

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Seventh Delegated Legislation Committee

DRAFT REPRESENTATION OF THE PEOPLE
(ELECTION EXPENSES EXCLUSION)
(AMENDMENT) ORDER 2019

DRAFT COMBINED AUTHORITIES (MAYORAL
ELECTIONS) (AMENDMENT) ORDER 2019

DRAFT LOCAL AUTHORITIES (MAYORAL
ELECTIONS) (ENGLAND AND WALES)
(AMENDMENT) (ENGLAND) REGULATIONS 2019

Monday 11 February 2019

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Friday 15 February 2019

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The Committee consisted of the following Members:

Chair: MR ADRIAN BAILEY

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| † Churchill, Jo (<i>Bury St Edmunds</i>) (Con) | † Jones, Mr Marcus (<i>Nuneaton</i>) (Con) |
| † Cunningham, Alex (<i>Stockton North</i>) (Lab) | † Lewer, Andrew (<i>Northampton South</i>) (Con) |
| † Dent Coad, Emma (<i>Kensington</i>) (Lab) | Monaghan, Carol (<i>Glasgow North West</i>) (SNP) |
| † Dhesi, Mr Tanmanjeet Singh (<i>Slough</i>) (Lab) | † Smith, Cat (<i>Lancaster and Fleetwood</i>) (Lab) |
| † Double, Steve (<i>St Austell and Newquay</i>) (Con) | † Smith, Chloe (<i>Parliamentary Secretary, Cabinet Office</i>) |
| † Fletcher, Colleen (<i>Coventry North East</i>) (Lab) | † Twist, Liz (<i>Blaydon</i>) (Lab) |
| † Ford, Vicky (<i>Chelmsford</i>) (Con) | |
| † Graham, Luke (<i>Ochil and South Perthshire</i>) (Con) | Mike Winter, <i>Committee Clerk</i> |
| † Hands, Greg (<i>Chelsea and Fulham</i>) (Con) | |
| † Hayes, Helen (<i>Dulwich and West Norwood</i>) (Lab) | |
| † Hollinrake, Kevin (<i>Thirsk and Malton</i>) (Con) | † attended the Committee |

Seventh Delegated Legislation Committee

Monday 11 February 2019

[MR ADRIAN BAILEY *in the Chair*]

Draft Representation of the People (Election Expenses Exclusion) (Amendment) Order 2019

6 pm

The Parliamentary Secretary, Cabinet Office (Chloe Smith): I beg to move,

That the Committee has considered the draft Representation of the People (Election Expenses Exclusion) (Amendment) Order 2019.

The Chair: With this it will be convenient to consider the draft Combined Authorities (Mayoral Elections) (Amendment) Order 2019 and the draft Local Authorities (Mayoral Elections) (England And Wales) (Amendment) (England) Regulations 2019.

Chloe Smith: It is a pleasure to serve under your chairmanship, Mr Bailey. The statutory instruments seek to make significant improvements to the electoral framework. Where I can, I will address and explain each of them in order.

The draft Representation of the People (Election Expenses Exclusion) (Amendment) Order 2019 proposes that expenses that are reasonably attributable to a candidate's disability and that are reasonably incurred are excluded from a candidate's electoral spending limits. For example, such expenses include, but would not be limited to, British Sign Language interpretation for hearing-impaired candidates or the transcription of campaign material into braille for a visually-impaired candidate. The order will also exclude from electoral spending limits expenses funded from grants provided through the Government's interim EnAble fund for elected office. That interim fund of £250,000 will support disabled candidates and help to cover disability-related expenses that people might face when seeking elected office.

The Government are absolutely committed to ensuring that the diversity of the UK is sufficiently represented in public office. Although around one in five of the UK population has a disability, disabled people remain insufficiently represented in our Parliaments, Assemblies and councils. The proposed changes will help to create a level playing field between candidates with and those without disabilities, which will enhance equality of opportunity.

