EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES (ELECTED MAYORS) (ELECTIONS, TERMS OF OFFICE AND CASUAL VACANCIES) (AMENDMENT) (ENGLAND) REGULATIONS 2014

2014 No. 2172

1. 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.

2. Purpose of the instrument

2.1 These Regulations amend the Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2012 ("the 2012 Regulations") in relation to the date on which the first election for an elected mayor may be held after a referendum, which takes place following a petition under section 9MC of the Local Government Act 2000 ("the 2000 Act"), approves a change to a mayor and cabinet executive. These Regulations allow for the first election to be held on the same date as the first ordinary day of election (usually the first Thursday of May) that occurs after the end of a period of three months following the successful referendum, where the local authority so resolves to do so following a request from the petition organiser. The Regulations also provide transitionally that in certain cases where the referendum was held after 31 December 2013 and the first election for the elected mayor has not taken place before the Regulations are in force, that first election will be held on the ordinary day of election in 2015.

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

3.1 None

4. Legislative Context

4.1 The 2000 Act provides that a local authority may, or may be required to, hold a referendum on the question of whether it should adopt a mayor and cabinet executive. Where the result of such a referendum is to approve proposals for such arrangements, an election for the return of an elected mayor is required. A local authority may also, if they are not required to hold a referendum under section 9M or an order made under section 9N, resolve to adopt a mayor and cabinet executive without holding a referendum.

4.2 The Local Authorities (Referendums) (Petitions) (England) Regulations 2011 ("the 2011 Regulations") enable the holding of a referendum under section 9M of the 2000 Act where at least 5% of the local government electors in the authority's area petition the authority. Regulation 10(4) requires

that the petition contain, or be accompanied by, a statement that contains, the name and full address of the person ("the petition organiser") to whom correspondence relating to the petition is to be sent.

4.3 The 2012 Regulations provide for the timing of the first, second and subsequent elections for the return of elected mayors of local authorities. In particular, regulation 3 of the 2012 Regulations provides that if a local authority so resolves the first election shall take place on the first relevant day after (as the case may be) the date of the successful referendum or the date the mayoral resolution was passed. If the local authority does not so resolve, the first election shall take place on the first relevant day after (as the case may be) the end of the period of three months beginning with the date of the referendum or the date the mayoral resolution was passed. Regulation 2 of the 2012 Regulations provides that the "first relevant day" is the first Thursday in May or the third Thursday in October.

4.4 These Regulations amend regulation 3 of the 2012 regulations to enable the first election of a mayor to take place on the same date as the first local elections (defined in the 2012 Regulations as "the ordinary day of election"), which occur after the end of a period of three months after a referendum which took place following a petition and which approved the adoption of a mayor and cabinet executive. The first election would be able to take place on the ordinary day of election where a local authority so resolves following a request for this from the petition organiser and prior to giving notice of a referendum. Transitionally the first election would take place on the ordinary day of election in 2015 in any case where the referendum was held after 31 December 2013, and before these Regulations are in force the referendum has approved the proposals that were subject of the referendum and the first election for the mayor has not taken place.

5. Territorial Extent and Application

5.1 This instrument applies to local authorities in England only.

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

7.1 The Regulations give effect to the policy that in certain circumstances following a referendum approving a governance change to a mayor and cabinet executive, the first election of a mayor will be held on the same day as the next local elections occurring after a period of three months following the referendum. This three month period ensures that where an authority and petition organiser wish to have the first mayoral election on the same day as local elections, the preparatory period (for example to allow candidates to come

forward) will not be less than three months. The circumstances where this timing of elections is possible are that at the time of submitting a valid petition for the referendum, a petition organiser makes a written request that if the referendum approves the governance change the first election will be on this date, and that the authority agrees and so resolves prior to giving notice of the referendum.

7.2 Requiring a resolution before the notice of the referendum ensures that those voting in the referendum can know the expected date of the first mayoral election should the referendum be successful and be clear about the likelihood of any extra elections and costs. Moreover, any such resolution is possible only following a request from the petition organiser so as to ensure that the first mayoral election can be delayed only with the agreement of those petitioning for the introduction of the mayor and cabinet executive form of governance.

7.3 This policy recognises circumstances in which a petition organiser wishes to minimise the additional cost or disruption to the authority where the timing of the referendum would lead, under the current Regulations, to a stand alone referendum on the third Thursday of October.

7.4 Where there is no written request by the successful petitioner for the date of the first mayoral election to be moved, the existing provisions (regulation 3 subject to regulation 5) of the 2012 Regulations continue to apply.

