

EXPLANATORY MEMORANDUM TO

THE TRANSFER OF FUNCTIONS (ELECTIONS AND REFERENDUMS) ORDER 2013

2013 No. 2597

1. 1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 This Order makes provision for various functions of the Secretary of State for Communities and Local Government in relation to elections and referendums to be exercisable concurrently with the Lord President of the Council.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 The decision to make the statutory functions in question exercisable concurrently by the Lord President of the Council and the Secretary of State requires an Order under the Ministers of the Crown Act 1975 and cannot be implemented administratively. The Order is also required to make appropriate supplementary provision in relation to these matters.
 - 4.2 A transfer of functions order was made in 2010 to enable the Deputy Prime Minister as Lord President of the Council to amend the electoral legislation which was then in existence (the Lord President of the Council Order 2010, S.I. 2010/1837). Since then, the Localism Act 2011 has amended existing electoral legislation and also created new regulation-making powers in relation to setting the conduct rules for newly instituted polls, most notably council tax and neighbourhood planning referendums. The Order sets out the powers affected or instituted by the Localism Act (albeit in a variety of other enactments) which are to be made jointly exercisable by the Secretary of State and the Lord President of the Council.
5. **Territorial Extent and Application**
 - 5.1 This instrument has the same extent as that of the relevant provisions of the Localism Act 2011, that is to say, England and Wales. The functions referred to in the Order all apply to England only.
6. **European Convention on Human Rights**
 - 6.1 The Minister for Political and Constitutional Reform has made the following statement regarding Human Rights:

“In my view the provisions of the Transfer of Functions (Elections and Referendums) Order 2013 are compatible with the Convention rights.”

7. Policy background

- 7.1 In a Written Ministerial Statement of 2 June 2010, the Prime Minister announced that, to bring into effect the decision that the Deputy Prime Minister should be given special responsibility for political and constitutional reform, responsibility for a range of matters relating to elections, the duration of Parliaments and the make-up of Parliament, and for specific bodies including the Electoral Commission, would transfer from the Secretary of State for Justice to the Deputy Prime Minister as Lord President of the Council (in the Cabinet Office). With these responsibilities for reform, and for the policy relating to specific bodies, comes the responsibility for the underlying administrative and policy areas.
- 7.2 One of the key aspects of Ministerial responsibility for electoral policy is the need, from time to time, to update the rules for polls to implement the detail which flows from Acts of Parliament across statutory elections and referendums. Over the course of 2013, Cabinet Office Ministers have brought forward several draft statutory instruments to update the rules for elections (under powers transferred by the 2010 Order), in particular, making changes consequent on the passage of the Electoral Registration and Administration Act 2013 and associated secondary legislation (such as the draft European Parliamentary Elections (Amendment) Regulations 2013).
- 7.3 Now that the Localism Act 2011 has created or amended regulation-making powers in relation to certain local polls, it is necessary to make a further Order to make these regulation-making powers jointly exercisable by the Lord President of the Council. This will allow the Deputy Prime Minister and other Cabinet Office Ministers to exercise these powers and bring forward regulations updating the rules for these local polls. The aim is to ensure the rules for polls are consistent to allow for a common voting experience and the effective combination of polls. The ability of the Secretary of State (in effect the Secretary of State for Communities and Local Government Ministers) to exercise these regulation-making powers is not affected by this Order. The approach taken in this Order has been agreed between Ministers in the Cabinet Office and the Department for Communities and Local Government
- 7.4 While this Order amends a number of enactments in consequence of the transfer of functions, it does not in itself create a need for consolidation. The question of whether there is a need for consolidation of the body of electoral legislation is under consideration as part of the Law Commission’s review of electoral law.

8. Consultation outcome

- 8.1 There has been no public consultation on this Order, since it relates solely to the change to the machinery of government outlined above at paragraph 7.1.

9. Guidance

- 9.1 The Electoral Commission will continue to issue guidance relating to the conduct of elections. No guidance is directly required as a result of this Order.

10. Impact

10.1 There is no impact on business, charities, voluntary bodies or the public sector.

10.2 A regulatory impact assessment has not been prepared for this instrument because no impacts on the private, public or voluntary sectors are foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 As the Order is limited to making provision to ensure the original intent of the 2010 machinery of government change is upheld in the light of legislation which has been made in the meantime, no monitoring or review is felt to be necessary. More widely, the Cabinet Office keeps all electoral legislation under review to ensure it continues to support electors' participation in elections and effective electoral administration.

13. Contact

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