The draft Combined Authorities (Mayoral Elections) (Amendment) Order 2019 and the draft Local Authorities (Mayoral Elections) (England And Wales) (Amendment) (England) Regulations 2019 make changes to the rule governing the conduct of elections of combined authority mayors and of local mayors. The instruments remove the existing requirement that each candidate's home address must be published during the election process and included on the ballot paper at elections of combined authority mayors and local mayors.

These changes are designed to enhance the security of candidates standing at those polls and to deliver commitments made by the Government in response to recommendations made by the Committee on Standards in Public Life. These are two of four instruments on that issue. In December 2018, we introduced two statutory instruments that implemented another recommendation from the Committee on Standards in Public Life in relation to candidates in local government and parish council elections. Since 2010, candidates in UK parliamentary elections have been able to choose for their home address not to be made public at such polls. The changes that we are making across all four instruments—for local and parish council elections and, with these SIs, for combined authority and local mayoral elections—will bring the procedure at those polls into line with what already applies to parliamentary elections.

The instruments before the Committee have quite a wide remit, so let me cover application. The election expenses exclusion order will apply UK-wide to all UK parliamentary elections, including by-elections. In England, the order will also apply to local government elections, Mayor of London elections and London Assembly elections, and to mayoral elections and combined authority mayoral elections. In Northern Ireland, it will apply to Northern Ireland Assembly elections. I plan to lay a second statutory instrument before the House this year to widen the application of that provision to police and crime commissioner elections across England and Wales. The two draft instruments concerning mayoral elections make provision for combined authority and local mayoral elections in England.

For hon. Members who have not already had enough, let me turn to the detail of the proposed changes. The election expenses exclusion order excludes expenses that are reasonably attributable to a candidate's disability and are reasonably incurred, by substituting a new paragraph 7A in part 2 of schedule 4A to the Representation of the People Act 1983. Part 2 of schedule 4A to the 1983 Act sets out a list of matters that are excluded from being election expenses and that are therefore not taken into account when calculating a candidate's electoral spending limits. The change ensures parity with electoral spending limits for non-party campaigners. Schedule 8A to the Political Parties, Elections and Referendums Act 2000 excludes reasonably incurred expenses that are reasonably attributable to an individual's disability from the electoral spending limits of non-party campaigners.

Let me allay any concerns, should the Committee have them, about whether the change will require candidates to disclose any disabilities. It will not, and there will be no legal obligation for candidates to report their disability-related expenses, although they can if they wish.

I also seek to allay concerns that the exclusion could be misused by individuals who want to manipulate their electoral spending limits. The provisions are quite clear that the exclusion can be used only for expenses that are reasonably incurred and reasonably attributable, as I have set out, and there is a robust process around candidates' spending returns to make sure of that. Any breach of those spending rules can be referred to the police and prosecutors for investigation. In sum, the order will not give candidates with disabilities an advantage, but create a level playing field so that candidates with disabilities are not disadvantaged from standing for election.

On the mayoral elections statutory instruments, currently, candidates standing at those two types of elections are required to give their home address, which appears on certain election documents and the ballot paper. The only current exception to those requirements is someone standing at combined authority mayoral elections, where the mayor would also have police and crime commissioner functions, because such candidates may require their home address not to be made public. Under the proposed changes, candidates at either type of election will not be required to provide their home address on their nomination form or consent to nomination form. Instead, they will be asked to include it on a home address form, which will not be made public.

We recognise that we need to strike a balance between the transparency of the electoral process and the safety of candidates running for public office. It is important for electors to know whether a candidate lives locally and whether they have a link to the area in which they are standing for election. For that reason, if a candidate chooses not to make their home address public, they must state the name of the local authority area in which they live. That will then appear on the ballot paper, the statement of persons nominated and the notice of poll for the election, instead of the candidate's home address. We are providing that home address forms be available for inspection by certain authorised people, including other candidates standing in the poll.

Let me briefly inform the Committee of the consultations on the orders. On the election expenses order, we consulted with the Electoral Commission, the Welsh Government, the Scottish Government and the Northern Ireland Office. There was also plenty of cross-Government collaboration between the Cabinet Office and the Government Equalities Office. All have been supportive.

