



BRIEFING PAPER

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Coronavirus Act. Elections

By Neil Johnston

1. Postponing elections 2020

On 13 March 2020 the Government confirmed that the local elections in England and police and crime commissioner elections in England and Wales, due to take place on 7 May 2020, [would be postponed](#) for a year. This was as a result of the ongoing coronavirus outbreak.

The emergency legislation introduced to deal with the outbreak, the [Coronavirus Bill](#) (Bill 122 2019-21) included provisions to delay the elections. It made provisions to delay the decennial electoral registration canvas that was due in Northern Ireland this year. The Bill also allows for unscheduled electoral events, such as by-elections in devolved elections and recall of MP petitions, to be delayed. No scheduled local elections were due to take place in Scotland, Wales and Northern Ireland

The postponements of any of these electoral events cannot go beyond 6 May 2021.

The Bill was introduced on Thursday 19 March 2020 and passed all its Commons stages on Monday 23 March. The Lords stages of the Bill were held on 24 and 25 March. The [Coronavirus Act 2020](#) gained Royal Assent on 25 March 2020. The main provisions are summarised below. The Government also [released a statement](#) which outlined the main provisions of the Bill in relation to postponing elections.¹

2. Where were elections due to take place?

Local elections were due to take place on 7 May 2020 in 118 metropolitan, district and unitary authority council areas in England. Different councils operate what are known as different electoral cycles - some were due to elect the whole council and others were due to elect either a third or half of the council.

In addition to local council elections there were other elections due to take place across the whole of England and Wales:

- London mayoral election and for seats on the Greater London Authority (GLA);

¹ [Postponement of electoral events: Written statement - HCWS174](#)

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- Police and crime commissioner (PCC) elections in 40 police force areas in England and Wales (except London and Manchester). In Essex, North Yorkshire, Northamptonshire and Staffordshire the role of PCC also now includes responsibility for fire and rescue services;
- Metro-mayoral elections in Greater Manchester, Liverpool City Region, Tees Valley and West Midlands;
- Single-authority mayoral elections in Bristol, Liverpool, and Salford.
- Parish council elections in some areas

Some local referendums and council by-elections were also scheduled to take place on the same day.

3. Calls to postpone the elections

The Electoral Commission [wrote to the Government](#) on 12 March calling for the postponement of local elections due in May:

The risks to delivery that have been identified are such that we cannot be confident that voters will be able to participate in the polls safely and confidently, nor that campaigners and parties will be able to put their case to the electorate. We therefore call on the Government to take steps to provide early clarity to all those with an interest in the electoral process; and on the available information and position we recommend the Government now delay the 7 May polls until the autumn.²

The Association of Electoral Administrators (AEA), the body that represents electoral administration staff, also asked for certainty on the potential postponement of the polls. It [wrote to the Government](#) on 10 March and highlighted some of the risks of holding a poll in the midst of a serious coronavirus outbreak:

- The delivery of the polls could be put at risk if returning officers and their staff become ill and need to self-isolate. As elections were due in all parts of England and Wales the possibility of staff from another area assisting may have been limited;
- Candidates must deliver nomination paper in person. If some council premises needed to close candidates may be unable or unwilling to deliver their nomination papers;
- Polling stations only have a relatively small number of people in them at any one time, but across polling day hundreds of people would be in attendance. The AEA sought guidance on best practice about measures to sanitize polling stations;
- Election counts involves large numbers of people gathered in one place. If people are reluctant or unable to attend the counts the transparency of the electoral process could be called into question;
- Staff may be unwilling or unable to staff polling stations.³

[Research by](#) Alistair Clark and Toby James, two leading academics specialising in electoral administration, found that of polling station staff, about 25% are retired; two-thirds are female; and their average age will be mid-50s. The AEA reported that some staff were already turning down polling station work.

Another issue highlighted by the AEA was the availability of specialised suppliers. There is a relatively small number of specialised suppliers that are able to deliver electoral services, such as printing ballot papers, postal voting packs, polling cards and specialised electoral software. If these had to scale back their services or close completely there would be a risk to returning officers that they would not be able to successfully deliver their polls.

