EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES (CONDUCT OF REFERENDUMS) (COUNCIL TAX INCREASES) (ENGLAND) REGULATIONS 2012

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

The Local Authorities (Conduct of Referendums) (Council Tax Increases) (England) Regulations 2012 ("the Regulations") make provision in relation to the conduct of council tax referendums held under Chapter 4ZA of the Local Government Finance Act 1992 ("the 1992 Act").

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

None

4. Legislative Context

4.1 These regulations were made under provisions inserted into the Local Government Finance Act 1992 (the "1992 Act") by section 72 and Schedule 5 to the Localism Act 2011 ("the 2011 Act"). The provisions were commenced on 3rd December 2011 by the Localism Act 2011 (Commencement No.1 and Transitional Provisions) Order 2011 (S.1. 2011/2896).

4.2 Part 1 of the 1992 Act relates to council tax in England. Section 1(1) of the 1992 Act provides that a billing authority**a** must levy and collect council tax which is to be payable in respect of dwellings situated in its area. A billing authority must set an amount of council tax in accordance with Chapter 3 of Part 1 of the 1992 Act. The amount set will include the amount of any precepts issued by major precepting authorities**b** or local precepting authorities**c** to the billing authority for the financial year under Chapter 4 of Part 1 of the 1992 Act.

4.3 Prior to the commencement of sections 72 and Schedules 5 and 6 to the 2011 Act, the Secretary of State was able to limit council tax increases in England by designating or nominating an authority for capping action under Chapter 4A of Part 1 to the 1992 Act. Sections 72 and Schedules 5 and 6 to the 2011 Act repeal the Secretary of State's capping powers in relation to authorities in England and create a new system of referendums in relation to council tax increases by inserting new Chapter 4ZA into the 1992 Act. References to the provisions of the 1992 Act that follow are references to the provisions inserted by Schedule 5 to the 2011 Act.

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a "Billing authority" has the meaning given in section 1(2) of the 1992 Act and accordingly district councils, London borough councils, the Common Council of the City of London and the Council of the Isles of Scilly are billing authorities. Certain county councils will also be billing authorities where orders have been made under Part 2 of the Local Government Act 1992 ("the LGA 1992") or Part 1 of the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act") (see section 18(1) of the LGA 1992 and section 19 of the 2007 Act).

b "Major precepting authority" has the meaning given in section 39(1) of the 1992 Act and accordingly county councils, the GLA, police authorities and fire and rescue authorities are major precepting authorities.

c "Local precepting authority" has the meaning given in section 39(2) of the 1992 Act and accordingly the sub-Treasurer of the Inner Temple, the under- Treasurer of the Middle Temple, parish councils, parish meetings and Charter Trustees are local precepting authorities.

4.4 New section 52ZB of the 1992 Act provides that each billing authority, major precepting authority and local precepting authority in England must determine whether its relevant basic amount of council tax for a financial year is excessive. The meaning of "relevant basic amount of council tax" is set out in section 52ZX of the 1992 Act. The Greater London Authority (GLA) calculates two different relevant basic amounts of council tax under this section. The GLA's unadjusted relevant basic amount reflects the amount calculated for all parts of its area under section 88 of the Greater London Authority Act 1999 (GLA Act 1999). The GLA's adjusted relevant basic amount includes the special expense of the Metropolitan Police Authority and is only applicable to the part of the GLA's area to which this special expense applies (see sections 88 to 90 of the GLA Act 1999 and section 52ZX(4) of the 2011 Act).

4.5 The question of whether the amount set as an authority's relevant basic amount of council tax for a financial year is excessive is to be decided in accordance with a set of principles determined by the Secretary of State for the financial year under section 52ZC of the 1992 Act. Any principles determined by the Secretary of State for a financial year must include a comparison between an authority's relevant basic amount of council tax for the year under consideration and the amount set by the authority in the preceding financial year (see section 52ZC(3) of the 1992 Act). The principles must be set out in a report and approved by the House of Commons (see section 52ZD of the 1992 Act) on or before the date on which the local government finance report for the year is approved under section 78A of the Local Government Finance Act 1992. This usually takes place in late January or early February of the financial year preceding the year under consideration.

4.6 Where a billing authority has determined that its relevant basic amount of council tax for a financial year is excessive it must make arrangements to hold a referendum before the first Thursday in May in the financial year (or such other date as is specified by order) (see section 52ZG of the 1992 Act). Where the authority setting an excessive council tax increase is a precepting authority, it must notify each billing authority to which it issues precepts and those billing authorities will then be required to make arrangements to hold a referendum in relation to the precepting authority's relevant basic amount of council tax for the financial year on or before the first Thursday in May (see section 52ZN of the 1992 Act). Where a precepting authority issues precepts to two or more billing authorities each of those billing authorities will be required to hold a referendum on the first Thursday in May (or such other date as is specified by order) and the result will be determined depending upon whether the major precepting authority's relevant basic amount of council tax is approved by a majority of persons voting in all of those referendums taken together (see section 52ZO of the 1992 Act).

4.7 These regulations make provision as to how referendums held under Chapter 4ZA of the 1992 Act should be conducted and for the combination of polls at a referendum with an election or other referendum.

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State for Communities and Local Government, Bob Neill, has made the following statement regarding Human Rights:

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

7. Policy background

- ***What is being done and why***

7.1 The Localism Act 2011, which received Royal Assent on 15 November, implemented the Government's policy to enable local electors in England to approve or veto excessive council tax increases in referendums and abolish central government capping powers. Where an authority sets a council tax increase in excess of a limit determined by the Secretary of State and approved by the House of Commons, a binding referendum must be held on that increase. These regulations make provision for the conduct of those referendums to ensure the referendums are conducted effectively and consistently.