On the two mayoral instruments, we have consulted with the Electoral Commission, the Association of Electoral Administrators and the Society of Local Authority Chief Executives. Again, I confirm that there is broad support for the proposed changes. We have also kept political parties informed of the changes through the parliamentary parties panel.

I highlight that it is important that the changes are in place as soon as possible, so that they can apply at the local government elections in May. The instruments come into force on the day after the day on which they are made. I commend them to the Committee.

6.9 pm

Cat Smith (Lancaster and Fleetwood) (Lab): I am sure the Committee welcomes the fact that the last general election returned the most diverse House of Commons ever, with more women MPs, more ethnic minority MPs and more MPs who are LGBT. The Minister is right to point out, however, that we still have a long way to go to achieve parity in the number of disabled candidates standing for election and being elected to this place and to councils up and down the country.

The Opposition welcome the instruments before us. We recognise that disabled candidates incur costs because of their disability and that they should not be penalised at election time. The Minister and I have spoken about addresses on ballot papers many times, so that is also a positive change. We recognise that it could help more

women and candidates from ethnic minority backgrounds to come forward, because there is a climate of intimidation and threat in our politics.

The Opposition therefore welcome these instruments. I want to speak briefly about both sets of instruments, because it is important that we acknowledge that intimidation, including death threats, criminal damage, sexism, racism, homophobia and antisemitism, has no place in our democracy. I think we are all too aware that candidates are often targeted because of their gender, sexuality or ethnicity. That represents a wider context of discrimination that targets individuals on the basis of their different identities. We should be particularly concerned about the scale of abuse experienced by women MPs, the resurgence of far-right and racist parties across Europe, as well as the worrying emergence of an organised far-right presence on the streets of British cities and towns.

The current legislative requirement for local candidates to disclose their home address on ballot papers has made local candidates and their families vulnerable to abusive activity and in some cases has deterred talented individuals from standing for elected office. The proposed changes should help to reduce that risk and bring the rules for local elections in England in line with those already in place for UK parliamentary elections, as the Minister mentioned. I and the Labour party have called for that on many occasions, so we very much welcome the statutory instruments before us today.

In addition to these measures, we also believe that there should be greater flexibility for electoral agents, to ensure that they do not have to disclose their home address either. The law currently requires election agents to have an office that appears on election imprints. That is often a local political party office or an office set up specifically for an election. However, agents who do not have such facilities are often forced to disclose their home address. It would therefore be welcome if the Minister outlined any steps that she or the Department are taking with regard to electoral agents.

With regard to the access to elected office fund, there are huge financial barriers in place that penalise disabled candidates, which we should acknowledge. The Government's decision to close the fund will be a lasting stain on their legacy, because their own evaluation, published last year, highlighted the fund's positive impact on disabled candidates, enabling them to stand for election. That evaluation noted that, in February 2015, the Geneva-based Zero Project, initiated by the Essl Foundation, selected the access to elected office fund as one of the top global innovative policies to support and encourage political participation by people with a disability. Over the past three years, the Government have rightly been under continued pressure to reintroduce that fund.

In September 2015, in a submission to an inquiry by the UN special rapporteur on disabilities, the Equalities and Human Rights Commission said:

"The UK Government should reopen the Access to Elected Office Fund in England, and work with the Scottish and Welsh Governments to explore options for making the scheme, or similar funds, available across Great Britain."

Civil society groups, such as Disability Rights UK and More United, have also played a vital role by campaigning on this issue. I therefore ask the Minister again: will she restore the access to elected office fund as a matter of urgency?

[Cat Smith]

The exclusion created by the order before us will capture disability-related expenses funded from grants provided by the EnAble fund for electoral office for disabled candidates. This interim fund of £250,000 will provide grants to support disabled candidates and will primarily cover English local government elections in May. Although we welcome the additional funds, the Minister would probably agree that the EnAble fund is not in itself a long-term solution to the substantial under-representation of disabled people in public life. The EnAble fund for elected office runs until May 2020 and is primarily intended to support disabled people seeking election in the May 2019 local elections and the May 2020 police and crime commissioner elections. Therefore, it is not intended to cover those seeking to stand for parliamentary elections. However, paragraph 4.2 of the explanatory memorandum states:

“The territorial application of this instrument is UK-wide. The instrument will apply to candidates standing for Parliamentary elections across the UK”.