7.6 Regulation 3 of these Regulations contains transitional provisions which address the circumstances in the Borough of Copeland where as explained below a referendum held on the 22 May 2014 (the ordinary day of election that year) approved a change to the mayor and cabinet executive form of governance. In that case both the petition organiser and Copeland Borough Council wished the first mayoral election to take place on the ordinary day of election in 2015 and had publicly made representations to the Secretary of State for him to amend the necessary secondary legislation to allow this to happen. The Secretary of State had indicated that if a referendum was successful he would be minded to make such a change.

7.7 There are currently no plans to consolidate the 2012 Regulations

8. Consultation outcome

8.1 These Regulations provide for a simple additional flexibility in the options for the date of the first mayoral elections.

8.2 This change follows representations from the organiser of the governance petition seeking a referendum on a change from the leader and cabinet governance model to the mayor and cabinet executive model in Copeland Borough. Before the referendum, the petition organiser made strong written representations that in the event of a successful referendum, the date of the subsequent election should be moved from the third Thursday in October 2014, to the first Thursday in May 2015 (the ordinary day of election), when it could be combined with local elections in Copeland Borough and the

parliamentary general election. Copeland Borough Council also made representations for such a change of date.

8.3 The petition organiser sought the change to enable the costs to be minimised, the existing council to complete the full four year term for which it had been elected, allow the elected mayor to then serve the following four years terms from that date, and to provide sufficient time for mayoral candidates to come forward.

8.4 The Government saw some force in these representations. The Government also believes that combining the elections may be helpful to electors and that the combined mayoral, local, and parliamentary elections in May 2015 could have a higher turnout than a stand alone mayoral election in October 2014, although the Government recognised the point, supported by the Electoral Commission, that there is no robust evidence that holding an autumn election necessarily leads to a lower turnout than at other times of the year. However the Government also recognised that the Police and Crime Commissioner elections held in November 2012 had a turnout at just 15.1%.

8.5 Following these initial representations, the Government confirmed to the petition organiser and Copeland Borough Council, that in the event of a successful referendum, and provided it remained the wish of the petition organiser and the Council, it would consider the legislative changes necessary to allow the first election of the mayor to take place on the first Thursday in May 2015.

8.6 Following the referendum, the Secretary of State received representations from the local MP, Jamieson Reed supporting a change of date to May 2015, and also received representations from the 'The Time for Change' Campaign Group in Copeland for retaining the 16 October 2014 election date.

8.7 The Electoral Commission was also consulted. They acknowledged that combining the elections could result in savings and that voters might find it convenient to vote at the same time as other elections. They expressed concern that the electorate, when voting in a referendum for a change to the mayor and cabinet executive model, could be unclear as to the date of the possible future mayoral election. However, the requirements for a valid petition, set out in regulation 10 and the Schedule to the Local Authorities (Referendums) (Petitions) (England) Regulations 2011, do not require the date of a possible first mayoral election to be highlighted either in a petition or to voters in a referendum. Moreover it is the petition organiser who to a large extent already determines the timing of a referendum and election in deciding when to submit the petition, and, as explained in paragraph 4.3 above, the precise date of a first mayoral election depends, on whether or not an authority adopts a specific resolution on the date. Furthermore, the general approach adopted in these Regulations means that any decision to hold a first mayoral election on the ordinary day of election pursuant to the Regulations' provisions must be taken well in advance of the referendum. In the case of Copeland the possibility of

this timing was recognised prior to the referendum and was known locally in Copeland at the time the referendum took place.

8.8 The Government have considered all the representations. They believe it is right that in Copeland the timing of the first mayoral election should reflect the views of the petition organiser and Council, and that more generally, providing such flexibility as to the date of the first mayoral election is a pragmatic and sensible approach particularly for areas where the unplanned cost of an election could be a significant drain on local funding.

9. Guidance

9.1 These Regulations are considered to be self-explanatory and there is no plan to produce any guidance.

10. Impact

10.1 An impact assessment has not been prepared for this instruction as it has no impact on business, charities or voluntary bodies. The Regulations will apply to any local authority required to hold a mayoral election following a successful referendum held after the submission of a valid petition for a change in governance arrangements. However, they will only have any impact where the petition organiser has requested a change in the date of the election, which has been agreed by the authority, this impact being that savings may be possible through the combination of an otherwise standalone election with other Parliamentary or local elections.

11. Regulating small business

11.1 The legislation does not apply to or affect small business.

12. Monitoring & review

12.1 The Regulations make amendments to the existing 2012 Regulations and the Department does not intend to put in place any formal means for monitoring and reviewing the Regulations.

13. Contact

13.1 Ian Barber at the Department for Communities and Local Government Tel: 0303 44 42578 or email: ian.barber@communities.gsi.gov.uk can answer any queries regarding the instrument.