EXPLANATORY MEMORANDUM TO

THE NEIGHBOURHOOD PLANNING (REFERENDUMS) (AMENDMENT) REGULATIONS 2013

2013 No. 798

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 make amendments to the Neighbourhood Planning (Referendums) Regulations 2012 (2012/2031) ("the Principal Regulations").

2.2 The Principal Regulations make provision in relation to the conduct of referendums required to be held as a result of paragraph 12(4) of Schedule 4B or paragraph 10(3) of Schedule 4C to the Town and Country Planning Act 1990 ("the 1990 Act"). These Regulations amend the Principal Regulations to make provision in relation to the conduct of an additional referendum ("a business referendum") required to be held on neighbourhood development plans and neighbourhood development orders in an area which is a designated business area under section 61H of the 1990 Act.

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

3.1 This is the first exercise of the powers in paragraph 15(5) of Schedule 4B to the 1990 Act.

4. Legislative Context

4.1 Chapter 3 of Part 6 of the Localism Act 2011 ("the 2011 Act") created a new neighbourhood planning regime in England, mainly by inserting new provisions into the 1990 Act and the Planning and Compulsory Purchase Act 2004 ("the 2004 Act").

4.2 The Principal Regulations built on the statutory frameworks in the 1990 Act and the 2004 Act in relation to the process for designating neighbourhood areas and neighbourhood forums and preparing neighbourhood development plans, neighbourhood development orders and community right to build orders.

4.3 A referendum must be held on a neighbourhood development plan, neighbourhood development order or a community right to build order before it can come into force (be 'made' by the local planning authority). This referendum must be held after the plan or order has been independently examined. Paragraph 14 of Schedule 4B to the 1990 Act sets out provision in relation to such referendums, including who is responsible for holding the referendums, who is entitled to vote in them and which local authorities are responsible for making arrangements for them (relevant councils).

4.4 Where a neighbourhood area is designated as a business area under section 61H of the 1990 Act, the relevant council must hold both a referendum and a business referendum.

These Regulations amend the Principal Regulations to make provision in respect of business referendums at which, in accordance with paragraph 15(3)(a) of Schedule 4B to the 1990 Act, a person who is a non-domestic ratepayer in the referendum area on the prescribed date (which is the date of the referendum - see the Neighbourhood Planning (Prescribed Dates) Regulations 2012[1]) is entitled to vote on the neighbourhood plan or neighbourhood development order.[2] Under paragraph 15(5) the Secretary of State has the power to make provision excluding a person's entitlement to vote in a business referendum. These Regulations make provision under this power by requiring that in order to be entitled to vote in a business referendum, a person must be registered on the business voting register on the day of the referendum, and, in order to be registered on the business voting register, they must, on the day of their application to be so registered, be a non-domestic rate payer in the referendum area.

4.5 The Secretary of State also has the power to make provision in regulations about referendums, including business referendums, under paragraph 16 of Schedule 4B to the 1990 Act – such as how they are to be conducted, or to impose duties on local authorities to publicise the time and place of a referendum.[3] These Regulations, like the Principal Regulations, are also made under this power.

4.6 Before making these Regulations, the Secretary of State must consult the Electoral Commission.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State for Planning, Nick Boles, has made the following statement regarding Human Rights:

In my view the provisions of the Neighbourhood Planning (Referendums)(Amendment) Regulations 2013 are compatible with Convention rights.

7. Policy background

What is being done and why

7.1 The 2011 Act provided powers to introduce neighbourhood planning as part of the Government's decentralisation of planning powers. These powers give communities across England the ability to develop plans and policies to shape and influence the future of the places where they live and work. This includes deciding where homes, shops and offices are built and which green spaces should be protected.

7.2 Neighbourhood planning seeks to enable communities (including local businesses) to come together to shape the development and growth of their local area. They will be able to take responsibility for the development of planning policy for their neighbourhood

[1] SI 2012/2030

2 N.B. there cannot be a business referendum on a community right to build order – see paragraph 10(6)(b) of Schedule 4C to the 1990 Act

3 By virtue of section 38A(3) of the Planning and Compulsory Purchase Act 2004, inserted by paragraph 7 of Schedule 9 to the Localism Act 2011, Schedule 4B of the 1990 Act is applied in relation to neighbourhood development plans.

through a neighbourhood development plan, to grant planning permission for certain types of development through a neighbourhood development order and, where communities wish to bring forward small scale development themselves, to give them a community right to build (though note that a business referendum cannot be held on a community right to build order).

Overview of the Regulations

7.3 These Regulations amend the Principal Regulations (which enable residential referendums for neighbourhood development plans and neighbourhood development orders) also to cover the conduct of business referendums. The Principal Regulations are based upon the Local Authorities (Conduct of Referendums) (England) Regulations 2012 (SI 2012/323) ('the 2012 Regulations') which provide for referendums on local authority governance arrangements.

Business Voting Register (invitations to register and creation of the Business Voting Register)

7.4 Where a neighbourhood area is considered to be wholly or predominantly business in nature section 61H of the 1990 Act empowers local planning authorities to designate these as a 'business area'. In these business areas an additional referendum must take place in which non-domestic rate payers can vote. It is for the local planning authority to reach a view on whether such as designation is appropriate but business parks, industrial estates or some town centres could be considered suitable for such a designation. Examples of areas that have been designated as business areas include central Ealing and central Milton Keynes.

