EXPLANATORY MEMORANDUM TO

THE OVERVIEW AND SCRUTINY (REFERENCE BY COUNCILLORS) (EXCLUDED MATTERS) (ENGLAND) ORDER 2012

2012 No. 1022

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 Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2012 ("the Order") revokes and replaces the Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2008 ("the 2008 Order").

2.2 A local authority in England may choose to operate executive arrangements, and where it decides to do so, must establish one or more overview and scrutiny committees. Overview and scrutiny committees are responsible for making reports and recommendations in relation to the discharge of executive and authority functions. Section 9FC of the Local Government Act 2000 ("the 2000 Act") enables councillors, who are not members of the local authority's overview and scrutiny committee, to refer any matter to the committee provided it is relevant to the functions of that committee and is not an excluded matter.

2.3 The Order specifies certain categories of matters which are excluded matters, and therefore cannot be referred to the overview and scrutiny committee by a councillor who is not a member of that 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 Localism Act 2011 ("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. Under section 9B of the 2000 Act, a local authority must operate executive arrangements, a committee system, or arrangements as may be prescribed by Regulations under section 9BA of the 2000 Act. Chapter 2 of Part 1A of the 2000 Act makes provision for local authority executive arrangements in England. A local authority that chooses executive arrangements as its form of governance

may operate either a mayor and cabinet executive or a leader and cabinet executive (England) within the meaning of 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 a local authority and its executive. Section 9FC of the 2000 Act requires the authority's executive arrangements to make provision enabling a member of the authority, who is not a member of a particular overview and scrutiny committee, to refer to that committee any matter which is relevant to the committees' functions and is not an excluded matter.

4.3 An excluded matter is any matter which is a local crime and disorder matter within the meaning of section 19 of the Police and Justice Act 2006 or a matter of any description that the Secretary of State has specified as excluded by order for the purposes of section 9FC of the 2000 Act. The Order excludes issues relating to individual planning and licensing decisions and issues which are vexatious, discriminatory or not reasonable to include 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 Commission for Local Administration in England – commonly known as the Local Government Ombudsman). However, a councillor can refer an allegation that there has been a systematic failure by the authority in relation to a function, even if it relates to an otherwise excluded matter.

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 accountability 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 or actions. This provides for a redress where local public service delivery fails, providing an opportunity to improve local public services.

7.2 An element of the overview and scrutiny system is that individual members of the authority can refer matters of concern to the overview and scrutiny committee. Whilst a member of the overview and scrutiny committee can refer any matter relevant to that committee's functions, overview and scrutiny committees can also investigate and make reports or recommendations on matters that are referred by councillors who are not members of the overview and scrutiny committee concerned.

7.3 The 2011 Act removed the restriction whereby councillors who were not members of the overview and scrutiny committee could only refer matters to an overview and scrutiny committee which affected all or part of the elected area for which the councillor was elected or which affected a person living or working in that area. Section 9FC of the 2000 Act provides that councillors will now be able to refer any matter that is relevant to the functions of the overview and scrutiny committee provided it is not an excluded matter.

7.4 A further restriction on matters which could be raised by a councillor with an overview and scrutiny committee was that an excluded matter could not be raised with an overview and scrutiny committee (see paragraph 4.3 above). The Order mirrors the provisions in the 2008 Order, which is revoked, in relation to excluded matters. However, given the changes made by the 2011 Act, the circumstances covered by the Order's provisions are wider since a councillor will now be able to raise any relevant matter with an overview and scrutiny committee, not just matters associated with the area which the councillor represents.

- ***Consolidation***

7.5 This is the first exercise of the enabling powers.

8. Consultation outcome

8.1 In drafting the Order, the Department has drawn on the provisions set out in the 2008 Order. The Government has not therefore undertaken any formal consultation on the Order.

8.2 However, the Order, as a draft, has 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 drafting points. The Department has had regard to the responses it received when finalising the Order.

9. Guidance

The Order is 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 has no impact on business or charities.

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 Order. The Department maintains close dialogue with the Local Government Association, the Society of Local Authority Chief Executives, the Centre for Public Scrutiny and the Association of Council Secretaries and Solicitors. Therefore any issues relating the Order 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.