Overview of the regulations

7.2 The Regulations are closely based upon the Local Authorities (Conduct of Referendums) (England) Regulations 2007 ('the 2007 regulations') as updated in the draft Local Authorities (Conduct of Referendums) (England) Regulations 2012 ('the 2012 Regulations')which deal with referendums on local authority governance arrangements. These regulations are familiar to electoral administrators, and have previously been used successfully. However, in preparing the Regulations, it has been necessary to depart from those provisions in order to address a number of matters that are particular to the administration of council tax.

The Referendum Question

7.3 Regulation 3 and Schedule 1 prescribe the question to be asked in the referendum. Voters are to be asked whether they approve of the percentage change in the relevant basic amount of council tax set by the authority for the financial year in question and are also informed of what the percentage change will be if the voters do not agree with the increase. The Department considers that it is important for voters to understand how the result of the referendum will affect the amount of council tax charged on dwellings situated in different council tax bands and in different parts of an authority's area. Regulation 7 therefore provides that the authority must publish information about this.

Publicity

7.4 To ensure people living in the authority's area are aware that a council referendum is due to be held and that they are informed of key information relating to the referendum, regulations 4 to 6 provide that the authority triggering the referendum must publish a detailed notice of referendum in its local area.

7.5 Once this notice has been published (and triggered the period of campaigning), in accordance with regulation 11, an authority may publish an additional statement setting out the reasons for the excessive increase, and the likely consequences if its council tax increase is not approved. This statement will be subject to the campaign expenses limit for the referendum and published no later than 28 days before the poll. To ensure the authority is not able to unduly influence the result of the referendum,

regulation 10 places restrictions on the publication of other promotional material by or on behalf of the authority.

Expenses Limits

7.6 Regulation 12 prescribes a limit on campaign expenses. This is to be calculated in the same way as the expenses limit prescribed in the 2007 and draft 2012 Regulations but where a number of referendums are held on a council tax increase set by a major precepting authority, the limit is calculated by reference to the number of registered voters in the major precepting authority's area rather than setting an individual limit for each billing authority holding a referendum on the same precepting authority's increase.

Chief Counting Officer

7.7 Where a referendum is held on the excessive increase set by a major precepting authority all the billing authorities in its area will each be required to hold a referendum within their areas. Regulation 16 provides that in such circumstances, the major precepting authority must appoint a person to be Chief Counting Officer. This person will be responsible for drawing up a statement of the total number of votes cast in favour of each answer to the question asked in the referendums held by each billing authority and publishing the final result. This person will have a power of direction over counting officers in each area, including the power to order a recount.

Timing of Referendum and Combination of Polls

7.8 Council tax referendums must be held on or before the first Thursday in May unless the Secretary of State specifies another date by order. To allow greater flexibility, regulation 17 provides that where a referendum or election of a kind mentioned in regulation 17(3) is to be held up to 28 days after a council tax referendum is due to be held, the poll at the council tax referendum may also be held on this date.

7.9 Given the comparatively short period of time authorities have to arrange a council tax referendum once it is triggered, the Regulations allow returning officers for elections and counting officers for referendums the discretion to decide whether to hold a council tax referendum in combination with polls at other elections or referendums taking place on the same date.

7.10 It is possible for multiple council tax referendums to be held within the same area. *In extremis* a billing authority could have to hold a referendum on its own excessive increase as well as that of a Police Authority, Fire and Rescue Authority, County Council and a number of local precepting authorities in its area. To avoid voter confusion, the regulations require that where multiple council tax referendums are to be held in the same area, the polls at those referendums must be held on the same date and they must be taken together.

The Greater London Authority (GLA)

7.11 Provision has been made for the GLA to reflect the fact that it calculates two different relevant basic amounts of council tax (see paragraph 4.4) The percentage increase stated in the referendum question will reflect the relevant basic amount of council tax of concern to voters in their billing authority's area (see regulation 3(2)).

Legal Challenges

7.12 Consistent with existing electoral practice, four or more voters will have the right to question the result of the referendum by petition. Until such time as a court hears the petition, the result of the referendum will stand.

7.13 Where following a successful petition, a court declares the result void, the authority's substitute calculations which produce an amount of council tax that is not excessive by reference to the principles, will take effect. Given the scope for lengthy delays, voter and tax-payer confusion, and for complications affecting the subsequent year's council tax-setting, the regulations do not make provision for a referendum to be re-run.

- ***Consolidation***

This is the first exercise of the enabling power.

8. Consultation outcome

8.1 The Government has consulted the Electoral Commission, as required by section 52ZQ (6) of the 1992 Act.

8.2 The Electoral Commission conducted focus groups and interviews and sought the views of local authorities and Members of Parliament over a 10 week period. A report setting out their views on the question has been placed in the library of both Houses of Parliament. The Government was broadly content to accept the Commission's views on the question but considers that the alternative question proposed by the Commission did not make sufficiently clear that voters are voting on a council tax increase that has already been set by the authority in question, with bills already issued based upon the "excessive increase". The referendum question prescribed in the Regulations is intended to clarify this.

8.3 The Commission also offered views on the draft regulations and raised a number of points of detail which informed the drafting of the regulations.

9. Guidance

The Regulations are largely based upon the Local Authorities (Conduct of Referendums) (England) Regulations 2007 with which local authorities and electoral administrators are already familiar, so the Department does not intend to issue detailed guidance on the Regulations. However the Department intends to issue explanatory information to aid understanding of the new points of procedure in these regulations.

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

Nick Littlewood at the Department for Communities and Local Government can answer any queries regarding the instrument (Tel: 0303 444 2096 nick.littlewood@communities.gsi.gov.uk).