EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES (OVERVIEW AND SCRUTINY COMMITTEES) (ENGLAND) REGULATIONS 2012

2012 No. 1021

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 Local Authorities (Overview and Scrutiny Committees) (England) Regulations 2012 ("the Regulations") revoke and replace the Local Authorities (Overview and Scrutiny Committees) (England) Regulations 2009 ("the 2009 Regulations").

2.2 The Regulations apply to local authorities in England which are operating executive arrangements under Part 1A of the Local Government Act 2000 ("the 2000 Act"), and which are therefore required to establish one or more overview and scrutiny committees. They give effect to changes made by the Localism Act 2011 ("the 2011 Act"), which removed the link between overview and scrutiny in local authorities operating executive arrangements and local improvement targets contained in local area agreements (LAAs). Instead, public bodies who fall within the definition of relevant partner authorities contained in the 2000 Act, are under a duty to have regard to the reports and recommendations of overview and scrutiny committees where they relate to any of the partner authorities functions, so far as exercisable in the local authority's area or the inhabitants of that area.

2.3 The purpose of the Regulations is to make provision about the information which must or which may not be disclosed by partner authorities when that information is requested by an overview and scrutiny committee. Additionally, the Regulations impose restrictions on the publication or supply of confidential or exempt information by executives when responding to overview and scrutiny committees. This places the executive of a local authority, when responding to an overview and scrutiny committee, on an equal footing with the full council of the local authority when it responds to an overview and scrutiny committee.

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

None.

4. Legislative Context

4.1 Sections 21 and 22 of, and Schedules 2 and 3 to, the 2011 Act inserted a new Part 1A (Arrangements with respect to local authority governance in England) into the 2000 Act, to apply to England only, and limited existing Part 2 of the 2000 Act to Wales. Section 9B of the 2000 Act requires a local authority in England to operate a permitted form of governance. One of the permitted forms of governance is executive arrangements, consisting of either a mayor and cabinet executive or a leader and cabinet executive (England) (see section 9C of the 2000 Act).

4.2 Under section 9F of the 2000 Act a local authority's executive arrangements must include provision for the appointment of overview and scrutiny committees to review and scrutinise the decisions of the local authority and its executive. Section 9FF of the 2000 Act applies where an overview and scrutiny committee makes a report or recommendation which relates to the functions of a relevant partner authority so far as exercisable in relation to the authority's area or inhabitants of that area. Any person who is partner authority for the purposes of Chapter 1 of Part 5 of the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act"), other than a chief officer of police, is a relevant partner authority. In areas where there is a district council and a county council, a relevant partner authority of the overview and scrutiny committee for the district council includes the county council. Where section 9FF of the 2000 Act applies the overview and scrutiny committee may require the relevant partner authority to have regard to its report or recommendations in exercising its functions, and it is the duty of the partner authority concerned to have regard to such report or recommendations.

4.3 The Regulations, which are made under section 9FI of the 2000 Act, make provision as to the information which relevant partner authorities must provide to the overview and scrutiny committee, and the information which may not be disclosed by such partner authorities. For example, a relevant partner authority must provide information relating to its functions so far as exercisable in relation to the area of the authority concerned or the inhabitants of that area, if the information has been requested in writing and it is information which it is reasonably necessary for the overview and scrutiny committee to discharge its functions. However, a relevant partner authority must not disclose information if it would constitute a breach of confidence or would be prohibited under other enactments. There is also a general exclusion from the duty to disclose where provision for disclosure or non-disclosure of information could be made under equivalent powers in the Police and Justice Act 2006 or the National Health Service Act 2006, as there are separate regimes for health scrutiny and crime and disorder scrutiny.

4.4 Additionally, section 9FE of the 2000 Act imposes a duty on the executive of a local authority to respond to a report or recommendation of the overview and scrutiny committee. Section 9GA(8) of the 2000 Act allows the Secretary of State to regulate the publication or supply of copies of responses

by executives where confidential or exempt information (within the meaning of Part 5A of the Local Government Act 1972) is concerned. These Regulations replicate in relation to publication by local authority's executive the position applicable to publication of responses by the full council of the local authority under section 9FG of the 2000 Act.

