EXPLANATORY MEMORANDUM TO

THE CAMBRIDGESHIRE AND PETERBOROUGH COMBINED AUTHORITY (BUSINESS RATE SUPPLEMENTS FUNCTIONS) ORDER 2018

2018 No. 877

AND

THE LIVERPOOL CITY REGION COMBINED AUTHORITY (BUSINESS RATE SUPPLEMENTS FUNCTIONS) ORDER 2018

2018 No. 878

AND

THE WEST OF ENGLAND COMBINED AUTHORITY (BUSINESS RATE SUPPLEMENTS FUNCTIONS) ORDER 2018

2018 No. 879

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Orders confer functions corresponding to the business rate supplements functions that the Greater London Authority has in relation to Greater London on three mayoral combined authorities – Cambridgeshire and Peterborough Combined Authority ("the CPCA"), Liverpool City Region Combined Authority ("the LCRCA"), and West of England Combined Authority ("the WECA") – in relation to their respective areas. The Orders provide that the functions are exercisable only by the mayors of each Combined Authority.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The reports required by section 105B(9) of the Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act") have been combined into one report and this is published alongside this Explanatory Memorandum.

Other matters of interest to the House of Commons

3.2 Each entire instrument applies only to England.

3.3 Each instrument applies only to England as it is entirely concerned with local government areas in England. Section 103(2) of the 2009 Act provides that a combined authority may be established in relation to local government areas in England. Each instrument does not give rise to minor or consequential effects outside England.

3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject matter of each entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter; or the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament; or the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.5 The Department has reached this view because it considers that the primary purposes of the provisions in each instrument relate to local government which is within the devolved legislative competence of the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales.

4. Legislative Context

4.1 Part 6 of the 2009 Act provides for the establishment of combined authorities for the areas of two or more local authorities in England. They are bodies corporate that may be given power to exercise specified functions of a local authority, and power to exercise specified functions of any other public authority. Mayoral combined authorities are chaired by a mayor for the area of the combined authority who is elected by the local government electors for the area of a combined authority.

4.2 The three combined authorities with elected mayors on whom powers are conferred are:

- The CPCA, which was established by the Cambridgeshire and Peterborough Combined Authority Order 2017 (S.I. 2017/251), which also included provisions for the position of an elected mayor for the CPCA and the conferral of functions on the CPCA, some of which are exercisable individually by the mayor;
- The LCRCA, which was established by the Halton, Knowsley, Liverpool, St Helens, Sefton and Wirral Combined Authority Order 2014 (S.I. 2014/865); the position of elected mayor for the LCRCA was established by the Halton, Knowsley, Liverpool, St Helens, Sefton and Wirral Combined Authority (Election of Mayor) Order 2016 (S.I. 2016/782); and the Liverpool City Region Combined Authority (Functions and Amendment) Order 2017 (S.I. 2017/430) conferred further functions on the LCRCA, some of which are exercisable individually by the mayor;
- The WECA, which was established by The West of England Combined Authority Order 2017 (S.I. 2017/126), which also included provisions for the position of an elected mayor for the WECA and the conferral of functions on the WECA, some of which are exercisable individually by the mayor.

4.3 The Business Rate Supplements Act 2009 ("the BRS Act") gives county councils, unitary district councils and the Greater London Authority ("levying authorities") the power to levy a supplement on the national non-domestic rate, known as the business

rate supplement ("BRS"). The BRS Act provides that the purpose of the supplement is to raise money for expenditure on a project that will promote economic development in an area and the supplement is limited to a maximum of two pence in the pound of the rateable value of a property. The Business Rate Supplements (Rateable Value Condition) (England) Regulations 2009 (S.I. 2009/2542) provide that the BRS can only be levied on properties with a rateable value of more than £50,000. The BRS Act was amended by section 68 of the Localism Act 2011 (c. 20) to provide that any BRS must be approved in a ballot of affected businesses before it can be imposed.

4.4 Section 105B of the 2009 Act provides that when laying before Parliament an order which confers public authority functions on a combined authority, the Secretary of State must also place a report before Parliament which sets out the effect of the order and why the Secretary of State considers it is appropriate to make it. The report must include any consultation and information which has been taken into account, as well as any other evidence or contextual information that the Secretary of State considers it appropriate to include.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales as the relevant powers being exercised extend to England and Wales.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 Jake Berry MP, Parliamentary Under Secretary of State at the Ministry of Housing, Communities and Local Government, has made the following statements regarding Human Rights:

"In my view the provisions of the Cambridgeshire and Peterborough Combined Authority (Business Rate Supplements Functions) Order 2018 are compatible with the Convention rights."

