EXPLANATORY MEMORANDUM TO

THE ROYAL PARKS AND OTHER OPEN SPACES (AMENDMENT) (NO. 2) REGULATIONS 2012

2012 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

2.1. To prohibit persons in open spaces in the vicinity of Parliament Square from failing to comply with police directions to cease, or not to start, using amplified noise equipment or camping equipment.

2.2. To enable police to seize property used in connection with the prohibited activities, the Secretary of State to retain and dispose of such property, and the Court to order its forfeiture.

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

3.1. This is the first use of the power in section 2(1A) of the Parks Regulation (Amendment) Act 1926 ("1926 Act") to apply (with any necessary modifications) sections 4 to 6 of the Royal Parks (Trading) Act 2000 (seizure, retention, disposal and forfeiture of property) in relation to any offences under section 2(1) of the 1926 Act.

4. Legislative Context

4.1. The regulations are being made to better protect land in the vicinity of Parliament over which the Secretary of State for Culture, Olympics, Media and Sport ("Secretary of State") has the power to make regulations under the 1926 Act.

4.2. The 1926 Act allows the Secretary of State to make regulations to be observed by persons using any park, garden, recreation ground, open space or other land vested in, or under the control or management of the Secretary of State. The Royal Parks and Other Open Spaces Regulations 1997 ("1997 Regulations"), which this instrument amends, are an example of such regulations.

4.3. The 1926 Act makes it an offence to fail to comply with, or act in contravention of, any regulations made under the 1926 Act.

4.4. The Police Reform and Social Responsibility Act 2011 ("2011 Act") amended the 1926 Act to enable the Secretary of State to make regulations applying (with any necessary modifications) sections 4 to 6 of the Royal Parks (Trading) Act 2000 (seizure, retention, disposal and forfeiture of property) in relation to any offences

under section 2(1) of the 1926 Act. This is the first time this regulation-making power is being exercised. The section was added to the Police Reform and Social Responsibility Bill by way Lords Amendments to the Bill, as brought from the House of Lords on 20 July 2011. The explanatory notes on those amendments said at paragraph 51:

> "Amendment 53 would amend the Parks Regulation (Amendment) Act 1926 to enable current seizure powers contained in the Royal Parks (Trading) Act 2000 to be applied in relation to the enforcement of any offences under the 1926 Act. This would cover other areas around Parliament Square not covered by Part 3 of the Bill, or by Westminster City Council or Greater London Authority byelaws – for example the lawn area around the statue of George V, Victoria Tower Gardens and the Jewel Tower. Amendments 56, 57 and 59 are consequential on amendment 53."

4.5. The 2011 Act creates new offences in Parliament Square of failing to comply with the direction of a police constable or other authorised person to cease, or not to start, using amplified noise equipment, or camping or sleeping equipment.

4.6. This instrument prohibits similar conduct in the land in the vicinity of Parliament Square over which the Secretary of State has regulation-making powers under the 1926 Act.

4.7. This instrument also applies, with necessary modifications, sections 4 to 6 of the Royal Parks (Trading) Act 2000, allowing seizure, retention, disposal and forfeiture of property used in the commission of the offence of contravening the new regulations.

5. Territorial Extent and Application

5.1. This instrument extends to all of the United Kingdom, but there is no effect anywhere other than England.

6. European Convention on Human Rights

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 2011 Act restores the ability to protest in Parliament Square, but subject to control to avoid the establishment of protest encampments.

7.2. The Secretary of State wishes the public to continue to enjoy the use of the land around Parliament and avoid the displacement of protests from Parliament Square onto the land in the vicinity over which the Secretary of State has the power to make regulations.

7.3. The 1997 Regulations already prohibit (without the prior written consent of the Secretary of State) camping, giving a public speech (other than in Speakers' Corner) or using amplified noise equipment. They also prohibit refusing the instructions of a police constable to leave a park. Under the 1926 Act these are criminal offences, the penalty being a maximum fine of level 1 on the standard scale (presently £200).

7.4. The new regulations are very close to what is already prohibited. They create an offence specifically for the Parks in the vicinity of Parliament that mirrors the offences in the 2011 Act. That makes it an offence to fail, without reasonable excuse, to comply with a direction by a police constable to cease doing, or not to start doing, a prohibited activity. The prohibited activities include setting up or using camping or sleeping equipment, or using amplified noise equipment. The offences carry the same penalty as other offences under the 1997 Regulations.

7.5. Therefore, while the new prohibitions are only a small shift from existing prohibitions in the parks covered by the regulations, their precise wording will allow for more effective policing by ensuring the same powers apply across different areas in the vicinity, providing certainty to the police and to the public.

7.6. The new regulations give police new powers of seizure of items used in connection with this offence, namely camping equipment and equipment used to amplify noise. They also give the Secretary of State the power to retain and dispose of the items, and the court the power to order their forfeiture. These powers mirror the powers of seizure, retention, disposal and forfeiture that exist in relating to park trading offences under the Royal Parks (Trading) Act 2000.

7.7. The 2011 Act gave additional seizure powers to the Police and authorised persons of Westminster City Council and Greater London Authority in relation to Parliament Square itself. These new powers are being mirrored in bye laws proposed by Westminster City Council and the Greater London Authority in relation to land under their authority.

7.8. To ensure consistency, the new regulations apply seizure, retention, disposal and forfeiture powers under the Royal Parks (Trading) Act 2000, to the new offences for the parks in the vicinity of Parliament. This will provide a consistent approach for the land around Parliament.

- Consolidation

7.9. The Secretary of State does not intend to consolidate the 1997 Regulations at this time.

8. Consultation outcome

8.1. The Secretary of State ran a consultation between 14 December 2011 and 23 January 2012. Five responses were received, one from a Government department, advising it had no concerns with the proposal, and four from individuals who were against the proposal.

8.2. The Secretary of State has published a response to the consultation, at www.culture.gov.uk.

9. Guidance

9.1. No formal or statutory guidance is being issued. The Royal Parks already publishes the 1997 Regulations and other Parks Regulations on its website. Park Regulations are also displayed on some park notice boards.

10. Impact

10.1. The impact on business, charities or voluntary bodies is considered to be nil.

10.2. The impact on the public sector is considered to be nil.

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

11. Regulating small business

11.1. The legislation applies to small business, because the 1997 Regulations apply to anyone visiting or conducting a business in the parks the regulations cover. The Government considers the regulations will have no impact on business because no businesses are currently licensed to operate on the parks covered.

12. Monitoring & review

12.1. This legislation will be monitored by the Deputy Chief Executive of the Royal Parks Agency within 18 months of its introduction and any observations will be published on the Agency's website.

13. Contact

Colin Buttery at The Royal Parks Tel: 0300 061 2087 or email: cbuttery@royalparks.gsi.gov.uk can answer any queries regarding the instrument.