² Electoral Commission, [Letter: Coronavirus and its impact on the May polls](#), 12 March 2020

³ AEA, [Letter to Chloe Smith MP](#), 10 March 2020

4. The *Coronavirus Bill* provisions

The date of local elections is set out in legislation. Without the provisions passed in the *Coronavirus Act* returning officers would have had to continue to prepare for polls so they didn't break the law. As the Explanatory Notes to the Bill explained:

There is no existing legislative provision that allows for any of the statutory polls scheduled for 7 May to be postponed. There are some powers to move poll dates by secondary legislation, but these are only available significantly in advance and can no longer be used for 7 May polls.⁴

Clauses 57-66 of the *Coronavirus Bill*, as introduced, dealt with electoral matters.

Clause 57 of the Bill applied to England and Wales and would postpone local elections for the various types of elections due on 7 May 2020. As noted above scheduled local elections were due in some parts of England and PCC elections were due in England and Wales.

It allowed for existing councillors to serve an additional year and for those elected in 2021 who should have been elected in 2020 to serve a three-year term instead of the normal four-year term.

The London Mayor, London Assembly members, other elected mayors and police and crime commissioners elected in 2021 will also all serve a three-year term.

This is to allow the normal electoral cycles to be restored once the current crisis is over.

Clause 58 would give the Secretary of State power to make regulations to postpone any relevant by-elections or local referendums that may be required in the relevant period. This period is from the passing of the Bill to 6 May 2021.

Relevant elections or referendums are by-elections for local council elections in England, the Mayor of London and directly elected mayors in England, GLA members, police and crime commissioners. PCC elections are not devolved and remain the responsibility of the UK Government.

It also applies to local government by-elections in Northern Ireland. Elections in Northern Ireland are an excepted matter and are therefore the responsibility of Ministers in the UK Parliament. Local council by-elections are rare in Northern Ireland as vacancies are normally filled by co-option. There are no scheduled local elections due in Northern Ireland in 2020.

Relevant referendums covered by this clause were local referendums in England triggered following local petitions, council tax referendums and on neighbourhood development plans.

Powers to postpone contained in this clause may be exercised more than once, up to the time limit of 6 May 2021.

Clause 59 would extend to the whole of the UK and allows petition officers and Ministers to postpone [Recall petitions](#).

Under the [Recall of MPs Act 2015](#), MPs can face a recall petition under certain circumstances: if an MP is sentenced to a jail term; suspended from the House at least 10 sitting days (or at least 14 days if sitting days are not specified) following a report and recommended sanction from the Committee on Standards; or convicted of an offence

⁴ *Coronavirus Bill 2019-21*, [Explanatory notes](#), para 103, p18

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under section 10 of the [Parliamentary Standards Act 2009](#) (making false or misleading Parliamentary allowances claims).

If the Speaker of the House of Commons is notified that one of the triggers has been met under the 2015 Act, this clause would relax the requirement on the petition officer (the local returning officer who will run the recall petition) to initiate a petition. Normally a petition officer must start a petition on the 10th working day after they have received notification from the Speaker that a petition is required. Instead, from the passing of the Act, they may start the petition at a later date, but no later than 6 May 2021.

If a petition has been started but subsequently requires postponing, then the clause also gives power to the Secretary of State to delay the petition, again to no later than 6 May 2021.

Clause 60 would allow a Minister to make any consequential or supplementary regulations related to clauses 57-59. The Explanatory Notes give examples of the sort of supplementary matters that may be required:

- a. the handling of nominations of candidates;
- b. the handling of postal ballots;
- c. the terms of office of incumbent office holders, which might need to be extended in the event of an election being postponed;
- d. the handling of expenses of persons other than local authorities (e.g. candidate expenses);
- e. compensation of local authorities or candidates incurring additional expenditure as a result of the Act.⁵

Any regulations made under these four clauses are subject to the [negative procedure for SIs](#).

Regulations made under this clause would be able to make retrospective provision, to deal with situations where an election timetable has automatically been triggered. This would, for example, enable provision to be made disapplying (after the event) certain statutory steps that should have been taken in the run-up to the original poll date. It would also allow regulations under this clause to amend, repeal or revoke statutory provisions (including primary legislation).

Clause 61 would postpone the date of the 2020 canvass of Northern Ireland electors by a year. In Northern Ireland the electoral register is maintained through a process of continuous registration, with the addition of a canvass which must take place at least every ten years from 2010. After 2021 the clause re-establishes the decennial pattern from 2030.

