EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES (CONDUCT OF REFERENDUMS) (ENGLAND) (AMENDMENT) REGULATIONS 2014

2014 No. [DRAFT]

AND

THE LOCAL AUTHORITIES (CONDUCT OF REFERENDUMS) (COUNCIL TAX INCREASES) (ENGLAND) (AMENDMENT NO. 2) REGULATIONS 2014

2014 No. [DRAFT]

1. 1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 These instruments make changes to the rules for conducting referendums concerning a local authority's governance arrangements, and local authority council tax referendums in England. They apply or copy electoral conduct provisions in the Electoral Registration and Administration Act 2013 (the "ERA Act") and associated secondary legislation for the purposes of these referendums.

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

3.1 None.

4. **Legislative Context**

4.1 The Local Authorities (Conduct of Referendums) (England) (Amendment) Regulations 2014 amend the Local Authorities (Conduct of Referendums) (England) Regulations 2012 (S.I. 2012/323) (the "2012 Regulations") which set out the rules governing the conduct of referendums concerning a local authority's governance arrangements in England. The Local Authorities (Conduct of Referendums) (Council Tax Increases) (England) (Amendment No. 2) Regulations 2014 amend the Local Authorities (Conduct of Referendums) (Council Tax Increases) (England) Regulations 2012 (S.I. 2012/444) (the "2012 Council Tax Increases Regulations") which set out the rules governing the conduct of council tax referendums in England. The two instruments make the same substantive changes to their respective referendums.

4.2 Many of the provisions in the two instruments replicate, for referendums concerning a local authority's governance arrangements and local authority council tax referendums, amendments that have been made for the conduct of UK Parliamentary elections by the ERA Act and the Representation of the People (England and Wales) (Description of Electoral Registers and Amendment) Regulations 2013 (S.I. 2013/3198) (the "2013 Regulations"). It is intended that the relevant provisions of the ERA Act will be brought into force so they can have effect at polls that take place on 22 May 2014.

4.3 The instruments are part of a wider package of Statutory Instruments which make various changes to the rules for conducting elections and referendums and include the European Parliamentary Elections (Amendment) Regulations 2013 (S.I. 2013/2876), the 2013 Regulations, and the Neighbourhood Planning (Referendums) (Amendment) Regulations 2014 (S.I 2014/333).

4.4 The instruments are made under the Local Government Act 2000 and the Local Government Finance Act 1992, which conferred the regulation-making power on the Secretary of State. The power was made exercisable concurrently with the Lord President of the Council by the Transfer of Functions (Elections and Referendums) Order 2013 (S.I. 2013/2597).

5. Territorial Extent and Application

5.1 The instruments apply only in England.

6. European Convention on Human Rights

6.1 Greg Clark, the Minister of State for Cities and the Constitution, has made the following statement regarding Human Rights:

"In my view the provisions of the Local Authorities (Conduct of Referendums) (England) (Amendment) Regulations 2014 and the Local Authorities (Conduct of Referendums) (Council Tax Increases) (England) (Amendment No.2) Regulations 2014 are compatible with the Convention rights."

7. Policy background

7.1 The instruments make provision for a number of changes to the conduct of referendums concerning a local authority's governance arrangements, and local authority council tax referendums. Many of these changes have been made for parliamentary elections by Part 2 of the ERA Act and the 2013 Regulations.

7.2 These changes are being made now, in conjunction with changes to other electoral legislation, so they can have effect at polls that take place on 22 May 2014 (the scheduled date for European Parliamentary elections and local government elections) and thereafter. They are designed to improve the accessibility and security of the voting process, and implement a number of recommendations which have been made by (amongst others) the Electoral Commission and the Association of Electoral Administrators.

7.3 These instruments make the following changes:

- Amend the method of calculating the campaign expenditure limit at the referendums so that it will no longer be calculated with reference to the register produced after the annual canvass in the preceding year. That is because there will be no post-canvass register in 2013. The 'relevant register' used to calculate the referendum expenses limit will be the register of local government electors as it exists at the time when the referendum period begins (so not fewer than 28 working days before the poll for a council tax referendum, and not fewer than 56 working days before the poll for a local authority governance referendum).

- Enable Police Community Support Officers to enter polling stations and counting venues under the same conditions as police constables. This ensures that the changes made by the ERA Act to the parliamentary elections rules are reflected for these referendums.

