EXPLANATORY MEMORANDUM TO

THE OVERVIEW AND SCRUTINY (REFERENCE BY COUNCILLORS) (EXCLUDED MATTERS) (ENGLAND) ORDER 2008

2008 No. 3261

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 Section 21A of the Local Government Act 2000 (c. 22) ("the 2000 Act") provides a power for councillors to refer local government matters to the local authority's overview and scrutiny committee.

2.2 This Order excludes certain issues from the definition of 'local government matter' for the purpose of section 21A. The Order excludes issues relating to individuals concerning planning and licensing, and issues which are vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of the overview and scrutiny committee or any of its sub-committees. It also excludes issues relating to individuals or entities, where there is already a right to a review or appeal (other than the right to complain to the Local Government Ombudsman).

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

3.1 None.

4. Legislative Context

4.1 Section 21 of the 2000 Act requires local authorities to include provision in their executive arrangements for the appointment of one or more overview and scrutiny committees to review or scrutinise decisions made by the executive of the authority, and to make reports or recommendations with respect to the discharge of any functions by the executive.

4.2 Section 21A of the 2000 Act, which is inserted by section 119 of the Local Government and Public Involvement in Health Act 2007 (c.28), requires authorities to include in their executive arrangements, provision enabling members of the overview and scrutiny committee and any sub-committee of that committee to refer to the committee or sub-committee any matter which is relevant to the functions of that committee or sub-committee. In England, the executive arrangements must also enable any member of the authority who is not a member of the overview and scrutiny committee to refer a local government matter to that committee.

4.3 Section 21A(10) defines "local government matter" as a matter which relates to the discharge of any function of the authority, affects all or part of the electoral area for which the member is elected or any person who lives or works in that area, and is not an excluded matter.

4.4 Section 21A(11) defines "excluded matter" as a matter which is a local crime and disorder matter (within the meaning of section 19 of the Police and Criminal

Justice Act 2006 (c.48)) or a matter of any description specified in an order made by the Secretary of State for the purposes of section 21A.

4.5 The enabling power to make this instrument was brought into effect on 12th December 2008; see article 2 of S.I. 2008/No. 3110 (C.134). Article 4 of that Order provides for section 119 of the Local Government and Public Involvement in Health Act 2007 (and, accordingly, section 21A of the 2000 Act) to come into force fully on 1st April 2009.

5. Territorial Extent and Application

5.1 This instrument applies to England.

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 Government's view is that the work of resolving community concerns is an important element of a local councillor's role. It believes that councillors can frequently resolve issues informally or using powers delegated to them but that the ability to give an issue wider consideration, by referring it to an overview and scrutiny committee (a "Councillor Call for Action") is a useful additional tool. Overview and scrutiny committees are well placed to obtain all the information that is required to identify any shortcomings in the discharge of functions of local authorities and to make reports and recommendations about matters which are brought to their attention by local councillors.

7.2 Some issues will be better dealt with through existing mechanisms. For instance, processes for dealing with planning and licensing applications, reviews and appeals are established by primary and secondary legislation. There are also statutory appeals processes relating to, for example, council tax and non-domestic rates.

7.3 The intention of the Government in making this Order is to ensure that overview and scrutiny committees are required to consider Councillor Calls for Action where they can add value, rather than merely duplicating existing mechanisms for consideration of issues. This Order excludes issues relating to individuals concerning planning and licensing. It also excludes issues relating to the dealings of individuals or entities, where there is already a statutory right to a review or appeal (other than the right to complain to the Local Government Ombudsman).

7.4 Issues which are vexatious, discriminatory, or not reasonable for inclusion in the agenda for, or for discussion at, a meeting of an overview and scrutiny committee or of any of its sub-committees are also excluded. Examples of such matters might be those where the issue relates to a minor matter affecting only one individual, or because the issue would be detrimental to community cohesion.

8. Consultation outcome

8.1 The *Local Petitions and Calls for Action Consultation* ran from 27th December 2007 until 20th March 2008. The consultation sought views on issues which should be excluded from the scope of the Councillor Call for Action power, and matters which could be covered in guidance. HenleyCentre Headlight Vision was commissioned to

analyse the responses and its report, *Local Petitions and Calls for Action Consultation: Summary of Responses*, is available at www.communities.gsi.gov.uk. The *Government's Response* to the consultation, is also available at www.communities.gsi.gov.uk.

8.2 Consultation respondents suggested that issues for which there are existing statutory processes, such as licensing and planning, should be excluded from the scope of the Councillor Call for Action. Respondents were also keen that overview and scrutiny committees should not be required to consider calls for action which were vexatious, repetitive or related to individual complaints. Many consultation respondents said they would welcome guidance on a number of issues, such as the timeframe for dealing with Councillor Calls for Action, dealing with CCfAs on issues which affect several wards, wards with more than one councillor, and two-tier areas.

8.3 In the *Government's Response* to the consultation, it was proposed that issues for which there are already statutory processes, and complaints about an individual's treatment by the local authority, should be excluded from the scope of the Councillor Call for Action. Guidance was also proposed on the timeframe for dealing with Councillor Calls for Action, dealing with vexatious or repetitive calls for action, and calls for action on issues which affect several wards, wards with more than one councillor, and two-tier areas.

8.4 The Order excludes issues relating to individuals and entities, where there is already a statutory right to a review or appeal, other than the right to complain to the Local Government Ombudsman. It is considered that the remit of the Local Government Ombudsman is so wide, in that it enables the Ombudsman to investigate any allegation of maladministration in the discharge of any local authority function, that to exclude any matter which could give rise to a complaint to the Ombudsman would make virtually every matter an "excluded matter". The Order clarifies that systematic failures in the discharge of an authority's functions are within the scope of the Councillor Call for Action, even if they mention individual cases, which would otherwise be excluded.

8.5 After further reflection, subsequent to the *Government's Response* to the consultation, the Government has decided that matters which are vexatious, discriminatory or not reasonable for inclusion in the agenda for, or for discussion at, a meeting of an overview and scrutiny committee or any of its sub-committees should also be excluded. If these matters were covered only in guidance it could result in overview and scrutiny committees being required to include inappropriate matter in their meeting agenda.

9. Guidance

9.1 To support councillors in using the new power, the Government will work with the Local Government Association to produce a good practice guide to the Councillor Call for Action to help prepare for its coming into force on 1st April 2009. It is envisaged that the guidance will deal with all of the matters on which respondents to the consultation requested guidance.

10. Impact

10.1 The aim of the Councillor Call for Action is to help empower local representatives to resolve issues of local concern. The impact of the Councillor Call for Action on business, charities or voluntary bodies is minimal. It is expected that the costs to the public sector will be approximately £4 million per year decreasing over time. These costs arise from increased work for councillors, overview and scrutiny committees, and the officers supporting them. The estimated cost was arrived at based on sector experience of comparable processes. The costs to local authorities associated with Councillor Call for Action are being fully funded by central government. The total national cost of approximately £4 million per annum however falls below the threshold requiring the publication of a full Impact Assessment.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Government will monitor and evaluate the effectiveness and impact of the Councillor Call for Action, in line with its commitment to evidence-based policies and reviews.

13. Contact

Emma Hagan at the Department for Communities and Local Government (tel. 020 7944 3440 or email Emma.Hagan@communities.gsi.gov.uk) can answer any queries regarding the instrument.