The clause also requires the Chief Electoral Officer (CEO) of Northern Ireland to notify the Secretary of State of any Northern Ireland Assembly by-elections before the CEO sets a date for that election.

Clauses 62 would allow the Llywydd/Presiding Officer to delay any by-election required for constituency seats in the Senedd Cymru. Normally constituency by-elections must be held within three months of the vacancy arising.⁶ Regional list seats are filled by appointing the next person from a party list from the previous Senedd general election and are unaffected by this legislation.⁷

⁵ [Coronavirus Bill 2019-21, Explanatory notes, para 469](#), p57

⁶ [Section 10](#) of the *Government of Wales Act 2006*

⁷ [Section 11](#) of the *Government of Wales Act 2006*

Clauses 63 and 64 would make similar provisions to those in 57-59 for Welsh Ministers to postpone Senedd Cymru and local council by-elections, and to make supplementary provision if required in Wales up to 6 May 2021.

Clauses 65 would allow the Presiding Officer of the Scottish Parliament to delay by-elections for constituency seats. As in Wales, constituency vacancies must be filled within three months and list seat vacancies are filled from party lists from the previous election.⁸

Clause 66 would make similar provisions for returning officers to delay local government by-elections in Scotland. Normally a vacancy would be filled within three months. There are no scheduled local elections due in Scotland in 2020.

5. What about local by-elections already taking place?

There will be a small number of local polls underway that will not be covered by the Bill's provisions. The Government statement released on 19 March noted these and said that it would support returning officer who decided to suspend their polls, saying:

Running a poll in present times is likely to come with significant concerns about the wellbeing of those involved, which may be unfair to both staff and the public. As such it would be both reasonable and consistent with the national position to suspend any poll scheduled within this period, including those due to take place today, Thursday 19th March.

The Government will give its full support to Returning Officers and others running polls who make the decision to suspend their polls. We have consulted with the Crown Prosecution Service (CPS), who have assured me that prosecution in these circumstances is highly unlikely.⁹

6. Government amendments

During the committee stage of the Bill in the Commons a number of Government amendments were agreed to. These were agreed to without division.¹⁰

Following amendments and additional clauses being added to the Bill in the Commons, the Bill, as introduced in the House of Lords, made provisions for postponing elections in clauses **59-70**.

Clauses 59 and 65 were added to the Bill during the Committee stage, listed as Government New Clauses 17 and 18 respectively. These relieve returning officers and others of liability over any existing polls that were scheduled to take place after 15 March but before the provisions of the Bill are enacted (see section 5). These apply to elections and referendums in England (Clause 59) and elections in Wales (Clause 65).¹¹

Government amendments 27 and 31 amended Clauses 60 and 64, as introduced. These were the clauses to allow UK Government or Welsh Government ministers to make supplementary provisions. The amendments ensured that regulations under this clause are capable of relieving returning officers, presiding officers and others of liability for defaults in relation to postponed elections under the terms of the Bill from its enactment until 6

⁸ Sections 9 and 10 of the *Scotland Act 1998*

⁹ Postponement of electoral events: Written statement - HLWS169

¹⁰ [HC Deb 23 March 2020](#)

¹¹ [HC Deb 23 March 2020](#), c154-5

May 2021. The amended clauses were renumbered **Clauses 63 and 68** in the Bill as introduced in the House of Lords.

7. Postponement of elections to the General Synod of the Church of England

The [Coronavirus Bill](#) was also amended at Committee stage in the Commons to postpone elections to the General Synod of the Church of England, which had been due to take place this summer.

The last Synod was elected in 2015 and would therefore expire in July 2020. New clause 1 states that:

Her Majesty may by Order in Council, at the joint request of the Archbishops of Canterbury and York, postpone to the date specified in the Order the date on which the Convocations of Canterbury and York stand dissolved for the purposes of the Church of England Convocations Act 1966.

New clause 1, tabled by the Second Church Estates Commissioner, Andrew Selous MP, also states that if either the Archbishop of Canterbury or York is unable to request such an Order in Council, then the “power may be exercised by the senior bishop of the province”, determined in accordance with the [Bishops \(Retirement\) Measure 1986](#).

