EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES (EXEMPTIONS FROM POLITICAL RESTRICTIONS)(DESIGNATION) REGULATIONS 2012

2012 No. 1644

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 Regulations designate the person who is to have the functions of the head of paid service under section 3A of the Local Government and Housing Act 1989.

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

3.1 None.

4. Legislative Context

4.1 Section 4 of the Local Government and Housing Act 1989 (the 1989 Act) imposes a duty on every relevant authority to designate one of their officers as the head of their paid service. "Relevant authority" is defined in section 4(6) and section 21(1)(a) to (e), (ja) and (jb).

4.2 Section 1 of the 1989 Act imposes political restrictions on certain officers of local authorities. Subsection (1) provides that a person shall be disqualified from becoming (whether by election or otherwise) or remaining a member of a local authority if he or she holds a politically restricted post under that local authority or any other local authority in Great Britain. Subsection (5) provides that the terms of appointment or conditions of employment of every person holding a politically restricted post under a local authority (including persons appointed to such posts before the coming into force of section 1) shall be deemed to incorporate such requirements for restricting his or her political activities as may be prescribed for the purposes of this subsection by regulations made by the Secretary of State. Such requirements are prescribed by the Local Government Officers (Political Restrictions) Regulations 1990. These restrictions can be summarised that people in "politically restricted" posts cannot act as an election agent for another candidate in respect of an election to one of these bodies, be an officer of a political party or any branch or committee of a political party, speak in public with the apparent intention of affecting public support for a political party or publish any written or artistic work appearing to be intended to affect public support for a political party.

4.3 Section 2 of the 1989 Act sets out what posts are politically restricted and includes the holders of various named posts. In addition, subsection (2) imposes a duty on a local authority to prepare and maintain a list of posts the duties of which appear to the authority to fall within subsection (3) i.e. posts that consist in or involve giving advice on a regular basis to the authority or committee and / or speaking on behalf of the authority on a regular basis to journalists or broadcasters.

4.4 Section 3A of the 1989 Act provides that the head of paid service of a local authority in England must consider any application for exemption from political restriction which is made to the head of paid service, in respect of any post under the relevant authority, by the holder for the time being of that post. If, on such an application the head of paid service is satisfied that the duties of the post do not fall within section 2(3), the head of paid service must direct that, for so long as the direction has effect in accordance with its terms, the post is not to be regarded as a politically restricted post; and that accordingly the post is not to be specified in the list maintained by the relevant authority under section 2(2) or (as the case may be) is to be removed from that list.

4.5 Section 3A also provides that the head of paid service may on the application of any person or otherwise, give directions to the relevant authority requiring it to include a post in the list maintained by the authority under section 2(2).

4.6 Not all local authorities are required to designate one of their officers as head of paid service. In relation to those authorities which do not, the Secretary of State may modify the effect of section 3A (see section 3A(7B).

4.7 Amendments have been made to section 3A as a result of the provisions in the Localism Act 2011 relating to standards of members and co-opted members of local authorities (Chapter 7 of Part 1). In particular, the Localism Act 2011 abolished the requirement in the Local Government Act 2000 for local authorities to have a "standards committee". References to standards committees in section 3A have been replaced, with effect from 1st July 2012, with references to the head of paid service.

5. Territorial Extent and Application

5.1 This instrument applies to in relation to 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 Regulations in the Local Government and Housing Act 1989 provide the regulatory framework for the restrictions on political activities which apply to local government employees, so upholding the principle of a party

politically neutral workforce. Under the Act, certain officers are regarded as holding a politically restricted post. An officer whose post has been restricted is entitled to apply for exemptions from political restricts if the nature of the duties of that post do not require the post holder to be restricted in this way. The test of whether a post and its post holder should be politically restricted in their activities is whether the duties of that post necessitate there being confidence in the party political impartiality of the post holder. Thus posts which involve the post holder giving advice to members or publicly representing the local authority need to be politically restricted.

7.2 In addition to determining the outcome of allegations that authority members have breached the model code of conduct, standards committees established as part of the 'Standards Board regime' also consider and grant exemptions sought by officers of the authority from political restriction rules. The Localism Act 2011 makes provision for the abolition of the Standards Board regime (including abolishing the requirement for authorities to maintain statutory standards committees with the power to suspend local authority members) and the regime is to be abolished with local authorities promoting and maintaining high standards of conduct through new arrangements that are in line with the principles of localism.

7.3 The Localism Act makes therefore makes provision for the transfer of the function of considering and granting exemptions sought by officers of an authority from political restriction rules from statutory standards committees to the 'head of paid service' (usually the Chief Executive) of the authority. However, not all authorities requiring a process for the consideration and granting of exemptions to political restrictions have a 'head of paid service'.

7.4 The regulations specify for those authorities that do not have a 'head of paid service' such as Transport for London, London Fire and Emergency Planning Authority or the Broads Authority the person who has responsibility for considering applications from local authority employees for exemption from political restriction in respect of their posts and also, where appropriate, to issue directions requiring the authority to include a post in the list of politically restricted posts it maintains.

8. Consultation outcome

8.1 The policy proposal to abolish the Standards Board regime, which includes statutory standards committees, was announced in the Coalition Agreement 'Our Programme for Government. As a Coalition Agreement commitment, no consultation was undertaken. However the policy received scrutiny by debate during passage through both Houses of Parliament.

9. Guidance

9.1 This order is self explanatory and there is no intention to issue guidance.

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department for Communities and Local Government will undertake a post implementation review of the policy to abolish the regime 3-5 years after policy implementation. The review is intended to be a proportionate check that legislation, including the abolition of the Board and the establishment of new, local arrangements for local authority standards, is operating as expected.

12.2 Monitoring arrangements will include a survey, by the Department, of local authorities to ascertain the arrangements in place to uphold standards of councillors, and a survey, by the Department, of councillors and citizens to understand their attitudes towards the new arrangements for upholding standards, and their perceptions of standards of councillors.

13. Contact

Steve McAllister at the Department for Communities and Local Government Tel: 0303 44 42582 or email: stephen.mcallister@communities.gsi.gov.uk can answer any queries regarding the instrument.