EXPLANATORY MEMORANDUM TO

THE NEIGHBOURHOOD PLANNING (REFERENDUMS) (AMENDMENT) REGULATIONS 2016

2016 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The Localism Act 2011 provided a statutory regime for neighbourhood planning. These Regulations make provision in relation to that regime to prescribe a date by which a referendum on a proposal for a neighbourhood development plan or neighbourhood development order (including a community right to build order) must be held.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The powers at paragraph 16 of Schedule 4B to the Town and Country Planning Act 1990 ("the 1990 Act") have been exercised previously (S.I. 2012/2031, amended by S.I. 2013/798 and S.I. 2014/333). But these Regulations are the first use of the specific power at sub-paragraph (2)(c) of that paragraph to prescribe a date by which the referendum must be held.

Other matters of interest to the House of Commons

3.2 This instrument extends to England and Wales, and applies in relation to England only.

3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

4. Legislative Context

4.1 Chapter 3 of Part 6 of the Localism Act 2011 ("the 2011 Act") created the neighbourhood planning regime in England mainly by inserting new provisions into the 1990 Act and the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") (*see* Part 1 of Schedule 9 and Schedules 10 and 11 of the 2011 Act, for the provisions

inserted into the 1990 Act, and Part 2 of Schedule 9 of the 2011 Act for the provisions inserted into the 2004 Act).

4.2 Before a neighbourhood development plan or neighbourhood development order (including a community right to build order) can be made by a local planning authority, it must be voted on by the local community in a referendum. Where the neighbourhood area has been designated as a business area there must be an additional referendum for the businesses. A relevant council (defined at paragraph 14(3) of Schedule 4B to the 1990 Act) must make arrangements for the referendum or referendums to take place in so much of their area as falls within the referendum area.

4.3 The Neighbourhood Planning (Referendums) Regulations 2012 ("the 2012 Regulations"), as amended by the Neighbourhood Planning (Referendums) (Amendment) Regulations 2013 and the Neighbourhood Planning (Referendums) (Amendment) Regulations 2014, make provision for the conduct of neighbourhood planning referendums. These Regulations further amend the 2012 Regulations to prescribe a date by which a referendum must be held, subject to exceptions.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England, as set out in section 3 of this explanatory memorandum under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 The Minister of State for Housing and Planning has made the following statement regarding Human Rights:

"In my view the provisions of the Neighbourhood Planning (Referendums) (Amendment) Regulations 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 Once a local planning authority has decided, following an independent examination of a proposal for a neighbourhood development plan or order (including a community right to build order), that the proposal should proceed to referendum, the Government is keen to ensure that the referendum takes place as quickly as possible. Delays in holding the referendum date can cause frustration for communities.

7.2 These Regulations prescribe a time period of 56 working days within which the referendum must be held in most cases. Where the neighbourhood area is designated as a business area, where more than one relevant council must arrange a referendum, and areas where the local planning authority responsible for neighbourhood planning is not the relevant council responsible for arranging the referendum (such as in National Parks or Mayoral Development Corporations), a longer period of 84 working days applies. These time periods are intended to allow sufficient time for the local authority to prepare the required Information Statement and other documents prescribed under regulation 4 of the 2012 Regulations, including time for liaison between authorities in cross-boundary area and where the local planning authority is not the relevant council.

7.3 There are three exceptions to where the prescribed date does not apply. First, where the local planning authority and the neighbourhood group agree a date for the referendum to be held that is later than the prescribed date. This may be, for example, because there is an event that the neighbourhood group wishes to align the referendum with to help encourage turnout. Secondly, where there is another poll due to be held within three months of the prescribed date, and the neighbourhood planning referendum can take place on the same day (whether or not combined with that poll). This may enable the relevant council to make cost savings, for example by using the same polling station for both polls. It may also help encourage turnout. Thirdly, where there are legal challenges to the decision to hold a referendum. Although the prescribed date does not apply in this case, it is for each relevant council to decide, in the light of their own legal advice where necessary, whether to proceed with the referendum.

Consolidation

7.4 Not applicable.

8. Consultation outcome

8.1 The Department formally consulted on a number of reforms to the regulations governing neighbourhood planning from 18 February 2016 to 15 April 2016 (https://www.gov.uk/government/consultations/implementation-of-planning-changes-technical-consultation). There were over 800 responses to the consultation of which 321 commented on the proposal to prescribe a date by which a referendum must be held. Just under half of those respondents represented local planning authorities and around a quarter were from parish councils.

8.2 The consultation document proposed a time period of 10 weeks (in most neighbourhood areas) and 14 weeks (in business areas. In these Regulations the time periods have been expressed as working days and adjusted slightly to align with the "referendum period" under regulation 4 of the 2012 Regulations.

8.3 Over two thirds of local authorities supported the time periods proposed in the consultation and the proposed circumstances where the prescribed time period would not apply. Some consultees suggested other situations in which the longer time period should apply, and these have been taken into account in these Regulations. There was very strong support from parish councils, house builders and professional bodies. A report of the consultation is being prepared and will be placed in the Library of each House of Parliament and on the Department for Communities and Local Government website (https://www.gov.uk/government/organisations/department-for-communities-and-local-government).

9. Guidance

9.1 The Department for Communities and Local Government's planning practice guidance, which is a web-based resource (available at: http://planningguidance.planningportal.gov.uk/) includes guidance on neighbourhood planning. The Department intends to update the guidance to reflect the changes made by these Regulations.

10. Impact

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

10.2 The impact on the public sector is minimal as we believe that local authorities already comply with the requirements of the Regulations in the vast majority of cases.

10.3 An Impact Assessment has not been prepared for this instrument.

10.4 Neighbourhood planning is a voluntary activity; it is for individual organisations – parish councils or community organisations or businesses – to choose to produce, lead or participate in the production of a neighbourhood development plan or neighbourhood development order (including a community right to build order). There is no new additional direct cost to businesses or civil society organisations arising from the reforms.

10.5 Funding has been identified to support those local authorities that incur additional burdens as a result of the duties imposed under the 1990 Act and 2004 Act in relation to neighbourhood planning. We do not consider that our reforms are introducing a requirement for additional administration or expenditure by relevant councils. They are required to arrange a referendum in any event and these Regulations simply prescribe a date by which the referendum must be held. It will still be possible to combine polls that are due to take place within a reasonable period of the date prescribed in these Regulations. Therefore our current arrangements for meeting any new burdens are sufficient.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

11.2 Neighbourhood planning is entirely voluntary and is not a mandated process. It is for individual businesses and employees to choose whether or not they wish to participate they choose their involvement and the level of it freely. The proposals do not give rise to any additional requirements or costs on business.

12. Monitoring & review

12.1 These Regulations do not contain provision for review and section 28 of the Small Business, Enterprise and Employment Act 2015 (duty to review regulatory provisions in secondary legislation) does not apply as these Regulations do not make regulatory provision in relation to any qualifying activity or amend regulatory provision made in relation to any qualifying activity. Neighbourhood planning is an activity that may be carried on by a voluntary or community body but these Regulations prescribe the date by which a referendum must be held and the activity of holding a referendum is carried out by a relevant council and not by a business or by a voluntary of community body.

12.2 The Government is committed to speeding up and simplifying the neighbourhood planning process. If evidence suggests that these measures in relation to prescribing the date by which a referendum must be held are not effective, further measures will be considered as appropriate.

13. Contact

13.1 Jenny Frew at the Department for Communities and Local Government Tel: 0303 444 1343 or email: jenny.frew@communities.gsi.gov.uk can answer any queries regarding the instrument.