

**EXPLANATORY MEMORANDUM TO**  
**THE REGIONAL ASSEMBLY AND LOCAL GOVERNMENT**  
**REFERENDUMS ORDER 2004**

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

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

2. **Description**

The instrument uses powers under the Regional Assemblies (Preparations) Act 2003 (“the Preparations Act”) and under the Political Parties, Elections and Referendums Act 2000 (“PPERA”) to make provisions relating to the conduct of Regional Assembly and local government referendums called under the Preparations Act. It contains the rules and procedures for holding the referendums by all-postal ballot, and for the combination of polls.

3. **Matters of Special Interest to the Joint Committee on Statutory Instruments**

*Relationship with PPERA*

- 3.1 A referendum about the establishment of an elected regional assembly (“a Regional Assembly referendum”) (see s.1 Preparations Act) is subject, as a regional referendum, to the requirements of Part 7 of PPERA (see s.101 PPERA). PPERA does not apply to local government referendums (see s.2 of the Preparations Act) about the restructuring of local government in areas which have both a county and district council, as they are sub-regional. This Order uses powers under the Preparations Act to apply, and make modifications to, PPERA so that there is one consistent scheme for both the Regional Assembly and local government referendums, which regulates those who wish to campaign for an outcome in one or more of the referendums in a region.

- 3.2 The Order uses powers under both PPERA and the Preparations Act to make provision for regional referendums and for local referendums respectively, and for their combination.

4. **Legislative Background**

- 4.1 This Order is to be made under sections 2(9) and (10) and 7(1) of the Preparations Act, and sections 129 and 156 of PPERA and follows statutory consultation with the Electoral Commission. It represents the first use of those powers for making provision in relation to referendums.

- 4.2 This instrument is related to two other draft orders laid at the same time, namely:
- i. The Regional Assembly and Local Government Referendums (Expenses Limits for Permitted Participants) Order 2004
  - ii. The Regional Assembly and Local Government Referendums (Counting Officers' Charges) Order 2004.
- 4.3 The government intends to lay a further order in July 2004 calling referendums and setting the options in the local government referendums.

## 5. **Extent**

- 5.1 This instrument extends to all of the United Kingdom.
- 5.2 The provisions will only apply to Regional Assembly and local government referendums held in England under sections 1(1) and 2(2) of the Preparations Act.

## 6. **European Convention on Human Rights**

- 6.1 The Minister of State for Local and Regional Government (Mr. Nick Raynsford), has made the following statement:

“In my view the provisions of the Regional Assembly and Local Government Referendums Order 2004 are compatible with the Convention rights.”

## 7. **Policy background**

- 7.1 As part of its programme of devolution and constitutional change, the government has proposed establishing elected regional assemblies in those English regions that want them. Where an elected regional assembly is established, the government believes the local government structure in that region should be completely unitary, also known as single-tier.
- 7.2 The Preparations Act received Royal Assent on 8th May 2003. After a soundings exercise, the Secretary of State directed the Boundary Committee for England to conduct reviews of the structure of local government in the regions of the North East, North West and Yorkshire and the Humber and to make recommendations as to options for restructuring local government in the two-tier areas, i.e. those with both district and county councils, to a single-tier. The Boundary Committee delivered its recommendations on 25 May 2004.
- 7.3 The Preparations Act is a framework for the holding of Regional Assembly referendums and local government referendums. If a Regional Assembly referendum is ordered to be held in a region, the Act also requires the Secretary of State to order local government referendums to be held in the two-tier areas, on the same date, about the government's proposed options for single-tier local government in those areas. About 74% of local government electors in the three northern regions live in unitary authorities and would

therefore only be able to vote in a Regional Assembly referendum. The other 26% would be able to vote in both the regional referendum and the local referendum in their area.

- 7.4 Neither the Preparations Act nor PPERA make detailed provision for the conduct of referendums. This Order therefore sets out the provisions and rules specifically to govern those referendums and how the polls are to run in combination.
- 7.5 The Chairman of the Electoral Commission is appointed by PPERA (s. 128(2)) as the Chief Counting Officer for the regional referendum. He is appointed by this Order to the same position for the local government referendums. Counting officers at regional referendums act as counting officers for local government referendums in their area. The Commission has a statutory function to report on the referendums.
- 7.6 The Government indicated during the passage of the Preparations Act in Parliament that it contemplated conducting the referendums by all-postal ballot and would further consider doing so. The Hansard references are:

Commons

Committee report, column 33, 3rd December am

Committee report, column 97, Tuesday 10 December am

Committee report, clause 9, Tuesday 10 December

Lords

Official report: Column 530, 24th March 2003

Official report: Column 107, 7th Apr 2003

- 7.7 This Order requires that the referendums are conducted by all-postal ballot. Following a number of successful pilots in 2000, 2002 and 2003, Nick Raynsford MP announced the government's intention to hold the referendums by all-postal ballot on 22 October 2003. The reason for the early announcement was to give electoral administrators certainty in their planning. To avoid administrative and voter confusion, provisions are broadly similar to those at the pilot regions for the European and local elections in June 2004. At the European elections, there was an average turnout of 42.6% in the pilot regions compared with 20.2% in 1999: an increase of more than 100%. In the non-pilot regions, turnout increased by 50% compared to 1999.