Penny Mordaunt, the Paymaster General, said the new clause was “consistent with the approach that the Government have taken to other elections”.¹²

The new clause was **Clause 84** of the Bill as introduced in the House of Lords.

¹² [HC Deb 23 March 2020, c136](#)

8. Summary of provisions contained in the Bill

Provision	Clause numbers		Section numbers
	Bill as introduced in the Commons	Bill as introduced in the Lords	<i>Coronavirus Act 2020</i>
Indemnity against abandoned polls in England	n/a	59	59
Postpones scheduled election in England due in May 2020 and PCC election in England and Wales	57	60	60
Power to postpone local by-elections and referendums in England and local government by-elections in Northern Ireland	58	61	61
Postpones Recall of MP petitions	59	62	62
Power to make supplementary regulations in England	60	63	63
Postpones Northern Ireland electoral registration canvass to 2021	61	64	64
Indemnity against abandoned polls in Wales	n/a	65	65
Power to postpone any by-election required for constituency seats in the Senedd Cymru	62	66	66
Power to postpone local government by-elections in Wales	63	67	67
Power to make supplementary regulations in Wales	64	68	68
Power to postpone by-elections for constituency seats in Scottish Parliament	65	69	69
Power to postpone local government by-elections in Scotland	66	70	70
Postponement of General Synod elections	n/a	84	84

9. Subsequent regulations

9.1 The *Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020*

The *Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020* were made on 3 April 2020.

They were made using the powers conferred by sections 61 and 63 of the Act and came into force on 7 April 2020. They made the necessary regulations for the postponement of by-elections and local referendums relating to local authority governance changes and neighbourhood planning until 6 May 2021. It covers by-elections and local referendums in England and police and crime commissioner by-elections in England and Wales.

As noted in section 4, the *Coronavirus Act 2020* had already made the necessary similar provisions to cancel the scheduled ordinary election in May 2020 and by-elections already in progress at the time of the passage of the Bill.

By-elections

The relevant by-elections are those required after 15 March 2020 until 6 May 2021 and are for principal councils, parish councils, constituency members of the Greater London Authority, the Mayor of London, elected mayors, combined authority mayors in England. They also cover police and crime commissioner elections in England and Wales.

The requirements to hold by-elections are spread across various pieces of legislation and would normally take place within 35 days of the vacancy being declared, unless the vacancy occurs less than six months before an ordinary election.¹³ The Regulations ensure that returning officers may not be subject to criminal liability for breach of duty in relation to by-elections that were due to be held in the period after 24 April (section 59 of the 2020 Act removes liability for elections due to be held from 15 March to 24 April 2020).

The Regulations also make the required changes to the terms of those subsequently elected to fill the vacant seats in May 2021. This ensures the vacant seats that are filled in this period revert to the existing normal four-year electoral cycle for the election of councillors, mayors and GLA members. For example, a councillor with under one year left to serve may vacate their seat at the same time as a councillor with three years left to serve. When the by-elections are held in May 2021 the new councillor returned for each seat will serve the appropriate amount of time so that their seat is next contested in the appropriate electoral cycle.

In addition, the Regulations clarify the position relating to a police and crime commissioner vacancy that existed prior to the postponement of elections. In Cambridgeshire, an acting Commissioner was appointed by the Police and Crime Panel in line with the *Police Reform and Social Responsibility Act 2011* in November 2019, following the resignation of the PCC elected in May 2016. The Acting PCC, Ray Bisby,

¹³ See the [Explanatory Memorandum](#) to the Regulations, section 6

took up the post on December 2019.¹⁴ He was due to be replaced by the PCC elected in May 2020.

As noted above, by-elections are normally required within 35 days of a position become vacant, but a by-election would not be held within 6 months of the date of the next ordinary PCC elections. Normally if a PCC was incapacitated or suspended and an Acting PCC was appointed, the maximum term in these circumstances would be 6 months. If the original PCC did not return to the post within 6 months the post would become vacant and a by-election would be required.¹⁵ The 2011 Act is silent on what would happen in the circumstances brought about by the coronavirus because it did not envisage the cancellation of an ordinary poll, where an Acting PCC was appointed within 6 months of the ordinary day of poll. The Regulations now clarify that the vacant PCC post will remain vacant until May 2021 and that the Acting PCC may continue in post.¹⁶

Local referendums

The relevant referendums covered by these regulations are:

- Any [local advisory referendum](#) under section 116 of the *Local Government Act 2003*;
- Those relating to [changing the governance arrangements](#) of a local authority under section 9MB or section 9MC of the *Local Government Act 2000*;
- Any [Neighbourhood Planning referendums](#) held under schedule 4B of the *Town and Country Planning Act 1990*.