5. Territorial Extent and Application

This instrument applies to local authorities in 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 Local authority overview and scrutiny can be a powerful tool for empowering and enabling local people through their councillors to participate in decisions which affect their day to day lives. Overview and scrutiny committees were introduced as part of new executive governance arrangements by the 2000 Act to ensure that members of the authority who were not part of the executive could hold the executive to account for their decisions and actions that affect their communities. Overview and scrutiny committees may investigate and make reports or recommendations on any issue of importance to the local authority's area.

7.2 The powers of overview and scrutiny committees were strengthened by the Health and Social Care Act 2001, which legislates for the reviewing and scrutinising of health matters. A similar scrutiny arrangement was made under the Police and Justice Act 2006 for reviewing and scrutinising crime and disorder matters.

7.3 The 2007 Act gave overview and scrutiny committees powers in relation to the scrutiny of local partner authorities in relation to their local improvement targets in LAAs. The partner authorities are the local service providers such as Primary Care Trusts and National Park authority listed in section 104 of the 2007 Act. The 2007 Act together with the Local Authorities (Overview and Scrutiny Committees) (England) Regulations 2009 ("the 2009 Regulations") in particular made provision for:

- requiring information on relevant LAA matters from public service providers covered by the duty to co-operate;
- sending reports/recommendations to relevant partner authorities and requiring that they have regard to those recommendations when exercising their functions; and
- requiring the council/executive to consider and publicise their response to overview and scrutiny recommendations within 2 months.

7.4 The 2011 Act removed the link between local authority scrutiny and local improvement targets in LAAs. This enabled scrutiny committees to scrutinise a wide range of partner authorities' activities, enabling local communities to have a say on matters that affect them. The 2011 Act also provided that overview and scrutiny committees of non-unitary district councils will have the same powers as overview and scrutiny committees in other principal local authorities.

7.5 The Regulations largely mirror the 2009 Regulations in making provision about information which must, or which may not be disclosed by partner authorities. However as a result of changes made in the 2011Act these Regulations now cover any activities of partner authorities that affect a local authority or the people in that authority's area not, as was previously the case, only activities of the partner authorities connected with local improvement targets in the LAAs.

7.6 The Regulations also make provision that an executive must or may exclude confidential and exempt information when publishing their response to the reports or recommendations of overview and scrutiny committee.

- ***Consolidation***

7.7 This is the first exercise of the enabling powers.

8. Consultation outcome

8.1 In drafting the Regulations, the Department has drawn on the provisions set out in the 2009 Regulations. The Department has not therefore undertaken any formal consultation on the Regulations.

8.2 However, these Regulations, as drafts, have been the subject of an informal sounding exercise with external partners – the Local Government Association, the Society of Local Authority Chief Executives, the Centre for Public Scrutiny, and the Association of Council Secretaries and Solicitors.

8.3 The Department received responses from the Centre for Public Scrutiny and the Association of Council Secretaries and Solicitors, in which they raised a number of drafting points. In general, the Association of Council Secretaries and Solicitors commented that they considered that the Regulations looked workable. The Centre for Public Scrutiny enquired about changes that may need to be made to references to the National Health Services as a result of the Health and Social Care Act 2012. The Government will review the need for consequential amendments on commencement of the Health and Social Care Act 2012.

8.4 The Department has had regard to the responses it received when finalising the Regulations.

9. Guidance

The Regulations are considered to be self explanatory and there is no intention to produce separate guidance.

10. Impact

An Impact Assessment has not been prepared for this instrument as it does not have an impact on business, charities or voluntary bodies.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

It is not intended to put in place any formal mechanism for monitoring and reviewing the Regulations. The Department maintains close dialogue with the Local Government Association, Society of Local Authority Chief Executives, Centre for Public Scrutiny, and Association of Council Secretaries and Solicitors. Therefore any issues relating the Regulations will be identified and addressed through these channels.

13. Contact

Tayo Peters at the Department for Communities and Local Government Tel: 03034442551 or email: tayo.peters@communities.gsi.gov.uk can answer any queries regarding the instrument.