EXPLANATORY MEMORANDUM TO

THE NEIGHBOURHOOD PLANNING (REFERENDUMS) 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

2.1 The Neighbourhood Planning (Referendums) Regulations 2012 ("the Regulations") make provision in relation to the conduct of referendums required to be held as a result of paragraph 12(4) of Schedule 4B or paragraph 10(3) of Schedule 4C to the Town and Country Planning Act 1990 ("the 1990 Act").

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

3.1 This is the first exercise of these powers.

4. Legislative Context

4.1 Chapter 3 of Part 6 of the Localism Act 2011 creates a new neighbourhood planning regime in England mainly by inserting new provisions into the 1990 Act and the 2004 Act (*see* Part 1 of Schedule 9, and Schedules 10 and 11, for the provisions inserted into the 1990 Act, and Part 2 of Schedule 9 for the provisions inserted into the 2004 Act).

4.2 The 1990 Act provides that within a designated neighbourhood area a parish council or a designated neighbourhood forum may propose a neighbourhood development order and Schedule 4B (as read with the modifications in Schedule 4C for community right to build orders (which are a particular type of neighbourhood development order)) sets out the framework for making such orders.

4.3 The 2004 Act provides that within a designated neighbourhood area a parish council or a designated neighbourhood forum may propose a neighbourhood development plan and Schedule 4B to the 1990 Act (as applied, with modifications, by section 38A of the 2004 Act) sets out the framework for making such plans.

4.4 The Regulations build on the statutory frameworks in the 1990 Act and the 2004 Act in relation to the process for designating neighbourhood areas and neighbourhood forums and the preparation of neighbourhood development plans and neighbourhood development orders and community right to build orders.

4.5 A referendum must be held on a neighbourhood development plan, neighbourhood development order or community right to build order before it can come into legal force (be 'made' by the local planning authority). This referendum must be held after the plan or order has been independently examined and approved by the local planning authority (with or without modifications) under paragraph 12 of Schedule 4B or paragraph 10(3) of Schedule 4C of the 1990 Act. Paragraph 14 of Schedule 4B sets out provision in relation

to such referendums, including who is responsible for holding the referendum, who is entitled to vote in them and which local authorities are responsible for making arrangements for them (relevant councils).

4.6 Provision is also made in the 1990 Act in relation to additional referendums of non-domestic ratepayers which are held in a designated "business area". The provisions about additional referendums do not apply to community right to build orders, on which only residents will have a vote in a referendum. These Regulations do not make provision for additional referendums. Provision in relation to these will be brought forward in due course. In the meantime the duty to hold an additional referendum will not be commenced.

4.7 The Secretary of State has the power to make provision in regulations about referendums, including additional referendums, under paragraph 16 of Schedule 4B – such as, how they are to be conducted or to impose duties on local authorities to publicise the time and place of a referendum. The Neighbourhood Planning (Referendums) Regulations 2012 are made under this power. Before making these regulations, the Electoral Commission must be consulted by the Secretary of State.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The policy aim underlying neighbourhood planning is that by enabling communities to have a greater say over the planning of their communities they are more likely to become supporters of sustainable growth.

7.2 The Localism Act 2011 inserts new provisions into the 1990 Act and 2004 Act for communities to come together to produce a neighbourhood development plan or neighbourhood development order or a community right to build order. Take up of the new right will be voluntary and at the discretion of neighbourhoods and communities.

Overview of the regulations

7.3 The Regulations are closely based upon the Local Authorities (Conduct of Referendums) (England) Regulations 2012 ('the 2012 Regulations') which deal with referendums on local authority governance arrangements. The procedures provided for in these regulations are familiar to electoral administrators.

The Referendum Question

7. 4 Regulation 3 and Schedule 1 prescribe the form of words of the question to be asked in a neighbourhood planning referendum. There are 3 questions depending on whether the referendum relates to a neighbourhood development plan, a neighbourhood development order or a community right to build order.

Publicity

7.5 To ensure people living in the local authority's area are aware that a referendum is due to be held, the subject matter of that referendum and that they are informed of key information relating to the referendum, regulation 4 provides that the relevant council responsible for the referendum must publish a detailed notice of the referendum in its local area at least 28 working days before the date of the referendum. It also provides for weekends, bank holidays and public holidays to be ignored in calculating certain periods of time for the purposes of regulation 4(1), namely the referendum period.

7.6 To ensure the local authority is not able to unduly influence the result of the referendum, regulation 5 imposes restrictions on the material that may be published, displayed or distributed by and on behalf of the authority in the period beginning 28 working days before the date of the referendum.

