EXPLANATORY MEMORANDUM TO

THE LOCAL GOVERNMENT (PARISHES AND PARISH COUNCILS) (ENGLAND) REGULATIONS 2008

2008 No. 625

THE LOCAL GOVERNMENT FINANCE (NEW PARISHES) (ENGLAND) REGULATIONS 2008

2008 No. 626

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before the House of Commons by Command of Her Majesty.

2. Description

2.2 The Local Government (Parishes and Parish Councils) (England) Regulations 2008 ("the Parishes and Parish Councils Regulations") make incidental, consequential and transitional provision for the purposes of, and in consequence of, reorganisation orders made under section 86 of the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act"). The Regulations deal with matters such as the distribution of property, rights and liabilities of parish councils affected by a reorganisation order and transitional issues such as those affecting councillors and staff.

2.1 The Local Government Finance (New Parishes) (England) Regulations 2008 ("the Finance Regulations") make transitional and consequential provision in relation to a parish council or the chairman of a parish meeting for a new parish and the financial year in which the new parish is constituted or, if a separate parish council is established for the parish, the financial year in which that council is first established. The Regulations, which apply in relation to England only, relate to reorganisation orders made under section 86 of the 2007 Act.

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

3.1 None

4. Legislative Background

The Local Government (Parishes and Parish Councils) (England) Regulations 2008

4.1 Chapter 3 of Part 4 of the 2007 Act, which was commenced by S.I. 2008/337, authorises principal councils, as defined in section 102(2) of that Act, to undertake community governance reviews in their areas and make recommendations for matters such as the creation of new parishes and parish councils, the electoral arrangements for parish councils, the abolition of existing parishes and parish councils, and changes to parish boundaries. It also requires a principal council which has received a valid community governance petition to undertake a community governance review. Section

86 of the 2007 Act enables a principal council to make an order (a reorganisation order) to give effect to recommendations made in a community governance review.

4.2 Section 97 of the 2007 Act provides for regulations to make incidental, consequential, transitional or supplementary provision for the purposes of, or in consequence of, reorganisation orders. The purpose of these Regulations is to make such provision. These Regulations largely replicate general regulations made under the Local Government and Rating Act 1997 which apply to orders made by the Secretary of State under section 14 of that Act.

The Local Government Finance (New Parishes) (England) Regulations 2008

4.3 Section 97 of the 2007 Act provides for regulations to make incidental, consequential, transitional or supplementary provision for the purposes of, or in consequence of, reorganisation orders. The purpose of these Regulations is to make such provision in relation to the issue of precepts by the parish council of a new parish or the chairman of the parish meeting of a new parish.

4.4 By virtue of section 39 of the Local Government Finance Act 1992 ("the 1992 Act"), a parish council and the chairman of a parish meeting are local precepting authorities for the purposes of Part 1 of that Act. Section 32 of the 1992 Act (calculation of budget requirement) requires a billing authority, in relation to each financial year, to calculate its budget requirement taking into account, amongst other things, the amount of any precept issued to it for the year by a local precepting authority. Section 32(9) of the 1992 Act enables the Secretary of State to make regulations which alter, amend etc. the constituents of any calculation, or the rules which apply to any calculation, made under section 32. These Regulations do this in relation to new parishes. They largely replicate general regulations made under the Local Government and Rating Act 1997 and the 1992 Act which apply in relation to orders made by the Secretary of State under section 14 of the Local Government and Rating Act 1997.

5. Territorial Extent and Application

5.1 The instruments apply in relation to England.

6. European Convention on Human Rights

6.1 As both instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 A need to streamline the way parish reviews are conducted was first raised in a departmental local vision paper: *Citizen Engagement and Public Services: Why Neighbourhoods Matter* published in January 2005. This paper suggested looking at ways to make it easier for communities to set up parish councils – the commonly held view was that the process had become cumbersome with the Government and the Electoral Commission having to make separate orders for changes to parish arrangements. Following this paper the Government undertook a technical review of the mechanisms for parish arrangements. This review was conducted within the context of the neighbourhoods programme set out in *Citizen Engagement and Public Services: Why*

Neighbourhoods Matter and the Manifesto commitment to devolve power to neighbourhoods. The Government set up a small technical group working with key stakeholders in the parish sector on this review including the Local Government Association (LGA), the National Association of Local Councils (NALC), the Society for Local Council Clerks (SLCC), London Councils and the Electoral Commission. Also included in the group were representatives of district councils that had had recent experience of undertaking parish reviews.

7.2 The findings of the technical review indicated principal councils would be best placed to process parish reviews. A further group was set up, which included the stakeholders identified in paragraph 7.1 above, to consider guidance to assist principal councils when conducting community governance (parish) reviews. The approach proposed by the review and the draft guidance has been broadly supported by the key stakeholders.

7.3 The Government subsequently set out its policy on parish reviews in the Local Government White Paper, *Strong and Prosperous Communities* (October 2006) which stated that the Government would simplify and speed up the review process by devolving power to create parishes to principal councils, and enable them to respond to petitions from local communities. As was reflected in the Central-Local Concordat signed on 12 December 2007 by the Secretary of State and the Chairman of the Local Government Association, which refers to a presumption that powers are best exercised at the lowest effective and practical level, the Government believes that decisions on community governance reviews should be taken locally by those who know and understand local needs.

7.4 The White Paper also reiterated the Government's manifesto commitment that communities in London, as elsewhere in England, should be able to petition for a parish, and that London borough councils should be able to undertake community governance reviews.

7.5 The Government's approach to parish reviews was endorsed by Parliament in the 2007 Act. The commencement of Chapter 3 of Part 4 of the 2007 Act means that principal councils are now able to create new parishes and make changes to existing parish arrangements following a review by means of a reorganisation order. Neither of these sets of Regulations provide any additional powers to parish councils or to the chairman of a parish meeting; they essentially replicate those made under the previous legislation (the Local Government and Rating Act 1997).

7.6 The Finance Regulations enable the principal council to calculate the first anticipated precept for a newly constituted parish council and for the amount of that precept to be included in the reorganisation order.

7.7 These Parishes and Parish Councils Regulations deal with incidental and transitional matters such as the distribution of property, rights and liabilities of parish councils affected by a reorganisation order. For example, when a new parish is created in the area of an existing parish these regulations provide for the transfer of property, rights and liabilities from the existing parish to the new parish without the principal authority needing to make such specific provision in the reorganisation order.

7.8 These Regulations apply in relation to England only. In relation to Wales, the Local Government Act 1972 established a system of communities, representing in Wales substantially the same system as that of parishes in England, but to which separate legislative provisions apply.

8. Impact

8.1 An Impact Assessment has not been prepared for these instruments as they have no impact on business, charities or voluntary bodies.

9. Contact

Steve A'Court at the Department for Communities and Local Government Tel: 020 7944 4256 or e-mail: steve.a'court@communities.gsi.gov.uk can answer any queries regarding the instruments.

Date March 2008