EXPLANATORY MEMORANDUM TO

THE EXERCISE OF FUNCTIONS BY LOCAL COUNCILLORS (WRITTEN RECORDS) REGULATIONS 2009

2009 No. 352

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 Where councillors have had functions of the council delegated to them under section 236 of the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act"), this instrument requires a record to be made of any decision made or action taken in carrying out those functions and for the record to be provided to the council within one month of the decision or action.

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

3.1 None.

4. Legislative Context

4.1 This is the first use of the regulation-making power under section 100EA of the Local Government Act 1972 ("the 1972 Act") which was inserted by section 237 of the 2007 Act on 12 December 2008.

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 Section 236 of the 2007 Act permits the delegation of functions of the council to individual councillors in relation to their ward. Section 100EA of the 1972 Act permits the Secretary of State to make regulations regarding the keeping of records of decisions made or actions taken in exercise of a function delegated under section 236.

7.4 The Government is keen to preserve accountability when functions are devolved to individual councillors. Members of the public have certain rights of access to meetings and documents of certain councils, committees and sub-committees under Part 5A of the 1972 Act. Section 100EA(2) of the 1972 Act provides for public access to any records kept pursuant to regulations made under subsection (1) for a period of 6

years. These regulations require that councillors pass on records to the council within a month so that public access to the records can be effective.

- ***Consolidation***

7.2 N/A

8. Consultation outcome

8.1 The primary legislation was trailed in the 2006 Local Government White Paper, 'Strong and Prosperous Communities', and was covered by its consultation processes. It was also subject to Parliamentary Scrutiny during the passage of the Local Government and Public Involvement in Health Bill. The content of these record-keeping regulations has been discussed with representatives of the Local Government Association, who are content with the approach.

9. Guidance

9.1 The Department is supporting the Improvement & Development Agency in partnership with the Centre for Public Scrutiny to publish a sector led best practice guide on use of the power in section 236 of the 2007 Act and these regulations, combining it with guidance on the new powers on the "Councillor Call for Action" pursuant to section 21A of the Local Government Act 2000. The Improvement & Development Agency will also be convening a series of workshops in different areas of the country at which the exercise of powers under section 236 and keeping of records under section 100EA of the 1972 Act can be discussed, together with the "Councillor Call for Action", so that awareness of the powers can be raised and local authorities have further information about how they work.

10. Impact

10.1 No impact on the private or voluntary sector is foreseen.

10.2 It is expected that the costs to the public sector of the record keeping requirements in these regulations will be minimal and fall below the threshold requiring the publication of an Impact Assessment. The s236 power to delegate functions is an enabling power rather than a requirement, and we have no indication of how widely it will be used. Where councils do use the power, they will not be taking on new or different functions – the same functions will be carried out but by a different part of the organisation. Costs arising from the requirement under these regulations on ward councillors to keep records are likely to be cancelled out by efficiencies arising from the expected reduction in the business needing to be carried out be executive councillors, as they will no longer need to approve the use of functions by neighbourhood forums or ward councillors.

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

11. Regulating small business

11.1 The regulations do not affect small business.

12. Monitoring & review

12.1 The Government has no specific plans to monitor and evaluate the impact of these regulations but will respond to any representations from representatives of local government if any difficulties arise in practice.

13. Contact

13.1 Susie Turner at the Department for Communities and Local Government Tel: 020 7944 8361 or email: susie.turner@communities.gsi.gov.uk can answer any queries regarding the instrument.