Expenses Limits

7.7 Regulation 6 prescribes a limit on campaign expenses. This is to be calculated in the same way as the expenses limit prescribed in the 2012 Regulations. Schedule 2 makes provision about the matters relevant to referendum expenses. Regulation 6(3) includes an offence for a campaign organiser to knowingly incur expenses expenditure in excess of the referendum expenses limit. Regulation 7 provides that where certain property, services and facilities are used free of charge or at a significant discount then where the cost is greater than £200 the full cost of that use will be treated as incurred by way of referendum expenses for the purposes of regulation 6.

7.8 Regulation 8 provides for the conduct of a referendum which is not combined with any other polls. These Regulations set out the rules for the conduct of a referendum (the Neighbourhood Planning Referendums Rules), in Schedule 3. Other electoral legislation is applied, with modifications, to facilitate the conduct of referendums (Part 1 of Schedule 4).

7.9 Regulation 9 specifies who is to be the counting officer at the referendum.

Cross boundary referendum areas / Chief Counting Officer

7. 10 Section 61I of the 1990 Act allows for neighbourhood areas to be designated which cross local planning authority boundaries in England. Regulation 10 provides that where the referendum area includes any part of the area of more than one council, the authorities must appoint a person to be the Chief Counting Officer for the cross boundary referendum. 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 and publishing the final

result. This person will have a power of direction over counting officers in each relevant council's area, including the power to order a re-count.

Combination of Polls

7. 11 Regulation 11 makes provision for the conduct of referendums when combined with the poll at elections. Where a referendum or election of a kind mentioned in regulation 11 ("relevant election" is defined in regulation 2) is due to be held up to 28 days after a neighbourhood planning referendum is due to be held, the neighbourhood planning referendum may be held on the date of the relevant election. These Regulations set out the rules for conducting referendums in such circumstances - (the Neighbourhood Planning Referendums (Combination of Polls) Rules) in Schedule 5.

7.12 Regulation 12 applies other electoral legislation to facilitate the conduct of such referendums. Regulation 13 makes provision as to the modification of election rules in relation to the relevant election with which the referendum is combined.

Timing of Referendum

7.13 Regulation 14 exempts advertisements relating specifically to the referendum from regulations under the 1990 Act controlling the display of advertisements.

7.14 Regulation 15 provides that premises used in relation to the referendum for public meetings or the taking of the poll are to be treated as unoccupied for rating purposes.

7.15 Regulation 16 allows for the circumstances where the relevant council for a referendum is not the local planning authority. The regulation require the two authorities (i.e. the local planning authority and the relevant council) to co-operate and sets out the nature of that co-operation.

Consolidation

7.16 Not applicable.

8. Consultation outcome

8.1 The Government has consulted the Electoral Commission, as required by paragraph 16(5) of Schedule 4B of the 1990 Act.

8.2 The Electoral Commission conducted focus groups and interviews and sought the views of a range of stakeholders over a 10 week period on the question(s) to be asked in the referendum. A report setting out their views on the question can be accessed from http://www.electoralcommission.org.uk/__data/assets/pdf_file/0005/147551/Consultation-response-to-CLG-Neighbourhood-Planning-referendum-questions-2012-04-11.pdf . The Government is content to accept the Commission's views on the referendum question.

8.3 The Commission also offered views on the draft regulations and raised a number of points of detail which informed the detailed drafting of the regulations. In particular regarding the requirements for information provided to voters prior to the referendum being held and the pre-referendum notice and publicity period.

8.4 The Government also consulted the Association of Electoral Administrators on the draft Regulations, who made detailed comments on the drafting. For example, they recommended that the Chief Counting Officer be entitled to attend the count, which we have provided for in the Regulations.

9. Guidance

9.1 The Regulations are largely based upon the Local Authorities (Conduct of Referendums) (England) Regulations 2012, which made no substantive procedural changes to the 2007 Regulations of the same name, with which local authorities and electoral administrators are already familiar, so the Department does not intend to issue detailed guidance on the Regulations themselves.

9.2 The Department is considering the need for more detailed guidance on neighbourhood planning under the Localism Act and is currently discussing with stakeholders what guidance needs to be produced by the Department and what guidance or advice should be produced by other bodies on neighbourhood planning. The Department has already published a short guide to neighbourhood planning and a Frequently Asked Questions report.

10. Impact

10.1 Neighbourhood planning is a voluntary activity. It is for individual organisations - a parish council or community organisation or businesses – to choose to produce, lead or participate in the production of a neighbourhood development plan or a neighbourhood development order or a community right to build order.

10.2 A full Impact Assessment of the effect that neighbourhood planning will have on business and the public sector is available from the Department and is annexed to this Explanatory Memorandum.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 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

Gareth Bradford at the Department for Communities and Local Government Tel: 0303 444 4277 or email: gareth.bradford@communities.gsi.gov.uk can answer any queries regarding the instrument.