Some might argue that there is an increased likelihood of an election before the one scheduled in 2022, so will the Minister provide clarification on those issues?

Concerns have also been raised with me regarding the administration of the EnAble fund and the timing of these draft instruments. The Electoral Commission itself recommends that any changes to election rules should be clear six months before anyone is required to deliver or comply with those rules, so that those in question can be informed and respond accordingly. In these cases, that would have been the September just gone, so will the Minister explain why it has taken so long for these draft instruments to be prepared?

Government delay meant that the fund was launched on 3 December, just five months ahead of the local elections this May. I hope that I will be proved wrong, but my fear is that the current timeframe is too short to support disabled candidates who are not already elected and looking to stand again. We know from the experience in Scotland that the longer the lead-in time, the more successful the scheme will be. The Scottish Government spent a year on promotion and a broader access to politics scheme ahead of the 2017 Scottish local government elections. What steps are the Government taking to promote the new fund and to ensure that aspiring candidates are aware of their rights?

The Local Government Association issued a seriously flawed bidding document that included a requirement that any contractor must support the Government's vision of shifting the prime responsibility for supporting disabled candidates to political parties. I have been told that that attracted zero bids, which forced the LGA to rewrite the document and start again, deleting that particular requirement. Will the Minister confirm whether that was the case? The revised contract has now been awarded to Disability Rights UK, and the EnAble fund is open for applications. We welcome the fact that the fund is now managed by a deaf and disabled people's organisation that has an understanding of the barriers that disabled people face.

However, the issue of responsibility is extremely important. Political parties should play a role in supporting disabled candidates. Not only do they have a legal obligation to make reasonable adjustments for disabled

members and candidates under the Equality Act 2010, it is also, frankly, the right thing to do. That is why the Labour party established a bursary scheme to support disabled members standing for Parliament following the Government's decision to freeze the access to elected office fund.

Opposition Front-Bench Members are extremely concerned by the Minister's shifting the prime responsibility for supporting disabled candidates from central Government to political parties. While all political parties can do more to reduce barriers faced by disabled candidates, the extra campaign costs that disabled candidates incur because of their disability should be met by the Government. The Government's own evaluation of the access to elected office fund stated that there was a potential risk

“that the parties may do less regarding ‘reasonable adjustments’...with reduced Government funding actually leading to fewer disabled candidates being adopted”.

That will particularly be the case for smaller parties, which will have less money to spend on election expenses, and the same can be said for independent candidates, who will not have access to political party bursary schemes.

It is clear that the draft instruments are needed to make our democracy more representative and to tackle rising security concerns. The Opposition welcome the additional funds that the Minister's Department is providing through the EnAble fund, but we disagree with the political direction that the Government are taking. I urge the Minister to restore the access to elected office fund immediately, in order to find a long-term solution to this incredibly important issue.

6.18 pm

Chloe Smith: I will try my best briefly to answer the questions that have been put to me. I welcome the Opposition's support for the draft statutory instruments. I did not clearly hear the hon. Lady's third question, and I wonder if she might repeat it for me, so that I can be sure to answer all her questions. I think I got the other six.

Cat Smith: Which one was the third?

Chloe Smith: Perhaps if I answer the first and second questions, the hon. Lady will be able to think of the third. I shall return to the others.

The hon. Lady asked how we might protect the home addresses of agents as well as candidates. I have considered that, but I should make the Committee aware that doing so would require primary legislation, rather than secondary legislation, because of where in law agents are legislated for. I assure the Committee that that is being considered, although it is not possible to do inside tonight's SI.