"In my view the provisions of the Liverpool City Region Combined Authority (Business Rate Supplements Functions) Order 2018 are compatible with the Convention rights."

"In my view the provisions of the West of England Combined Authority (Business Rate Supplements Functions) Order 2018 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Government committed in its 2015 manifesto to "devolve powers and budgets to boost local growth in England…to large cities which choose to have elected mayors". The Government considers such devolution will boost economic growth, increase public service efficiency, improve Britain's productivity, and rebalance the economy, including contributing to the Midlands Engine and the Northern Powerhouse.

7.2 Devolution Deals made with Cambridgeshire and Peterborough, Liverpool City Region and West of England contained a mayoral infrastructure supplement, which has similar aims to the BRS. The Local Government Finance Bill that was lost with interruption of business, as a result of the 2017 election, included provisions for a

mayoral infrastructure supplement and for mayoral combined authorities to levy a BRS. The Government subsequently offered the BRS power to those mayoral combined authorities, which they have accepted, with the consent of the authorities in the area of the combined authority and subject to the agreement of Parliament.

7.3 Conferring the power to levy a BRS on to these combined authorities, to be exercised by the mayor will ensure they have the appropriate powers to develop projects that promote economic growth and regeneration in their area, benefiting both business and the wider community. It is local areas that are often best placed to take decisions relating to the area about the use of public money and assets, support for business and infrastructure investment.

7.4 The Orders provide for the conferral of the Greater London Authority function under the 2009 Act to levy a supplement of up to two pence in the pound of a business property's rateable value on business rates bills. The purpose of any such levy is to raise money for expenditure on a project that will promote economic development in the levying authority's area, and which would not have happened without the supplement. The money raised cannot go towards day-to-day costs, defined in the 2009 Act as costs relating to housing, social services, education services, services for children, health services and services that the authority provides in the discharge of functions imposed by or under the Planning Acts (as defined by the Town and Country Planning Act 1990 (c. 8)) – services that levying authorities have existing obligations to provide.

7.5 The process for introducing a BRS ensures that businesses have the opportunity to shape and ultimately approve any proposal. The levying authority is required to consult upon and publish a prospectus setting out the benefits of the proposed project, and this is then subject to a ballot of affected businesses. Both a majority of affected individual rate-payers must approve it and the aggregate rateable value of those businesses in favour must exceed those against. Smaller businesses are protected – and therefore not eligible to vote in a ballot – as the levy cannot be applied to business properties with a rateable value of less than £50,000. The combined authority mayors will also have the flexibility to increase this threshold, and to apply any other reliefs as they may set out in the prospectus describing the proposal.

7.6 The Secretary of State is satisfied that the statutory conditions for each Order, provided for in the 2009 Act, have been met. These conditions include that the appropriate consent – from the mayor, the combined authority and its constituent councils – is given to the making of the Order, and the Secretary of State considers that the making of the Order is likely to improve the exercise of statutory functions in the area to which the Order relates.

8. Consultation outcome

8.1 Unlike the legislation surrounding the establishment of a combined authority, or the conferral of local authority functions on a combined authority, a consultation is not required to confer public authority functions, such as functions of the Mayor of London, on a combined authority.

8.2 An Order can be made to make provision for conferring on a combined authority in relation to its area a function corresponding to a function that a public authority has in relation to another area if the 'appropriate' consent is given and the Secretary of State considers that the making of the Order is likely to improve the exercise of statutory functions in the relevant area(s). The appropriate consent is that of the mayor,

combined authority and constituent councils of each combined authority. Before laying these Orders, the Government sought and obtained the consent of each mayor, combined authority and constituent council in relation to each Order, and considers that each Order is likely to improve the exercise of statutory functions in the area of each combined authority.

8.3 Consultations were undertaken on proposals, often described as an infrastructure supplement were for wider powers (in particular there was no requirement for a binding ballot of business ratepayers) than are now being conferred, and would have required primary legislation. Further consultation at this time is not considered necessary. Should a combined authority mayor choose to exercise the BRS functions conferred, they would be required to conduct a statutory consultation on proposals and then secure agreement to a prospectus from a ballot of affected businesses, in accordance with section 4 of the BRS Act. However, as consultations have been undertaken in combined authority areas that have referred to proposals for supplements on business rates, they are described below.

