

EXPLANATORY MEMORANDUM TO
THE CITY OF LIVERPOOL (SCHEME OF ELECTIONS AND ELECTIONS OF
ELECTED MAYOR) ORDER 2021

2021 No. 1089

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order provides a new scheme for the holding of the ordinary elections of councillors of all wards in the City of Liverpool. The new scheme is for all councillors to be elected and retire together every four years, starting in 2023. In consequence, certain councillor elections due to take place in 2022 are postponed to 2023, and the date of the next election of the directly elected mayor for the City of Liverpool is moved from 2024 to 2023.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England albeit that it only applies in relation to the City of Liverpool.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Section 85 of the Local Government Act 2000 (“the 2000 Act”) prescribes three options for the scheme for the ordinary elections of councillors of a principal council. “Principal council” means a county council, a district council or a London borough council (see section 84). For all three options the term of office of councillors is four years. The essential characteristics of the three schemes can be summarised as:
- (a) a scheme under which elections are held in a given year and every fourth year after it, and all councillors are elected and retire together (“whole council elections”),
- (b) a scheme under which elections are held in a given year and every second year after it, and one half of the councillors are elected in each year in which elections are held (“election by halves”), or

- (c) a scheme under which elections are held in a given year and every year after it other than every third year after it, and one third of the councillors are elected in each year in which the elections are held (“elections by thirds”).
- 6.2 Section 86(A1) of the 2000 Act provides that the Secretary of State may by order make provision to secure that the scheme for the ordinary election of councillors of a principal council in England is a scheme of whole council elections.
- 6.3 Section 87 of the 2000 Act provides a power to the Secretary of State to change the years in which the ordinary elections of councillors of any specified local authority are to be held, but which does not change the scheme which prevails for the ordinary elections of those councillors. “Local authority” means a principal council or a parish council (see section 84).
- 6.4 “Ordinary day of election” means the first Thursday in May (see section 37 of the Representation of the People Act 1983) subject to the power of the Secretary of State by order to specify a different date in certain circumstances.
- 6.5 Sections 86(7) and 87(3) of the 2000 Act provide that any order which changes the scheme or year of ordinary elections of councillors may also make provision for members to retire at different times than that which they would otherwise have retired.
- 6.6 The Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2012 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. This Order amends those provisions, using section 9HB and section 105 of the 2000 Act to make special provision for the City of Liverpool.

7. Policy background

What is being done and why?

- 7.1 This Order provides for all Liverpool City Council councillors, and the directly elected executive mayor of the City of Liverpool, to be elected and retire together every four years, starting in 2023. It forms part of the Government intervention to Liverpool City Council (“the Council”). The Secretary of State considers the intervention package, including this Order, will address the failings identified in the independent inspection of the Council.

Explanations

- 7.2 Prior to the making of this Order, the scheme for the ordinary election of councillors to Liverpool City Council was election by thirds. Of those councillors serving the Council at the point at which the Order was made, a third were elected in 2018, a third in 2019, and a third in 2021 (the election due in 2020 having been postponed by the Coronavirus Act 2020). In 2012 the Council resolved to adopt the elected mayor executive arrangements, with an elected mayor being returned in 2012, 2016 and 2021 (again, the election due in 2020 having been postponed).
- 7.3 On 17 December 2020, following the seriousness of the issues identified through the Merseyside Police investigation into fraud, bribery and corruption in public office, which involves a significant connection to the Council, and following consideration of information from the Council regarding their governance arrangements, oversight and

control measures, the then Secretary of State appointed Max Caller CBE, under section 10 of the Local Government Act 1999 (“the 1999 Act”), to carry out an inspection of the compliance of the Council with its best value duty (as set out in Part I of the 1999 Act).¹

