughout the summer and autumn of 2006 the Department consulted Advisory Groups made up of key stakeholders with practical and in-depth knowledge of running elections, to provide feedback on the appropriateness of the proposed content of the 2006 Rules. The 2006 Rules themselves apply to the conduct of elections of local councillors the detailed Rule changes made to the Parliamentary Elections Rules - Schedule 1 to the Representation of the People Act 1983 (c.2) - as amended by the 2006 Act.

7.6 Many of the proposals contained in the 2006 Act emerged from a series of detailed studies and consultation carried out by the Electoral Commission with the electoral community following the 2001 General Election. The Electoral Commission produced several reports and recommendations for changes to the administration of elections, culminating in two main reports: '*Voting for change*', published in June 2003 and '*Delivering democracy? The future of postal voting*' published in December 2004. These studies and reports considered or made recommendations relevant to the conduct of local elections as well as Parliamentary elections. The Government's responses to these reports was published and announced as command papers in December 2004.

7.7 Following the election petition cases in respect of the local elections in Aston and Bordesley Green wards of Birmingham City Council in June 2004, the Government undertook urgent policy discussions with stakeholders on a range of proposals aimed at

safeguarding the integrity of the electoral system. A Government policy discussion paper was published in May 2005 and a series of discussion meetings were held with the Association of Electoral Administrators, other returning officers and administrators, suppliers of electoral services and political parties. Over 160 responses were received on the proposals. On the basis of comments and responses received, the Government recommended a package of additional measures which also took into account the Electoral Commission's recommendations in their report '*Securing the Vote*', published in May 2005.

7.8 On 11 October 2005, as well as introducing the (then) Electoral Administration Bill, the Government also published a report: '*Electoral Administration – legislative proposals resulting from consideration of the policy discussion paper published on 25 May 2005*'. This report set out its considerations of the responses to the May 2005 policy paper referred to in the previous paragraph, and outlined the Government's resulting proposals for legislation. In particular, the report detailed: a) the measures the Government aimed to have in place for local government elections in May 2006; and b) the measures requiring primary legislation being taken forward in the (then) Electoral Administration Bill.

7.9 In outline, regulation 3 and Schedule 1 set out the question to be asked in the referendum. Regulations 4 to 7, and Schedule 2, make provision about publicity for the referendum and the regulation of referendum expenses. Regulations 8 to 13 make provision for the conduct of referendums, whether or not combined with the polls at other elections or referendums. Regulations 14 to 17, and Schedules 6 and 7, make provision for declaring, and challenging, the result in referendums. The detailed rules for conducting referendums, incorporating the reforms made by the 2006 Act, are contained in Schedule 3 (applicable when the referendum is taken alone) and Schedule 5 (applicable when the referendum is taken together with another poll).

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

9.1 Any queries about the content of this memorandum should be addressed to: Shashi Langham at the Ministry of Justice. tel. 0207 210 8244, e-mail: Shashi.Langham@dca.gsi.gov.uk