I will move on to the questions on the draft expenses exclusion order. Secondly, the hon. Lady believes that the predecessor fund—the access to elected office fund—should be reinstated. The Government are committed to the relevant issues, and they are using the interim EnAble fund for elected office to enable them to look at long-term solutions, as it is right to do. I refer to the fund as an interim fund because we want to use it to help people in the 2019 elections, while also allowing for

a programme of work with disability organisations, to help political parties to work on improving their ability to support disabled candidates. From that we hope to have political parties offering and advertising support, as well as solutions to help independent candidates. I think that the last of the hon. Lady's questions was about independent candidates.

The hon. Lady argued that supporting disabled candidates should not be a matter for parties, and that it was for the Government to do the job instead. I suggest that as a point of principle we expect employers and service providers to make reasonable adjustments—a phrase that she rightly used in her question. Given that we expect such action of employers in all other walks of life, I think it is reasonable that we expect political parties to step up and take it for candidates. I stand on a point of principle there, rather than accepting that there is a deficiency in the statutory instrument.

Cat Smith: Just to clarify, political parties absolutely have a role to play, and they should step up, where they are able to. My concern was primarily about smaller political parties, whose election funds are obviously much more constrained than those of the large parties that the Minister and I represent, which have more resources available.

As to the question that was not very clear, it was about the EnAble fund for elected office running until May 2020. Paragraph 4.2 of the explanatory memorandum states that the order is meant to be a UK-wide instrument applying to candidates for parliamentary elections; however, a parliamentary election is not scheduled until after May 2020. I was seeking clarification as to whether the Minister expected the fund to be used at the next general election. Perhaps it was a slightly cheeky question.

Chloe Smith: Forgive me, Mr Bailey. I was concentrating so diligently on the hon. Lady's previous question that I did not catch the detail she was asking for. I think perhaps it is simplest if I write to her on that point, to make sure that the Committee receives a reasonable answer. It comes back to the answer I just gave, which is that we are trying, through the EnAble fund, to create an interim way to support disabled candidates while putting long-term solutions in place. I think that is the right way to go about it.

I hope that what I have told the Committee will provide reassurance about our desire for action to happen during a range of elections. I hope that that will mean we have a good testing ground, so that we can look at solutions across different types of elections. Finally, although it has been noted that the arrangement is to

run until 2020, actually it is to run until 2020 or until its total of £250,000 is exhausted. That may assist the Committee's consideration.

The hon. Lady raised the question of a Local Government Association document, on which I am afraid I cannot give the Committee an answer tonight. I am not aware of it, but I will ask my colleagues in the Government Equalities Office to answer questions on the fund more broadly. The fund itself is not my responsibility, although the election expenses order is, so the hon. Lady may want to direct her question to ministerial colleagues in that Department.

Finally, the hon. Lady asked whether the order had been introduced on the right timeframe, ahead of the May 2019 elections. Although it is always desirable to have matters in hand six months before elections—that is certainly the aspiration that I work to and that the Electoral Commission has highlighted—I think that the order is in place in sufficient time. I hope that the answers I have given to the Committee about how we are using the fund and the order to encourage the development of longer-term solutions give confidence that we are looking at how to promote the fund, advertise the fund and ensure people are aware of how to use the fund. Ultimately, I think that the measures are in place at the right time for the elections, and I hope that the measures will be successful. I commend all three statutory instruments to the Committee, and I hope that what I have said has been helpful.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Representation of the People (Election Expenses Exclusion) (Amendment) Order 2019.

DRAFT COMBINED AUTHORITIES (MAYORAL ELECTIONS) (AMENDMENT) ORDER 2019

Resolved,

That the Committee has considered the draft Combined Authorities (Mayoral Elections) (Amendment) Order 2019.—(*Chloe Smith.*)

DRAFT LOCAL AUTHORITIES (MAYORAL ELECTIONS) (ENGLAND AND WALES) (AMENDMENT) (ENGLAND) REGULATIONS 2019

Resolved,

That the Committee has considered the draft Local Authorities (Mayoral Elections) (England and Wales) (Amendment) (England) Regulations 2019.—(*Chloe Smith.*)

6.27 pm

Committee rose.

