EXPLANATORY MEMORANDUM TO

THE COUNCIL TAX LIMITATION (MAXIMUM AMOUNTS) (ENGLAND) ORDER 2009

2009 No.

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This draft Order relates to the "capping" of the budget requirement of Surrey police authority ("Surrey").

2.2 It states the amount which this authority must not exceed as their budget requirement for the financial year 2009-10, following its designation by the Secretary of State.

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

3.1 This is the fourth occasion on which the powers conferred by section 52F (challenge of maximum amount) of the Local Government Finance Act 1992 ("the 1992 Act") are proposed to be exercised. Section 52F was inserted by the Local Government Act 1999 ("the 1999 Act"). These powers replaced provisions previously in Chapter 5 of the 1992 Act which were repealed by the 1999 Act. The powers in section 52F of the 1992 Act were previously used in making the following orders-

- the Council Tax Limitation (England) (Maximum Amounts) Order 2004 (S.I. 2004/1908),
- the Council Tax Limitation (England) (Maximum Amounts) Order 2005 (S.I. 2005/2032), and
- the Council Tax Limitation (Maximum Amounts) (England) Order 2008 (S.I. 2008/1850).

4. Legislative Context

4.1 This draft Order is subject to the affirmative resolution procedure. It is laid before the House of Commons under section 52F(7) of the 1992 Act.

4.2 Sections 52A to 52Z of the 1992 Act were inserted by section 30 of, and Schedule 1 to, the 1999 Act.

5. Territorial Extent and Application

5.1 This draft Order extends to England and Wales but applies only to the authority in England specified in paragraph 2.1 above.

6. European Convention on Human Rights

6.1 The Minister of State for Local Government, John Healey, proposes to make the following statement:

In my view the provisions of the Council Tax Limitation (Maximum Amounts) (England) Order 2009 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 The Minister of State for Local Government, John Healey, announced, in an oral statement to the House of Commons on 26 March 2009 that the Government intended to take action against authorities whose budget requirements for 2009-10 were excessive in accordance with the principles set out in the Minister's statement.

7.2 Accordingly, the Secretary of State designated two police authorities under section 52D(2)(a) (designation or nomination) of the 1992 Act.

7.3 In the light of challenges which the designated authorities made under section 52F of the 1992 Act to the maximum budget requirements proposed by the Secretary of State, John Healey announced in a written statement to the House of Commons on 13 May 2009 that the Secretary of State had cancelled the designation of one of the authorities and nominated it instead under section 52L (nomination) and 52N (no designation after nomination) of the 1992 Act. The Secretary of State proposes to proceed with the designation of Surrey for 2009-10 with a maximum budget requirement at the level proposed by the Secretary of State when the authority was originally designated under section 52D(2)(a) of the 1992 Act.

- ***Consolidation***

7.4 As this draft Order only applies in relation to the financial year beginning in 2009 consolidation is not a relevant issue.

8. Consultation outcome

8.1 Following consideration of the Surrey's challenge under section 52F of the 1992 Act and all other relevant matters, the Secretary of State proposes to proceed with the designation of Surrey for the financial year 2009-10.

9. Guidance

9.1 No guidance is being issued in relation to this draft Order.

10. Impact

10.1 The impact of the draft Order on business, charities or voluntary bodies is nil.

10.2 The impact of the draft Order on the public sector is a reduction in the budget requirement of the affected authority of £1,563,077 in 2009-10 and the costs associated with rebilling council taxpayers in the area of the affected authority, which costs will be borne by that authority. It will be for the authority to decide which services and activities will be affected when it sets a lower budget requirement.

10.3 An Impact Assessment has not been prepared for this draft Order as the Secretary of State cannot make assumptions as to which services and activities may be affected when an authority calculates a lower budget requirement.

11. Regulating small business

11.1 The draft Order does not apply to small business.

12. Monitoring & review

12.1 If the draft Order is approved by the House of Commons and made by the Secretary of State, by virtue of section 52J (duty of designated precepting authority) of the 1992 Act Surrey will be required to make substitute calculations in relation to 2009-10 so as to secure-

- that the amount calculated by the authority as its budget requirement for the year does not exceed that stated in the Order ("the maximum amount"), and

- that any amount calculated as the basic amount of council tax applicable to any dwelling does not exceed that so calculated in previous calculations.

12.2 If the authority fails to comply with section 52J within the relevant period specified in section 52K(1)(b) (failure to substitute) of the 1992 Act, by virtue of section 52K(3) and (4) until Surrey makes the necessary substitute calculations any authority to which Surrey has power to issue a precept will have no power to pay anything in respect of a precept issued by Surrey for the financial year 2009-10. This means that if Surrey fails to make substitute calculations within 21 days of being notified of the maximum amount, it will not receive any payments in respect of council tax for 2009-10 until it has made those calculations.

12.3 Accordingly no monitoring and review is planned as a result of the draft Order.

13. Contact

Richard Harries at the Department for Communities and Local Government, Tel: 020 7944 6680 or e-mail: richard.harries@communities.gsi.gov.uk with any queries regarding the draft Order.