- Update voting forms for accessibility reasons. The intention is to ensure that the forms which voters use at referendums are as clear and easy to use as possible to improve the voter's experience and encourage more effective engagement in the voting process.

- Provide that voters waiting in a queue at the close of poll (i.e. at 10pm on polling day), for the purpose of voting, may be issued with a ballot paper, and that those in the queue for the purpose of returning a postal ballot paper or postal voting statement may return it.

7.4 Many provisions in the Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341) (the "2001 Regulations") apply to referendums concerning a local authority's governance arrangements, and local authority council tax referendums by virtue of Table 6 in Schedule 4 in each of the 2012 Regulations and the 2012 Council Tax Increases Regulations. Taking the amendments to the 2001 Regulations made by the 2013 Regulations, together with the amendments to Schedule 4 in each of the 2012 Regulations and 2012 Council Tax Increases Regulations made by these Regulations, the effects on these referendums are as follows:

- Remove the restriction on postal votes being despatched earlier than the 11th working day before the day of the poll.

- Enable postal voters to cancel their postal vote following receipt and arrange instead to vote in person or by proxy, provided they do this before the postal vote application deadline (i.e. at least 11 working days before the poll) and that the postal ballot papers have not been completed and returned to the Counting Officer. This ensures the current flexibility afforded to voters to change their voting arrangements is maintained.

- Establish a system of postal vote identifier rejection notifications. Electoral Registration Officers (EROs) will inform electors after a poll where the signature or date of birth (known as "postal vote identifiers") which they supply on the postal voting statement failed to match those held on record or had simply been left blank. This is to help to ensure those voters can participate effectively in future elections and not have their ballot papers rejected at successive polls because of a signature degradation or because they are making inadvertent errors. EROs will not be obliged to inform individuals where fraud is suspected.

- Ensure that 100% of postal vote identifiers on postal voting statements are checked against those held on record, rather than the current minimum of 20%. This reflects practice by Returning Officers at recent national elections, and ensures all postal votes are subject to the same high level of scrutiny.

- Extend "emergency" proxy provisions to those absent on the grounds of business or service. This is to ensure that those who are absent at short notice for business or service reasons are eligible to apply for an emergency proxy vote in the days before the referendum.

8. Consultation outcome

8.1 The Electoral Commission has been consulted on these instruments. In addition, we have consulted informally with representatives of the Association of Electoral Administrators, the Society of Local Authority Chief Executives and other interested parties (in particular, SCOPE on the design of the forms). In addition, the Cabinet Office has undertaken a programme of public user testing of the revised voting forms.

8.2 The Electoral Commission's response welcomed the Government's approach to the updating of the conduct rules for these referendums.

8.3 The Commission suggested that the campaign expenditure limit at the referendums should be set with reference to the register of local government electors as it exists at a fixed point before the start of the relevant referendum period, for example, three months. The Commission thought that this would give campaigners more certainty when planning their campaign in the lead up to start of the regulated referendum period. However, as the Commission recognize, the difference between a register three months before the start of the referendum period and one at the start of the period is not likely to be significant. We think it would be preferable to use the more recent register when calculating the campaign expenditure limit, i.e. the one at the start of the referendum period, and therefore decided not to take on board this suggestion.

8.4 As a result of the Commission's comments, we made a technical change to the wording on the notice of poll for referendums concerning a local authority's governance arrangements.

9. Guidance

9.1 The Electoral Commission will continue to issue guidance relating to the conduct of elections and referendums. They will issue guidance on the new arrangements for referendums concerning a local authority's governance arrangements and local authority council tax referendums.

10. Impact

10.1 The attached impact assessments were produced relating to the conduct elements of the ERA Act and remain applicable to this instrument. A separate full regulatory impact assessment has not been prepared for this instrument because no significant impacts on the private, public or voluntary sectors are foreseen, other than those set out in the attached impact assessments prepared for the ERA Act.

11. Regulating small business

11.1 The legislation does not create new regulatory burdens for small business.

12. **Monitoring & review**

12.1 The Cabinet Office keeps all electoral legislation under review to ensure it continues to support electors' participation in elections and effective electoral administration. Furthermore, the Law Commission is undertaking a review of electoral legislation. It issued a scoping report on 11 December 2012 and expects to issue a consultation on reforming the law in late 2014.

13. **Contact**

Peter Richardson at the Cabinet Office, tel 020 7271 6433: email: peter.richardson@cabinet-office.gsi.gov.uk can answer any queries regarding the instruments.