7.5 As with referendums more generally, a register of those eligible to vote is required. Generally the register of local government electors will be used, but in order to compile a register of business voters, a specific registration process is needed in advance of a business referendum. Schedule 1 to the Regulations (which inserts new Schedule 6 into the Principal Regulations) provides for this process, which will involve the business registration officer of the relevant local authority inviting non-domestic rate payers in the referendum area to register to vote. Where a referendum area comprises the area of more than one council, Schedule 6 provides that the business registration officer will be the registration officer of the council which has the greatest number of local government electors registered to vote in the residential referendum.

7.6 Schedule 10 of the Localism Act already allows those who are non-domestic ratepayers on a prescribed date - the day of the referendum - to vote in a business referendum. However, in order for business referendums to work effectively, the non-domestic ratepayers also need to be included on a business voting register.

7.7 Each non-domestic rate payer on the business voting register in the referendum area will have one vote, regardless of the number of properties they pay rates on in the referendum area. When they register to vote, the rate-payer needs to assign a person - the 'named voter' - to vote on their behalf. The named voter may be any qualifying representative the rate-payer chooses (including the rate-payer him/herself). This process is similar to the process for balloting non-domestic rate payers on whether a proposal for a Business Improvement District (BID) should be created and for elections to the City of London's Court of Common Council.

Publication and Supply of the Business Voting Register

7.8 As above, Schedule 1 to these Regulations provides for a business voting register to be created of all the non-domestic rate-payers who register to vote in a business referendum, for the purposes of that referendum only. The business voting register lists the names of all the non-domestic rate-payers registered to vote and the addresses of the premises within the referendum area on which they pay non-domestic rates. It also contains the name of the individual who will cast the vote on behalf of each of the non-domestic rate-payers (the 'named voter'). The relevant council holds a copy of the business voting register for the purposes of the referendum only. There is a right to inspect the register, however it is a criminal offence to supply or use copies for purposes other than those set down in law.

7.9 Paragraph 30 of Schedule 1 to these Regulations provides that the business voting register will be published twice – on the nineteenth day before the business referendum, and then a second time in the period between the eleventh and the fifth day before the referendum.

Publicity

7.10 Part 2 of new Schedule 6 to the Principal Regulations inserted by Schedule 1 to the Regulations requires the business registration officer to publish, no later than 56 days before the date of the business referendum, information relating to the business referendum (including explaining who can vote how they can register and how they can vote). Additionally, the requirement in Regulation 4 of the Principal Regulations that the relevant council responsible for a neighbourhood planning referendum must publish a detailed notice of the referendum in its local area before the referendum is applied (with necessary modifications) by regulation 4 of these Regulations to business referendums.

The Referendum Questions

7.11 The questions are the same as those for the residential referendums (except that the question specified in paragraph 3 of Schedule 1 to the Principal Regulations – i.e. on a community right to build order - does not apply in the context of a business referendum).

Expenses Limit

7.12 The Regulations amend Regulation 6 of the Principal Regulations to make specific provision for a limit on campaign expenses for a business referendum. The calculation to be applied is based on that used in the Principal Regulations (which itself followed the method of calculation prescribed in the 2012 Regulations).

Combination of Polls

7.13 Regulations 11 and 12 of the Principal Regulations allow for neighbourhood planning referendums to be combined with other elections and referendums (e.g. local government elections, Police and Crime Commissioner elections). However, Regulations 11 and 12 do not apply to a business referendum, because business polls are built upon a different franchise and with potentially a different set of voters, making combination impractical.

Consolidation

7.14 These are the first amendments to the Principal Regulations and consolidation is not thought necessary at this stage.

8. Consultation outcome

8.1 The Government has consulted the Electoral Commission, as required by paragraph 16(5) of Schedule 4B to the 1990 Act.

8.2 The Electoral Commission made some detailed comments on the drafting of the Regulations. For example, they suggested that times specified (e.g. in relation to the correction of clerical errors) should be changed to bring them into line with other electoral legislation, and we have now made this provision in the Regulations. The Department intends to maintain a close dialogue with the Electoral Commission to see how the referendums work in practice.

8.3 An external group of interested parties has been used to help the Department develop the Regulations in a manner which ensures that they can be effectively implemented. This group included both the Electoral Commission and the Association of Electoral Administrators; both organisations have fed into the process and have commented in detail, for example, on the business referendum forms. In line with best practice, the business referendum forms have been tested for design, clarity and impartiality through an online survey and semi-structured interviews.

9. Guidance

9.1 The Department will work with the Electoral Commission, Local Government and other key stakeholders to support areas in implementing the Regulations.

10. Impact

10.1 It is for a parish council or community organisation or businesses to choose to produce, lead or participate in the production of a neighbourhood development plan or a neighbourhood development order.

10.2 A full Impact Assessment of the effect that the Regulations will have on the costs of business and the public sector is available from the Department and is annexed to this Explanatory Memorandum.

11. Regulating small business

11.1 The legislation does not impose a regulatory burden on small business.

12. Monitoring & review

12.1 The Department does not intend to put in place any formal mechanism for monitoring and reviewing the Regulations. The Department maintains close dialogue and liaison with the Electoral Commission and the Association of Electoral Administrators. Any issues relating to the Regulations will be identified through these channels.

13. Contact

Gareth Bradford at the Department for Communities and Local Government Tel: 0303 444 4277 or email: gareth.bradford@communities.gsi.gov.uk can answer any queries regarding the instrument.