EXPLANATORY MEMORANDUM TO

THE NEIGHBOURHOOD PLANNING (REFERENDUMS) (AMENDMENT) 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 Regulations change the rules for conducting neighbourhood planning referendums. In doing so, they apply or copy electoral conduct provisions in the Electoral Registration and Administration Act 2013 (c.6) (the "ERA Act") and associated secondary legislation for the purposes of residential and (in most cases) business neighbourhood planning referendums.

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

3.1 The Regulations include transitional provisions to ensure that the rules in relation to the conduct of a referendum do not change when preparations for it have already begun. For example, regulation 1(7) means that while the majority of the provisions in the Regulations will come into force on 6 April 2014, they will have no effect in relation to a referendum that takes place on or before 21 May 2014. In the absence of an express power to make transitional provision, the Lord President of the Council relies on section 333(2A) of the Town and Country Planning Act 1990 (c.8), which provides that regulations may make different provision for different purposes. The Cabinet Office takes the view that the transitional provisions in regulation 1 are an instance of making different provision for different purposes, and therefore that section 333(2A), together with the other provisions cited in the preamble to the Regulations, provides the necessary power.

4. **Legislative Context**

4.1 The Regulations amend the Neighbourhood Planning (Referendums) Regulations 2012 (2012/2031) (the '2012 Regulations').

4.2 Many of the provisions in the Regulations replicate, for neighbourhood planning referendums, amendments that have been made for the conduct of UK Parliamentary elections by the ERA Act or that will be made by the draft Representation of the People (England and Wales) (Description of Electoral Registers and Amendment) Regulations 2013 (the "draft 2013 Regulations"). The Regulations cross-refer to provisions in the draft 2013 Regulations and therefore cannot be made until the 2013 Regulations have been made.

4.3 The Regulations are part of a wider package of Statutory Instruments which make various changes to the rules for conducting elections and referendums and include the draft 2013 Regulations, the European Parliamentary Elections (Amendment) Regulations 2013 (S.I. 2013/2876) and the draft Local Authorities (Mayoral Elections) (England and Wales) (Amendment) Regulations 2014.

5. Territorial Extent and Application

5.1 The Regulations 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 Neighbourhood Planning (Referendums (Amendment) Regulations 2014 are compatible with the Convention rights."

7. Policy background

7.1 The Localism Act 2011 amended the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004 to place a duty on local authorities to hold a referendum on neighbourhood development plans or orders, or community right to build orders, subject to successful examination and meeting of certain conditions set out in legislation. In areas designated as business areas the primary legislation requires an additional referendum to be held of non domestic rate-payers in the referendum area.

7.2 The Regulations make provisions for a number of changes to the conduct of residential and business neighbourhood planning referendums. Many of these changes have been made for parliamentary elections by Part 2 of the ERA Act and the draft 2013 Regulations.

7.3 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.

7.4 These Regulations make the following changes to the 2012 Regulations:

- Amending the method of calculating the campaign expenditure limit at neighbourhood planning 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 28 working days before a residential poll, and 56 working days before a business and a residential poll that happen together).

- Enabling 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 neighbourhood planning referendums.

- Updating 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.

- Providing 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 voting statement may return it.

7.5 Many provisions in the Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341) (the '2001 Regulations') apply to residential neighbourhood planning referendums by virtue of Table 6 in Schedule 4 to the 2012 Regulations. Taking the amendments to the 2001 Regulations made by the draft 2013 Regulations together with the amendments to Schedule 4 to the 2012 Regulations made by these Regulations, the effects on residential neighbourhood planning referendums are as follows:

- Removing the restriction on postal votes being despatched earlier than the 11th working day before the day of the poll (there is no such restriction at business polls).

- Enabling electors to cancel postal votes 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 electors to change their voting arrangements is maintained.

- Establishing a system of postal vote identifier rejection notifications (PVIRN). 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 electors 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. (There are no plans to apply PVIRN to business polls where no PVI record is maintained after the poll).

- Ensuring 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.

- Extending "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 election.

7.6 The move to checking 100% of postal vote identifiers and the extension of emergency proxy provisions is also applied to business referendums by virtue of changes made to Schedules 6 and 7 of the 2012 Regulations.

8. Consultation outcome

8.1 The Electoral Commission has been consulted on this instrument as required by paragraph 16(5) of Schedule 4B to the Town and Country Planning Act 1990. 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 neighbourhood planning referendums.

8.3 The Commission has raised concerns around the drafting of the close of poll provisions, specifically in relation to the return of postal votes. The Commission raised identical concerns in relation to the European Parliamentary Elections (Amendment) Regulations 2013 (SI 2013/2876) and the draft Electoral Registration and Administration Act 2013 (Commencement No. 4) Order 2013.

8.4 The Electoral Commission is concerned that the provisions could risk creating an open ended period for the delivery of postal ballot papers and statements to a Counting Officer or their staff. The Government's view is that that this is a slim, near impossible, eventuality and genuine concerns can be adequately and more appropriately dealt with in the guidance that the Electoral Commission will produce for Counting Officers on close of poll arrangements.

8.5 The Society of Local Authority Chief Executives who represent Returning Officers, and the Association of Electoral Administrators, support the legislation and have welcomed the flexibility the drafting provides.

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 neighbourhood planning 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**

Fiona Willan at the Cabinet Office, tel 020 7271 6442: email: fiona.willan@cabinet-office.gsi.gov.uk can answer any queries regarding the instrument.