9.2 The Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020

The [Local Government \(Coronavirus\) \(Postponement of Elections\) \(Wales\) Regulations 2020](#) were made by the Welsh Minister for Housing and Local Government using the powers of the *Coronavirus Act* conferred (section 67 and 68). They were made on 27 April 2020.

The regulations postpone by-elections for council seats in Wales, both principal unitary authority seats and those on community councils, that would have been required between 16 March 2020 to 31 January 2021. Instead the regulations allow for the by-elections to be held within the period 1 February 2021 to 16 April 2021.

The regulations also include a provision to indemnify returning officers against liability for failing to hold any by-elections covered by the regulations.

9.3 The Postponed Elections and Referendums (Coronavirus) and Policy Development Grants (Amendment) Regulations 2020

The [Postponed Elections and Referendums \(Coronavirus\) and Policy Development Grants \(Amendment\) Regulations 2020](#) were laid before Parliament and made on 1 September 2020.

¹⁴ Office of the Police and Crime Commissioner for Cambridgeshire, [Acting Police and Crime Commissioner for Cambridgeshire and Peterborough appointed](#), 16 December 2019

¹⁵ Chapter 6 of the [Police Reform and Social Responsibility Act 2011](#) contains the relevant provision.

¹⁶ [Local Government and Police and Crime Commissioner \(Coronavirus\) \(Postponement of Elections and Referendums\) \(England and Wales\) Regulations 2020](#), Regulation 10

Elections and local referendums

The regulations give legal certainty to areas of electoral law where the postponement of the 2020 elections had created gaps. The legislative framework for elections does not normally make provisions for postponement of a scheduled poll.

The main effects of the regulations are as follows:

- Postal ballots – The regulations make provisions for postal ballots that may have been sent and returned for some council by-elections and neighbourhood planning and business referendums before the 2020 polls were postponed to have no effect. Documents will be sealed and destroyed after 12 months unless a court orders otherwise. When the polls eventually take place voters will have to fill in new postal ballots.
- Candidates – Some candidates who were to stand in May 2020 had already become candidates under electoral law at the point the polls were postponed. The regulations ensure they are not treated as candidates for the purposes of the 2020 polls and therefore are not subject to spending return and donation and loans rules as candidates. Some candidates may still be classed as regulated donees for the purposes of donations and loans if they already held elective office. The regulations extend the deadlines for reporting donations and loans for these donees to ensure no one commits an offence for late reporting as a result of the postponement.
- Returning Officers expenses – Returning Officers for police and crime commissioner elections are usually reimbursed from central government for election expenditure (hiring polling stations, printing of election stationery, polling station and count staff wages). In the event a poll does not occur there is no provision for reimbursement for costs incurred up to the point of postponement. The regulations make provisions to ensure that the Cabinet Office can reimburse relevant costs necessarily incurred by Returning Officers for the efficient and effective running of the polls up to the point when the elections were postponed. These regulations do not apply to local council elections as these are funded through local authority budgets.

Policy Development Grants

The regulations also make provisions for [Policy Development Grants](#) (PDGs). Alterations to the PDGs use powers conferred on Ministers by section 12(5) of the *Political Parties, Elections and Referendums Act 2000*.

PDGs are a grant scheme available to registered political parties who have two or more MPs in the House of Commons. The Electoral Commission has an annual budget of £2 million from the UK Parliament to allocate to political parties as a Policy Development Grant. The grants give political parties the funds to develop policies to include in their election manifestos.

Half of the grant is distributed on the basis of a formula that uses the number of registered electors in each of the four nations of the UK each year. This was usually the register published on the 1 December each year.

The regulations make permanent changes to the rules for calculating PDGs (in the *Elections (Policy Development Grants Scheme) Order 2006*, as amended) so that in future the registers to be used are those from the 2 February each year, starting from 2021.

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