

EXPLANATORY MEMORANDUM TO
THE LOCAL AUTHORITIES (ELECTED MAYORS)(ELECTIONS, TERMS OF
OFFICE AND CASUAL VACANCIES)(ENGLAND) REGULATIONS 2012

2012 No. 336

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.

2. Purpose of the instrument

The Local Authorities (Elected Mayors)(Elections, Terms of Office and Casual Vacancies)(England) Regulations 2012 (“the Regulations”) revoke and replace the Local Authorities (Elected Mayors)(Elections, Terms of Office and Casual Vacancies)(England) Regulations 2001 (“the 2001 Regulations”). The Regulations provide for the timing of the first, second and subsequent elections for the return of elected mayors of local authorities, for the term of office of those individuals, the intervals between subsequent mayoral elections and for the filling of casual vacancies in the office of elected mayor.

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

None.

4. Legislative Context

4.1 Section 21 of, and Schedule 2 to, the Localism Act 2011 (“the 2011 Act”) inserted a new Part 1A (Arrangements with respect to local authority governance in England) into the Local Government Act 2000 (“the 2000 Act”), to apply to England only, and limited existing Part 2 of the 2000 Act to Wales. Section 9H(6) of Part 1A provides that elections for the return of an elected mayor are to take place on the ordinary day of election in each of the relevant election years (set out at section 9R). Section 9H(7) provides that the term of office of an elected mayor is to be four years.

4.2 Section 9H is subject to regulations made under section 9HB (time of elections etc). These Regulations make different provision for the timing of the first, second and subsequent elections of elected mayors in local authorities which start to operate a mayor and cabinet executive after the Regulations come into force.

4.3 Section 9N of the 2000 Act empowers the Secretary of State by order to require a specified local authority to hold a referendum on whether that authority should operate a mayor and cabinet executive – and the Regulations make separate provision for the timing of first and second elections in local authorities specified in a section 9N order where the result of that referendum is in favour of a change to a mayor and cabinet executive.

4.4 The Regulations also make provision for mayoral elections held both in consequence of a referendum which approved a change to a mayor and cabinet executive, and for mayoral elections held in consequence of a resolution of the local authority (without holding a referendum) to make that change.

5. Territorial Extent and Application

This instrument applies to local authorities in England.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

7.1 Section 9N of the 2000 Act provides for the Secretary of State to require, by order, specified local authorities to hold a referendum on whether they should have a directly elected mayor. On 8 February 2012, the Minister for Decentralisation and Cities, the Rt Hon Greg Clark MP, made Orders under section 9N of the 2000 Act requiring the following local authorities to hold a referendum on 3 May 2012 on whether to operate a mayor and cabinet executive:

Birmingham City Council
Bradford City Council
Bristol City Council
Coventry City Council
Leeds City Council
Manchester City Council
Newcastle upon Tyne City Council
Nottingham City Council
Sheffield City Council
Wakefield City Council

7.2 The Regulations provide that where a referendum held in a local authority, by virtue of an order made under section 9N and which is made by 1 April 2012, approves the change to a mayor and cabinet executive, the first election for the return of an elected mayor in the authority shall take place on Thursday 15 November 2012. The Regulations also provide that the date of the second election of such elected mayors will take place on the ordinary day of election in May 2016, and subsequent elections will take place on the ordinary day of election every four years afterwards.

7.3 The Regulations also make provision in relation to the date of the first, second and subsequent elections of mayors in local authorities which have not been required to hold a referendum by virtue of an order made under section 9N. These provisions to a certain extent replicate the existing provisions in the 2001 Regulations. However, as a result of other provisions on local authority governance in the 2011 Act, we are making a number of changes to the 2001 Regulations, which are summarised below.

7.4 The principal change is to provide for the date of the first election for the return of an elected mayor after a local authority has resolved to move to the mayor and cabinet executive (without holding a referendum). Currently, the 2001 Regulations only make provision for the date of the first election of a mayor following a referendum.

7.5 The Regulations also give those local authorities, which are not the subject of an order made under section 9N, greater flexibility than provided for in the 2001 Regulations in relation to the date of the first election of the mayor. The Regulations provide that if a local authority so resolves it may hold the first election of the mayor on the first Thursday in May or third Thursday in October, whichever occurs first after the date of the referendum which approved the adoption of a mayor and cabinet executive, or after the date on which the local authority resolved to move to a mayor and cabinet executive. The Regulations also provide that where the date of such a referendum or resolution is before 15 November 2012, the local authority may resolve that the first mayoral election shall take place on 15 November 2012, alongside the poll for the election of the Police and Crime Commissioners.

