EXPLANATORY MEMORANDUM TO

THE COMMUNITY INFRASTRUCTURE LEVY (AMENDMENT) (ENGLAND) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport ("The Department") and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the operation of the Community Infrastructure Levy ("CIL"), a levy on new development of land. They introduce a new provision which allows the Mayor of London ("The Mayor") to spend CIL on repaying monies, including interest, borrowed by the Greater London Authority ("the GLA") or Transport for London (TfL") provided that the money borrowed is for funding the Crossrail project ("Crossrail").

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The entire instrument applies only to England. The instrument does not have any minor or consequential effects outside England.

3.3 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this 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 and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.4 The Department has reached this view because the subject matter of the instrument is local taxation which has been devolved to the Scottish Parliament and Northern Ireland Assembly. Most of the Secretary of State's functions under Part 11 of the Planning Act 2008 were transferred to Welsh Ministers on 1st April 2018.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales as Part 11 of the Planning Act 2008 extends to both England and Wales.

4.2 The territorial application of this instrument is set out in Section 3 under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Transport (Mr Andrew Jones), has made the following statement regarding Human Rights:

"In my view the provisions of the Community Infrastructure Levy (Amendment) (England) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The Community Infrastructure Levy Regulations 2010 ("the 2010 Regulations") provide that a charge may be levied on development in an area. They are made under Part 11 of the Planning Act 2008. Development is liable to the CIL where a charging schedule is in effect in the area on the date the planning permission for that development is granted.

6.2 Regulation 59(2) of the 2010 Regulations provides that CIL collected on behalf of the Mayor must be spent on funding the provision, improvement, replacement, operation or maintenance of roads or other transport facilities, including, in particular, funding for the purposes of, or in connection with, scheduled works under the Crossrail Act 2008 (CIL comprised around £300m of the original Crossrail funding package). Where the GLA or TfL borrows to pay for infrastructure regulation 60(3) of the 2010 Regulations provides that the Mayor may only spend CIL on repaying such borrowing where certain conditions ("the CIL conditions") are met requiring there to be, prior to the application of CIL, at least one financial year's collection of CIL and that the CIL spent on borrowing does not exceed the percentage set down in a direction issued by the Secretary of State under regulation 60(6).

6.3 In order to facilitate the GLA borrowing to fund Crossrail, regulation 3 of this instrument inserts a new paragraph (7A) into Regulation 60 allowing the Mayor to spend CIL received on repaying the GLAs Crossrail borrowing, including interest, but omitting the CIL conditions.

7. Policy background

What is being done and why?

7.1 The purpose of CIL is to ensure that the costs of providing infrastructure to support development of an area can be funded (wholly or partly) by levying a charge on the owners or developers of land when development takes place. The following paragraphs explain the changes made by this instrument.

7.2 The purpose of this instrument is to allow the Mayor to spend CIL receipts on repaying monies, including interest, borrowed by the GLA or TfL for the purposes of funding Crossrail.

7.3 Crossrail is a new railway line that will run from Reading in the west, through central London and out to Shenfield and Abbey Wood in the east. It will transform the rail network in London, carrying up to 200 million passengers a year, increasing the capacity of the network by up to 10%, reducing overcrowding, and helping deliver

£42 billion of investment. A funding package of £14.8bn was agreed in 2010 and subsequently revised in July 2018 to £15.4bn.

7.4 In August 2018, Crossrail Ltd, the delivery body established to deliver Crossrail, announced a delay to the planned opening of the railway (due to commence between Paddington and Abbey Wood in December 2018).

7.5 To maintain project continuity and provide funding certainty in a way that is fair to UK taxpayers and enables London-as the primary beneficiary of Crossrail-to bear the additional costs, the Government, the Mayor and TfL agreed a financial package of £2.15bn in December 2018.

7.6 The financial package includes a loan of up to 1.3bn[1] from the Department to the GLA. The GLA intend to repay the loan via London's Business Rate Supplement and from CIL.

7.7 The arrangement contained in new paragraph (7A) will cease to have effect on 31st March 2033 by which time the final payment under the loan agreement will have been made.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 There are no current plans to consolidate the 2010 Regulations.

10. Consultation outcome

10.1 There has been no formal public consultation on this instrument. This instrument applies only to the Mayor of London. The GLA has been consulted in the development of this instrument and the Department is content that no further consultation is required.

11. Guidance

11.1 There are no plans to revise the guidance in relation to the changes made by this instrument. Current guidance on the community infrastructure levy can be found at: https://www.gov.uk/guidance/community-infrastructure-levy. Copies can be requested from the Ministry of Housing, Communities and Local Government, Fry Building, 2 Marsham Street, London SW1P 4DF.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

[1] In addition to the loan from the Department, the GLA will also provide a £100 million cash contribution, taking its total contribution for this package to £1.4 billion. In addition, as the final costs of the Crossrail project are yet to be confirmed, a contingency arrangement has also been agreed between TfL and the Department for Transport. The Department for Transport will loan TfL up to £750 million in the event that further finance is required for the project.

12.3 An impact assessment has not been prepared for this instrument as the Department is not required to undertake one because this is a financial instrument.

13. Regulating small business

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

14. Monitoring & review

14.1 The legislation does not include a statutory review clause as it amends the operation of a levy (a financial measure) and as a result does not meet the requirements in the Small Business, Enterprise and Employment Act 2015 for the instrument to include a duty to review. The operation of the Crossrail borrowing will be closely monitored by the Department, GLA and TfL.

15. Contact

15.1 For Crossrail policy: Rachel Stressing at the Department for Transport (telephone 07776 493122 or email Rachel.stressing@dft.gov.uk. For CIL policy: CIL@communities.gsi.gov.uk can answer any questions regarding this instrument.

15.2 Graham Stockbridge, Deputy Director for the Policy area, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Andrew Jones MP at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.