

**EXPLANATORY MEMORANDUM TO
THE EUROPEAN PARLIAMENTARY ELECTION PETITION (AMENDMENT)
RULES 2009**

2009 No. 1118 L. 12

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

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

2. **Purpose of the instrument**

- 2.1 This instrument updates reference to Gibraltar legislation which is contained in the European Parliamentary Election Petition Rules 1979 (S.I. 1979/521) (“the 1979 Rules”). It also deletes a general reference to Gibraltar Ordinances in the 1979 Rules which is now redundant.

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

- 3.1 None

4. **Legislative Context**

The 1979 Rules regulate the presentation and hearing of an election petition to the High Court which questions the declared result of any election to the European Parliament. The 1979 Rules were made by the Supreme Court Rule Committee, and the power to make amendments to the Rules now rests with the Civil Procedure Rule Committee by virtue of regulation 120 of the European Parliamentary Elections Regulations 2004 (S.I. 2004/293).

- 4.1 The European Parliamentary Election Petition (Amendment) Rules 2004 (S.I. 2004/1415) extended the operation of the 1979 Rules to Gibraltar. This was necessary in light of the provisions contained in the European Parliament (Representation) Act 2003 (the “2003 Act”) and the European Parliamentary Elections (Combined Region and Campaign Expenditure) (United Kingdom and Gibraltar) Order 2004 (S.I. 2004/366) which combined Gibraltar with the Southwest electoral region in England to form a new electoral region for the purposes of European Parliamentary elections.

- 4.2 This instrument is necessary as a result of the adoption of a new constitution for Gibraltar under the Gibraltar Constitution Order 2006, following which legislation formerly termed “Ordinances” are now to be referred to as “Acts”.

4.3 This set of amendment rules is one of a number of instruments which prepare for the European Parliamentary election to be held on 4th June 2009. The amendment made in these Rules follows those made in relation to Gibraltar in those instruments.

5. Territorial Extent and Application

5.1 This instrument applies to England, Wales and Gibraltar.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 This instrument is necessary in the light of the Gibraltar Constitution Order 2006 by virtue of which Gibraltar Ordinances are now known as Acts and the Assembly is now known as the Parliament.

7.2 The 1979 Rules are part of the secondary legislation which ensures that the United Kingdom fulfils its obligation to enable the people of Gibraltar to vote in the European Parliamentary elections. In 1999, the European Court of Human Rights decided, as a result of a legal challenge against the UK by a Gibraltar resident, that by failing to organise European elections in Gibraltar, the United Kingdom was in breach of article 3 of the First Protocol to the European Convention on Human Rights. The 2003 Act provides for the Gibraltar electorate to be enfranchised for elections to the European Parliament.

8. Consultation outcome

8.1 This instrument was considered, approved and signed by the Civil Procedure Rule Committee on 24 April 2009.

8.2 The Government of Gibraltar and the Electoral Commission have been consulted on this instrument. Both are content.

9. Guidance

9.1 The Electoral Commission and the Government of Gibraltar will ensure that electoral administrators are provided with guidance in relation to the provisions contained within the 1979 Rules (as amended).

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

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

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 We will keep the Rules under review by liaising with the Electoral Commission, the Regional Returning Officer for the South West region (which includes Gibraltar) and the Chief Secretary for the Government of Gibraltar.

13. Contact

Paul Brunton at the Ministry of Justice Tel: 020 3334 3778 or email: paul.brunton@justice.gsi.gov.uk can answer any queries regarding the instrument.