*Security statements*

- 7.8 The Electoral Commission advised that "the traditional form of declaration adds nothing to the security of the process but introduces significant risks". The Government intends to use security statements, which do not require a witness signature, for this Autumn's referendums. Such security statements have been used in most of the local election pilots prior to 2004.
- 7.9 If a valid security statement is returned to Counting Officers unsigned, it will be returned to the voter for completion and return, if there is sufficient time remaining.

*Assistance and delivery points*

- 7.10 The purpose of the postal voting provisions is to make it as convenient as possible for people to have their say in this autumn's referendums. However, the Government does not want to compel people to vote by post: it believes that electors should have the choice as to whether to return their vote by post, to deliver it by hand, or to vote at a place supervised by electoral officials, guaranteeing the security and secrecy of the vote cast. For this reason, there is a requirement for counting officers to provide one assistance and delivery point per 50,000 electors. The assistance and delivery points have to be open on the date of the referendum between 7 am and 10 pm and the preceding five working days for normal working hours. Counting officers have discretion both to set up more assistance and delivery points and to extend the opening hours, including being open at weekends.

*Maintaining the integrity of the ballot*

- 7.11 Offences such as personation; voting more than once; putting undue influence on a voter; breaching the expenses rules; and maintaining the secrecy of information obtained at a delivery point and in the course of the issue, receipt and counting of ballot papers are being applied to referendums to uphold the integrity of the ballot.
- 7.12 In addition there are a number of measures to alert voters to the importance of avoiding fraud and to help counting officers detect it. For example, secrecy warnings would be placed on information literature and ballot instructions with warnings as to penalties, and ballot papers would bear official marks to ensure valid papers are readily identifiable. Counting officers would also have the ability to cancel the ballot number of any ballot paper identified as lost or stolen and to remove that ballot paper from the count if nonetheless it is returned to the counting officer. Where a voter seeks redirection of his ballot paper to another address, he would have to complete controlled forms and make a signed statement supporting his application: the completion of a false statement being an offence. Replacement ballot papers would be available to electors who apply in person, where their papers are lost or stolen, but evidence of identity is required to obtain a replacement.
- 7.13 Nick Raynsford has also written to the Attorney General to request that the right processes be put in place to detect and respond rapidly to fraudulent practice if referendums are held this Autumn.
- 7.14 Nick Raynsford MP has given an undertaking to Parliament "not to proceed with all-postal referendums as planned if the Electoral Commission produces convincing evidence in evaluating the June 2004 pilots that would lead to the conclusion that it would be unsafe to proceed as planned.

*Printing and dispatch of ballot papers*

- 7.15 Some media coverage of the pilot regions in the June elections focused on problems experienced printing ballot papers and delivering them to the Royal Mail. The government is confident that similar problems will not occur with the referendums. In an election, it is necessary to wait for the list of

nominated candidates to be finalised before printing ballot papers. For the June elections, this did not happen until 11 May, leaving only 14 working days to complete the printing of ballot packs before the deadline for their issue by Returning Officers. In the case of the referendums, there is no equivalent to a list of nominated candidates to be finalised and hence the period for printing the ballot packs would be substantially longer.

*The count and announcing the results*

- 7.16 To enable local people to identify how their particular area has voted, each counting officer will certify for his area the number of ballot papers counted and the number of votes cast for each referendum answer. The Chief Counting Officer will do the same for the whole of the referendum area.
- 7.17 To ensure there is confidence in the final result, the Order makes provision enabling recounts, both in a voting area and the whole referendum area.

*Consultation*

- 7.18 In drawing up this Order, ODPM officials have worked closely with officials from DCA and the Electoral Commission in regular fortnightly working group meetings. Public consultation with political parties, campaign groups, local authorities and disability organisations on an earlier version of the draft Order was held by ODPM between 18th December 2003 and 16th February 2004. 31 responses were received, mainly from local authorities. The consultation paper and a report summarising the views expressed is available on the ODPM website at [www.odpm.gov.uk/regions](http://www.odpm.gov.uk/regions). On the whole, respondents were supportive of the approach outlined in the consultation paper, with only a fifth opposed to combining the referendums and a third opposed to conducting the poll by all-postal. Calls for a greater number of delivery points and recount provisions are reflected in the revised Order. As responses to questions on electronic counting were divided, there are no provisions for e-counting in the Order.

**8. Impacts**

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on the costs of businesses, charities or voluntary bodies. The instrument has no significant impact on Local authorities.

*Costs*

- 8.2 The functions of the Chairman of the Electoral Commission as Chief Counting Officer are funded through the allocation of funds to the Electoral Commission from the Speaker's Committee. The functions of the Commission in managing the framework for permitted participants and reporting on the referendums are similarly funded. Provision for counting officers' charges is dealt with under a separate instrument.

**9. Contact**

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