

EXPLANATORY MEMORANDUM TO
THE LOCAL AUTHORITIES (CONDUCT OF REFERENDUMS)(ENGLAND)
REGULATIONS 2012

2012 No. 323

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 (Conduct of Referendums)(England) Regulations 2012 (“the Regulations”) provide for the conduct of referendums to be held under Part 1A of the Local Government Act 2000 (“the 2000 Act”). These referendums relate to the question of whether a county council in England, district council or London borough council should change its existing governance arrangements to different (executive or non-executive) governance arrangements.

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

None.

4. **Legislative Context**

4.1 Part 1A (Arrangements with respect to local authority governance in England) and new Schedule A1 (Executive arrangements in England: further provision) of the 2000 Act (as inserted by section 21 of, and Schedule 2 to, the Localism Act 2011 (“the 2011 Act”)), make provision for the governance of county councils in England, district councils and London borough councils. Under section 9B of the 2000 Act, a local authority must operate a mayor and cabinet executive, a leader and cabinet executive, a committee system, or arrangements as may be prescribed by Regulations under section 9BA of the 2000 Act.

4.2 A referendum on the question of whether a local authority should cease to operate its existing form of governance and start to operate one of the other permitted forms of governance may, or must, be held in certain circumstances (see Chapter 4 of Part 1A of the 2000 Act). For example, where a local authority’s existing form of governance was approved in a referendum, the authority must hold a referendum in order to change that form of governance, otherwise a local authority can resolve to hold a referendum (section 9M of the 2000 Act). Alternatively, a referendum can be triggered by a petition signed by at least 5% of the local electorate, in accordance with the Local Authorities (Referendums)(Petitions)(England) Regulations 2011, or as a result of an order under section 9ME. Finally, the Secretary of State may require, by order, a specified local authority to hold a referendum on whether to start to operate a mayor and cabinet executive, under section 9N of the 2000 Act. See, for example, the City of Birmingham (Mayoral Referendum) Order 2012 which has been made alongside these Regulations.

4.3 The Regulations make provision for the conduct of referendums under Chapter 4 of Part 1A of the 2000 Act.

4.4 The Regulations revoke and replace the Local Authorities (Conduct of Referendums)(England) Regulations 2007 (SI 2007/2089) (“the 2007 Regulations”), and incorporate, as appropriate, changes resulting from the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”) and the 2011 Act.

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

The Minister for Decentralisation and Cities, the Rt Hon Greg Clark MP, has made the following statement regarding Human Rights:

In my view the provisions of the Local Authorities (Conduct of Referendums)(England) Regulations 2012 are compatible with the Convention rights.

7. Policy background

• *What is being done and why*

7.1 The 2011 Act, which received Royal Assent on 15 November, implemented the Government’s policy on allowing local authorities in England to adopt the committee system model of governance and providing for referendums in England’s largest cities on whether the local authority should adopt the mayor and cabinet executive.

7.2 The Government believes that local authorities and the communities they represent are best placed to reach decisions on how their local authority should operate and be governed. The 2011 Act extends the options available to local authorities, by adding the committee system to the existing executive models set out in the 2000 Act. It will now be open to local authorities to operate one of the following governance models:

- a) the mayor and cabinet executive;
- b) the leader and cabinet executive (England);
- c) the committee system; or
- d) prescribed arrangements (i.e. prescribed in Regulations by the Secretary of State).

7.3 Part 1A of the 2000 Act provides for local people to have a say on the governance model adopted by their local authority via a referendum. The result of such a referendum is binding on the local authority concerned. Under the 2000 Act, governance referendums can be triggered by a petition signed by local people (under Regulations made under section 9MC), a resolution of the local authority itself (section 9M(3)) or an order made by the Secretary of State under section 9ME. The

7.4 The procedural rules for conducting a governance referendum under the 2000 Act are currently set out in the 2007 Regulations. As a result of the provisions on local authority governance in the 2011 Act, we have had to make a number of changes to those Regulations. We have also taken the opportunity to update the Regulations in light of changes made to the 2000 Act by the 2007 Act – including removing references to the now abolished mayor and council manager governance model.

7.5 The principal changes made in the Regulations are to apply the current procedural rules for conducting referendums to a referendum on the question of whether a local authority should adopt the committee system of governance and to a referendum on whether a local authority, specified in an order made under section 9N of the 2000 Act, should adopt the mayor and cabinet executive.

7.6 We have also taken the opportunity to update and improve the questions to be asked in a governance referendum, set out in Schedule 1, and the ballot papers in Schedules 3 and 5, drawing on the advice and expertise of the Electoral Commission. In line with the Government's localism agenda, we have also removed unnecessary prescription in relation to how local authorities publicise information about referendums, for instance, the date of the referendum and the question to be asked at the referendum etc. Under the 2007 Regulations, local authorities are currently required to publish such information in one or more local newspapers. However, under the Regulations, it will be for each local authority to decide the best method for ensuring that this information is brought to the attention of people living in its area.

7.7 Finally, provision has been made at regulation 10 to add the election of a police and crime commissioner, under section 50 (ordinary elections) or 51 (election to fill vacancy in office of commissioner) of the Police Reform and Social Responsibility Act 2011, to the list of elections with which a poll at a governance referendum may be required to be combined.

- *Consolidation*

7.8 This is the first exercise of the enabling power.

8. Consultation outcome

8.1 The Government consulted the Electoral Commission, as required by section 9MG(6) of the 2000 Act, on the questions set out in Schedule 1 to be asked at governance referendums. The referendum questions were sent to the Electoral Commission on 9 August 2011, and the referendum questions and ballot papers were subject to a public consultation by the Commission. The results of the consultation were reported to the Department on 28 October 2011. A report setting out the views expressed by the Commission on the questions has been placed in the library of each

House of Parliament. In response the Government has adopted the referendum questions and the form of ballot papers as recommended by the Commission.

8.2 Given our approach of replicating, with minor amendments and updates, the 2007 Regulations, which were themselves subject to extensive consultation, discussions with partners and reflect various reports and recommendations made by the Commission, 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. Minor points of clarification were raised which are reflected in the Regulations.

9. Guidance

The Regulations make no substantive procedural changes to the 2007 Regulations with which local authorities and electoral administrators are already familiar, so 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 and the Association of Electoral Administrators. Any issues relating to the 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).