7.6 The decision on whether to pass a resolution under regulation 3(1) or 3(2) will be for each local authority to make taking into account all relevant factors, including the requirement, currently set out in the Local Authorities (Mayoral Elections)(England and Wales) Regulations 2007 (S.I. 2007/1024), that returning officers must publish, not later than the 25th day before the day of election, a notice of the election setting out the place and times at which nomination papers are to be delivered and the date of the election poll.

7.7 If no resolution is passed by a local authority under regulation 3(1) or (2), regulation 3(3) provides that a default position applies which is that the first election of an elected mayor shall take place on the first Thursday in May or third Thursday in October, whichever occurs first, after the end of the period of three months beginning with the date of the referendum or the date of the mayoral resolution, as the case may be.

7.8 The Regulations also give local authorities, which are not the subject of an order made under section 9N, greater discretion than provided for in the 2001 Regulations in relation to the date of the second election of the mayor. The second election of the mayor will occur on a date specified in or determined under the local authorities executive arrangements, subject to the election taking place on a day on which the local authority holds councillor elections and the election not taking place earlier than 23 months after the first election of the mayor or later than 67 months after the first election of the mayor. This will provide that an elected mayor's first term of office may not be less than two years or longer than 5 and half years.

- *Consolidation*

7.9 This is the first exercise of the enabling power, so is not applicable.

8. Consultation outcome

8.1 The Regulations have been the subject of a short, focussed sounding exercise with election experts and practitioners - the Electoral Commission, Returning Officers and the Association of Electoral Administrators.

8.2 No substantial comments were received about the text of the Regulations. Respondents' comments centred on a potential risk around the combination of the poll for the election of any city mayors, with the poll for the election of Police and Crime Commissioners on 15 November 2012. In particular, the Electoral Commission, in its response of 22 December, stated that while holding the mayoral elections at the same time as the Police and Crime Commissioners elections will undoubtedly make the administration of the elections more complicated than would otherwise have been the case, they could see no insurmountable practical problems for Returning Officers in combining the two sets of polls. However, the Commission did refer to a potential risk of voters being confused, particularly given that both sets of elections will be new and will use a voting system - supplementary voting - with which many electors will be unfamiliar.

8.3 The Government believes that there is a strong case, where there is a vote in favour of the mayoral model at a referendum, required by an order made under section 9N, in May, for that city to hold its first mayoral elections shortly afterwards. This approach would avoid the serious loss of momentum that deferring the mayoral elections to May 2013, for instance, would cause. There is also precedent for local authority mayoral elections to be held in the same year as mayoral referendums held in May. Such elections usually, as was the case in the London Borough of Hackney, Mansfield, Stoke-on-Trent and others, take place in October.

8.4 On the basis of having elections as soon as practicable after the referendums in May 2012, an important factor when deciding on the date of the first election of a mayor, following a referendum required by a section 9N order, is the Police and Crime Commissioner elections which are to be held on 15 November 2012. Whilst the Government recognises that having these elections on the same day might have some risk of confusion amongst voters, it notes that there have been a considerable number of examples where two elections have been held on the same day. For example, over recent years local elections have been combined with General Elections and local elections in May 2011 were held on the same day as the referendum on the voting system for UK Parliamentary elections. Moreover, in some local authorities with existing elected mayors, for instance Bedford Borough Council, the London Borough of Hackney and Middlesbrough Borough Council, the local election of councillors, which is on the first past the post ballot, is held on the same day as the election of a mayor which is on the supplementary voting system. The Government also notes that both mayoral and Police and Crime Commissioner elections have the same voting system – the supplementary voting system. The Government equally recognises that holding two elections within a short timescale, say elections for mayors in October and Police and Crime Commissioner elections in November,

would involve considerable extra costs and risks to turnout, particularly for the later Police and Crime Commissioner election.

8.5 The Government therefore believes that on balance the right course is for any mayoral elections, following a referendum required by an order made under section 9N, to take place as soon as practicable after the referendum in May and that therefore these elections should be held on the same day as the Police and Crime Commissioner elections on 15 November 2012. The Government also believes that those local authorities, which are not the subject of an order made under section 9N, but hold a referendum or pass a resolution to adopt a mayor and cabinet executive before 15 November 2012, should have the option of resolving to hold the first election of a mayor on 3 May 2012 or 15 November 2012 (as may be appropriate), and the Regulations provide for this.

9. Guidance

The Regulations are considered to be self-explanatory and there is no intention to issue separate guidance.

10. Impact

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

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The Department does not intend to put in place any formal mechanism for monitoring and reviewing the Regulations. The Department maintains close dialogue and liaison with the Electoral Commission, electoral administrators, the Local Government Association and other local government representative groups. Any issues relating to these Regulations will be identified through these channels.

13. Contact

Karl Holden at the Department for Communities and Local Government can answer any queries regarding the instrument (Tel: 0303 444 2572, karl.holden@communities.gsi.gov.uk).