8.4 In the area of the CPCA, a consultation was undertaken in relation to proposals contained in a scheme1 prepared and published using provisions from the 2009 Act. This scheme was prepared in relation to the devolution agreement negotiated with the Government. The scheme proposed that "subject to the making of enabling legislation, the mayor shall have power to place a supplement of 2p per pound of rateable value on business rates to fund infrastructure and mayoral costs with the agreement of the local business community through the LEP [Local Enterprise Partnership]".

8.5 The consultation ran for 6 weeks from 8 July to 23 August 2016. This consultation has already been the subject of the Explanatory Memorandum to S.I. 2017/251, as most of the proposals consulted on have already been provided for in legislation. That Explanatory Memorandum also set out that for proposals that required legislation including those related to business rates, the Government would seek Parliament's approval to further legislation.

8.6 The consultation was undertaken via a survey, an Ipsos MORI telephone poll, and direct face-to-face sectoral and business engagement. The survey was run and analysed independently by Cambridgeshire County and Peterborough City Councils and could be responded to via an open online survey on the council websites, by paper survey, or by email. In total, the survey received over 1500 responses and Ipsos MORI's telephone poll received 2280 responses. The Councils produced a summary of responses to the consultation2 and published a separate annex relating to the telephone poll.3

8.7 The overwhelming response was that businesses strongly support the devolution proposals and are very keen that the opportunities these present are taken up. There was a consensus in favour of devolution with a strong mayor and support for the additional powers and funding coming for much needed investment in areas like infrastructure. Concerns that were voiced about the devolution proposals covered the level of funding on offer, compared to the scale of investment required in both

[1] https://www.eastcambs.gov.uk/sites/default/files/agendas/fc280616_R39%20Ap4.pdf
[2] https://www.cambridge.gov.uk/sites/default/files/devolution_consultation_summary.pdf
[3] https://www.cambridge.gov.uk/sites/default/files/devolution_consultation_online_survey_results.pdf

infrastructure and skills across the Cambridgeshire and Peterborough area. There was however, no specific reference to BRS proposals in the consultation summary.

8.8 The LCRCA undertook a consultation in relation to proposals contained in a scheme4 that the LCRCA prepared and published using provisions from the 2009 Act. The LCRCA prepared this scheme following negotiation of devolution agreements with the Government. The scheme proposed "that the LCRCA Mayor will have the power to place a supplement on business rates to fund infrastructure. This power will be subject to the approval of the LCR LEP and will be subject to an upper limit of supplement. For this purpose, LCRCA will be included in the definition of levying authorised in Section 2 of the Business Rates Supplements Act 2009."

8.9 This consultation ran for 6 weeks from 24 June to 5 August 2016. It has already been the subject of the Explanatory Memorandum to S.I. 2017/430, as most of the proposals consulted on have already been provided for in legislation. That Explanatory Memorandum also set out that for proposals that required legislation including those related to business rates, the Government would seek Parliament's approval to further legislation

8.10 The LCRCA led the consultation, delivered in conjunction with all local authorities in the Liverpool City Region and the Local Enterprise Partnership. 930 responses were received, including 806 from members of the public, 24 from the business sector, 28 from the public sector, and 29 from the third sector. The LCRCA produced a summary of responses to the consultation5 which included a statistical analysis of responses on each policy theme, pulling out key quotes from partners and stakeholders.

8.11 131 respondents left a comment under the finance part of the consultation. Of these comments, 76 (58 per cent) were positive, 22 (17 per cent) were negative, and 33 (25 per cent) comments raised issues that were not in connection to the proposals in the scheme that were the subject of the consultation. Of the 131 responses, 22 were from key stakeholders. 17 (77%) were positive and one (5%) was negative in relation to the specific issues raised through the governance review and scheme. Four comments were outside the scope of the consultation. There were 5 comments related to business rates proposals including business rates retention and BRS, 2 were found to be positive, 2 to be negative and 1 was out of scope of the consultation. Warrington Borough Council responded positively by saying that they particularly welcome "greater devolution of financial powers vital for further growth". Halton Chamber of Commerce also suggested that greater devolution required significant control over resources and stated "We will only be devolved when we have the ability over finances." Some concern was expressed over the potential ability to levy business rates or precepts from the private sector: "Any further supplements and levies on Business rates or local councils will undermine the opportunities to generate interest for new business development or expansion in the region and may disadvantage the LCRCA versus other regions in the UK." With the powers now being conferred, if business were concerned about any proposed supplement they could block it through the ballot.

