EXPLANATORY MEMORANDUM TO

THE HOUSING ACT 1996 (ADDITIONAL PREFERENCE FOR ARMED FORCES) (ENGLAND) REGULATIONS 2012 No. [XXXX]

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

2.1 The Housing Act 1996 (Additional Preference for Armed Forces) (England) Regulations 2012 ("the Regulations") amend section 166A(3) of the Housing Act 1996. These Regulations provide that local housing authorities in England must frame their allocation scheme so as to give additional preference to the following who fall within a statutory reasonable preference category and are in urgent housing need:

(i) a person serving in the regular forces who is suffering from a serious injury, illness or disability which is attributable (wholly or partly) to the person's service,

(ii) a person formerly serving in the regular forces,

(iii) a person who has recently ceased, or will cease to be entitled, to reside in accommodation provided by the Ministry of Defence following the death of the person's spouse or civil partner who was serving in the regular forces and whose death was attributable (wholly or partly) to that service, or

(iv) a person serving or formerly serving in the reserve forces who is suffering from a serious injury, illness or disability which is attributable (wholly or partly) to the person's service.

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

3.1 None.

4. Legislative Context

4.1 Every local housing authority is required to have an allocation scheme for determining priorities and the procedure to be followed in allocating housing accommodation. The scheme must be framed so that reasonable preference is given to the statutory 'reasonable preference' categories which include people who are homeless or are owed certain homelessness duties, people occupying overcrowded housing, people who need to move on medical or welfare grounds and people who need to move to a particular locality where failure to meet that need would cause hardship.

4.2 Local housing authorities have the discretion to frame their allocation scheme so as to give additional preference to particular descriptions of people who are already within the reasonable preference categories and who are in urgent housing need.

4.3 These Regulations provide that in addition to the discretion to grant additional preference, local housing authorities in England must frame their allocation scheme so that persons who are in the statutory reasonable preference categories, in urgent housing need and who meet one or more of the armed forces criteria specified in the Regulations (set out at 2.1 above) must be given additional preference for an allocation of accommodation.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

The Secretary of State has made the following statement regarding Human Rights:

In my view the provisions of the Housing Act 1996 (Additional Preference for Armed Forces) (England) Regulations 2012 are compatible with the Convention rights.

7. Policy background

- **What is being done and why**

7.1 The Government's policy is to ensure that members of the regular and reserve Armed Forces, and their families, are given appropriate priority for social housing if they need it when serving or after they have left the Armed Forces.

7.2 It is already the case that former and serving members of the regular and reserve Armed Forces who have an identified housing need, for example because they are homeless or have a medical or welfare need to move house, must be given priority ('reasonable preference') for social housing. These Regulations will go further and ensure that the groups of people set out in the amendment to section 166A(3) made by regulation 2 who are identified as having a more urgent need for social housing, are always given the highest priority ('additional preference') for social housing.

7.3 The draft Regulations on which the Government consulted applied only to those who had previously served in the regular Armed Forces who were identified as having a more urgent need for social housing. However, following consultation, the Regulations have been extended to:

i. existing members of the regular Armed Forces who are suffering from a serious injury, illness or disability, as a result of their service, recognising that they may need

to move out of military accommodation to suitably adapted social housing before they complete their service

ii. to bereaved spouses and civil partners of Service personnel when they leave service family accommodation following the death of their Service spouse or partner, recognising that they are likely to experience similar issues to former Service personnel and their families leaving military accommodation

iii. serving and former members of the Reserve Forces who suffer from a serious illness, injury or disability as a result of their service, recognising that they may find that their current accommodation is no longer suitable for their needs or no longer affordable, or that they have to move to access care or support.

7.4 For other categories of people in urgent housing need, local authorities will continue to have a power to give them greater priority, but will not be required to do so.

7.5 It is expected that most local authorities which use the power to give greater priority to people with more urgent medical and welfare needs will already include provision for 'serious injury, illness or disability' within their allocation scheme. For those that do not, s.166A(9) – which gives people who apply for social housing the right to know whether they will be given priority – will in effect require them to say how they will interpret this provision.

- **Consolidation**

7.6 Not applicable.

8. Consultation outcome

8.1 The draft Regulations were published for consultation on the DCLG website, together with draft new statutory social housing allocations guidance. The consultation ran from 5 January until 30 March 2012. A summary analysis of the responses to consultation on the draft Regulations and guidance has been made and is available at: www.communities.gov.uk/publications/housing/allocationaccommodationresponses

8.2 The draft Regulations on which DCLG consulted related only to former Service personnel and required local housing authorities to frame their allocation scheme to give those in urgent housing need additional preference for an allocation of social housing.

8.3 The majority of respondents supported the proposed Regulations. One respondent (a veterans' organisation) suggested that the Regulations should not be restricted to former Service personnel but should apply to seriously injured personnel while in service as well; while some respondents suggested that the Regulations should be extended to bereaved and separated families.

8.4 A few respondents (mistakenly) understood the Regulations to require all former Service personnel to be given additional preference (whether or not they were in urgent

housing need). Some viewed this with concern; a few welcomed it; while others were unsure whether this was the case and sought clarification.

8.5 Some respondents, while supporting the Regulations in general, considered they should be qualified in some manner. Suggestions included that they should:

- only apply for a limited period following discharge
- only apply to those who have seen active service
- not apply where the applicant had been dishonourably discharged
- not apply where the Service man or woman had left the Armed Forces voluntarily after only a short period of service

8.6 A number of respondents gave qualified support to the proposal – on the proviso that they were still able to take factors into account in determining priorities. Factors suggested included those set out in the allocation legislation, i.e. local connection, financial resources and behaviour.

8.7 There was also some call for clarification of the terminology in the Regulations, that is to say what was meant by 'urgent need', 'former Service personnel' and 'additional preference'.

8.8 Where respondents did not support the proposal, this was generally because they were concerned that the effect of the Regulations might be to favour ex-Service personnel at the expense of others in urgent housing need.

8.9 Following consultation, the Regulations have been extended to apply to: serving Armed Forces personnel (ie not just former Service personnel) who are suffering from a serious illness, injury or disability as a result of their service; existing and former members of the Reserve Forces who are suffering from a serious illness, injury or disability as a result of their service; and bereaved spouses or civil partners of Service personnel when they leave service families accommodation following the death in service of their spouse or partner. The intention to broaden the scope of the Regulations in this way was set out in the published summary analysis of responses.

9. Guidance

9.1 On 29 June a revised consolidated code of statutory guidance for local authorities on the allocation of social housing was issued by the Secretary of State under s.169 of the Housing Act 1996. This guidance advises local housing authorities of the Government's intention to make these Regulations and sets out in brief the categories of persons to whom the Regulations would apply at paragraph 4.14. A draft of this code was issued for consultation on 5 January alongside the draft Regulations. The final guidance is published on the DCLG website at:
www.communities.gov.uk/publications/housing/allocationofaccommodation

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is not expected to be significant as former service personnel who have an identified housing need are already required to be given priority for social housing.

11. Regulating small business

11.1 The Regulations do not apply to small businesses.

12. Monitoring & review

12.1 The Department monitors social housing lettings through CORE (the COntinuous REcording of lettings). The CORE system has been revised specifically to record whether a household member has served in the Armed Forces. We will review the operation of these Regulations as appropriate.

13. Contact

Frances Walker at the Department of Communities and Local Government Tel: 0303 444 3655 or email: frances.walker@communities.gsi.gov.uk can answer any queries regarding the instrument.