- 7.4 On 19 March 2021, Max Caller CBE, having undertaken his inspection, sent to the Council and the then Secretary of State a report (“the Report”) setting out his findings. The Report set out a picture of serious failings by the Council in the areas of its highways, regeneration and property management functions, and the interaction of these with the exercise of its planning functions and associated audit and governance arrangements. The Report concluded that the Council had failed to comply with its best value duty over a number of years.
- 7.5 In relation to elections, the Report said: “Councils in the recovery phase following an Inspection also need a long-term focus by the whole Council on getting things right, recognising that things may get worse before they get better. Embedding the cultural change needed to understand and comply with Nolan principles also needs a longer-term focus. It is the Inspection Team’s considered opinion that this is best delivered by Liverpool City Council moving to “all-out” (ie: whole council) elections.”
- 7.6 Having considered the findings of the Report, on 24 March 2021, the then Secretary of State published the Report and a letter to the Council setting out a proposed intervention package to secure compliance with its best value duty. He invited the Council and any other interested parties to make representations to him on or before 24 May 2021 about the Report and the proposed intervention package.
- 7.7 The proposed intervention package reflected the recommendations of the Inspector and contained two key elements: (a) Proposals to put in place Commissioners to take over functions associated with regeneration, highways and property management; and (b) Proposals to introduce electoral changes, including an Order to provide for whole council elections in 2023 and every fourth year thereafter.
- 7.8 On 10 June 2021, the then Secretary of State announced that having carefully considered the Report afresh, together with representations from the Council, Centenary Action Group, Unlock Democracy and members of the public, he was confident there was a sound basis for his considerations and, accordingly, was satisfied that the Council was failing to comply with its best value duty. In addition, he considered it necessary and expedient, in accordance with his powers under section 15(5) and (6) of the 1999 Act, to put in place an intervention package in order to secure the Council’s future and sustainable compliance with its best value duty.
- 7.9 Following the period for representations, the then Secretary of State confirmed his intention to make an Order using his powers in the 2000 Act to achieve the fresh start the Council requires by providing full council elections from 2023, and specifically for:
- The Council to hold whole council elections every four years from 2023 and adjust retirement dates for existing councillors accordingly;
 - Postponement for one year of the May 2022 elections of one third of Liverpool City councillors and extend their terms of office accordingly; and

¹ <https://www.gov.uk/government/collections/inspection-into-the-governance-of-liverpool-city-council>. All documents relating to the inspection and subsequent intervention are published here.

- The movement of the next election for Liverpool City’s Mayor to 2023 from 2024 so that they take place at the same time as council elections, and to shorten the term of office accordingly.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 The Order amends the Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2012. As the amendments are limited in scope and self-contained, we do not consider that consolidation of the 2012 Regulations is necessary.

10. Consultation outcome

- 10.1 As set out in section 7 of this Explanatory Memorandum, the then Secretary of State carefully considered the representations he received on the Report and his proposed intervention package. These representations are summarised in the Explanatory Memorandum² that accompanies the Directions, and the Council’s representation is published on gov.uk.³ None of the representations made direct reference to the new scheme for elections for the holding of the ordinary elections of councillors of all wards in the City of Liverpool. The then Secretary of State spoke with representatives from the Council about his proposed intervention package, and specifically the postponement of the 2022 elections and the movement of the next election for Liverpool City’s Mayor to 2023. The Liverpool City Mayor indicated that her preference was for the date of the next mayoral election to remain in 2024 rather than be brought forward to 2023. This would allow the Council more time to focus on the longer-term improvements needed. However, given the benefits of aligning electoral cycles (see para 7.5 above), the Secretary of State remains content that the new scheme of elections, including aligning the mayoral elections with the election of councillors, is the best way forward.

11. Guidance

- 11.1 No guidance is necessary to accompany the Order; the Council concerned has been notified of its making.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is that the Council will no longer be running elections in three years out of every four (making commensurate cost savings) and hence will be able to focus on longer term strategic change as part of the wider government intervention. In addition, the mayoral election will be aligned with the whole council elections in every fourth year.

² <https://www.gov.uk/government/publications/liverpool-city-council-explanatory-memorandum>

³ <https://www.gov.uk/government/publications/liverpool-city-council-representation>

12.3 An Impact Assessment has not been prepared for this instrument because there is no impact on business, charities or voluntary bodies.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 There is no plan to separately monitor or review this legislation as its purpose is limited to changing the Council's electoral cycle to one of several permitted schemes of election and to aligning the mayoral elections with the whole council elections. The Commissioners have been appointed to support the Council to make the necessary improvements for an initial period of three years. They will report on progress to the Secretary of State every six months and their reports will be published by the Secretary of State.

15. Contact

15.1 Gemma Penn at the Department for Levelling Up, Housing and Communities; Telephone: 030 3444 3677 or email: gemma.penn@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Paul Rowsell CBE, Deputy Director and Head of the Governance Reform and Democracy Unit, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kemi Badenoch MP, Minister of State at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.