[4] http://councillors.knowsley.gov.uk/documents/g6714/Public%20reports%20pack%2017th-Jun-2016%2013.00%20Liverpool%20City%20Region%20Combined%20Authority.pdf?T=10&StyleType=standard&StyleSize=none

[5] http://councillors.knowsley.gov.uk/documents/s44315/Item%206%20-%20Appendix%20One.pdf

8.12 In the area of WECA a consultation was undertaken in relation to proposals contained in a scheme6 prepared and published using provisions from the 2009 Act. This scheme was prepared following negotiation of a devolution agreement7 with the Government. The scheme proposed that the mayor will have the ability, with agreement of the mayoral combined authority and in consultation with the business community, to raise a Business Rate Supplement to fund infrastructure investment. The scheme also proposed WECA would be a levying authority for the purposes of the Business Rates Supplement Act 2009 and the constituent councils shall be deemed to be acting jointly through the combined authority in accordance with Section 2(3) of the Business Rates Supplement Act 2009.

8.13 The consultation ran for 6 weeks from 4 July to 15 August 2016. This consultation has already been the subject of the Explanatory Memorandum to S.I. 2017/126, as most of the proposals consulted on have already been provided for in legislation. That Explanatory Memorandum also set out that for proposals that required legislation including those related to business rates, the Government would seek Parliament's approval to further legislation.

8.14 The consultation was jointly led by the three councils that became the three constituent authorities of the WECA (Bath and North East Somerset, Bristol and South Gloucestershire). The councils invited residents and other stakeholders to participate in a survey. The survey received 2,011 responses and 14 organisations and individuals sent a response by email. The WECA's summary of responses to the consultation8 includes a demographic analysis of respondents and analysis of responses.

8.15 In relation to the BRS proposals, the consultation asked whether the mayoral combined authority would 'support innovation in key growth sectors' and whether 'it would boost productivity and growth through improved sharing of specialist knowledge and services'. Of the 389 respondents who made comments on business, 37% were 'on balance' in support of a mayoral combined authority, 50% disagreed and 10% were unsure. The most frequent views on business proposals were around the proposals being achievable without a MCA, such as respondents suggesting that the proposals are being done already and that an additional layer of government would be irrelevant to business. There was however no mention of Business Rates in the responses.

9. Guidance

9.1 Guidance on the Business Rate Supplement is available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/8306/business_rate_supplements_localauthority_guidance.pdf. The Government continues to work with colleagues in each combined authority to support their implementation of the devolution deals.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

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[6] https://democracy.bristol.gov.uk/documents/s5644/Appendix%203%20-%20Governance%20Scheme.pdf
[7] https://www.gov.uk/government/publications/west-of-england-devolution-deal
[8] https://democracy.bristol.gov.uk/documents/s6630/Devolution%20Consultation%20Final%20Report_Aug%202016.pdf

10.2 There is no impact on the public sector.

10.3 The purpose of any BRS would be to promote local economic growth, thus benefiting both business and the wider community. Any supplement would only be taken forward following consultation with and a successful double-lock ballot of affected businesses.

10.4 Any BRS would be at most an additional two pence in the pound of rateable value on the business rate bills of liable rate-payers.

10.5 The following table shows the number of properties above the rateable value threshold that would may be affected by any BRS and the number of properties that would not be affected and therefore exempt from any BRS.

Levying authority	Properties affected (000s)	Properties excluded (000s)	Properties affected (%)	Properties exempt (%)
CPCA	3	22	14%	86%
LCRCA	4	42	9%	91%
WECA	4	25	13%	87%

10.6 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

11.2 There will be no additional regulation of business arising from the supplement. The business rate supplements legislation ensures that a supplement can only be applied to properties with a rateable value of more than £50,000. The rateable value threshold for the BRS is also substantially higher than that for Small Business Rate Relief (available for business properties with a rateable value of up to £15,000), which provides protection for small businesses.

12. Monitoring & review

12.1 The combined authorities are required, under the devolution agreements reached with Government, to put in place an extensive programme of evaluation, agreed with HM Treasury, of the devolution agreements.

13. Contact

13.1 Luke Scofield, at the Ministry of Housing, Communities and Local Government, telephone: 030 3444 2562 or email: luke.scofield@communities.gsi.gov.uk, can answer any queries regarding each instrument.