EXPLANATORY MEMORANDUM TO

THE COUNCIL TAX LIMITATION (MAXIMUM AMOUNTS) (ENGLAND) ORDER 2010

2010 No. [DRAFT]

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 Warwickshire police authority ("Warwickshire").

2.2 It states the amount which this authority must not exceed as its budget requirement for the financial year 2010-11, 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 first occasion on which the powers conferred by section 52Q (challenge of maximum amount) of the Local Government Finance Act 1992 ("the 1992 Act") are proposed to be exercised, although very similar powers in section 52F of the 1992 Act (challenge of maximum amount) have been used on four previous.

3.2 Section 52Q 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 These powers replaced provisions previously in Chapter 5 of the 1992 Act which were repealed by the 1999 Act.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 to make 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),
- the Council Tax Limitation (Maximum Amounts) (England) Order 2008 (S.I. 2008/1850), and
- the Council Tax Limitation (Maximum Amounts) (England) Order 2009 (S.I. 2009/1849).

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 52Q(6) 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 Barbara Follett, Parliamentary Under Secretary of State at the Department for Communities and Local Government, proposes to make the following statement:

In my view the provisions of the Council Tax Limitation (Maximum Amounts) (England) Order 2010 are compatible with the Convention rights.

7. Policy background

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

7.1 Warwickshire is being set a maximum budget requirement for 2010-11; that is, if the draft Order is approved by the House of Commons and made by the Secretary of State, in determining its budget requirement for 2010-11, the amount specified in the draft Order is the amount which Warwickshire cannot exceed (although the authority may choose to set a lower level).

7.2 This action is a continuation of capping action initiated in the financial year 2008-09. In that year, the authority exceeded the capping principles which were set for all authorities for that year under section 52B of the 1992 Act. The 2008-09 capping principles were that an authority's budget requirement was excessive if it set:

- a budget requirement increase of more than 5% in 2008-09 compared with 2007-08; and

- a Band D council tax increase of more than 5% over the same period.

7.3 Warwickshire's budget requirement increase in 2009-09 was 6.7% and its Band D council tax increase was 12.9%.

7.4 The Secretary of State designated the authority under section 52D(2)(a) of the 1992 Act and proposed a maximum budget requirement for 2008-09. The authority exercised its right to challenge this designation. After considering the authority's challenge, the Secretary of State cancelled the authority's designation and nominated the authority instead, choosing to designate the authority in advance for 2009-10 under section 52M of the 1992 Act. At the same time the Government announced that it also proposed Warwickshire should be subject to following year designation in

2010-11. The policy intention was to limit Warwickshire's Band D council tax increase in 2009-10 and 2010-11 to around 3% in each of those financial years.

7.5 When the Secretary of State designates an authority for the following financial year, the Secretary of State must propose a target budget requirement and a maximum budget requirement for the financial year.

7.6 Under section 52M of the 1992 Act, a maximum budget requirement and a target budget requirement were proposed for Warwickshire for 2009-10. The authority accepted these amounts and did not exercise its right to challenge. Subsequently, the authority set its budget requirement for 2009-10 at the maximum amount possible.

7.7 Warwickshire's budget requirement for 2009-10 was above its target amount for the year. As a result, the Secretary of State has the power under section 52P of the 1992 Act to designate the authority for 2010-11. The Secretary of State exercised this power and proposed a maximum budget requirement of £90,279,000 for Warwickshire for 2010-11.

7.8 The authority exercised its right to challenge this amount. Consequently, subject to the approval of the draft Order by the House of Commons, the Secretary of State is required by section 52Q(2)(a) of the 1992 Act to make an order stating the amount which the amount calculated by the authority as its budget requirement for 2010-11 is not to exceed. Having considered the authority's challenge, the Secretary of State determined the amount of £90,395,000 for these purposes.

- ***Consolidation***

7.9 As this draft Order only applies in relation to the financial year beginning in 2010 consolidation is not a relevant issue.

8. Consultation outcome

8.1 Following consideration of Warwickshire's challenge under section 52Q of the 1992 Act and all other relevant matters, the Secretary of State has decided that it is appropriate to cap Warwickshire at the amount stated in the draft Order for the financial year 2010-11.

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 limitation on the budget requirement that Warwickshire may calculate for 2010-11. It will be for the authority to decide which services and activities will be affected when it sets its budget requirement for that financial year.

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 its budget requirement for a financial year.

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 52U (duty of designated precepting authority) of the 1992 Act. Warwickshire will be required to make its calculations under sections 43 to 48 of the 1992 Act for 2010-11 so as to secure that the amount calculated by it as its budget requirement does not exceed the amount stated in the Order.

12.2 If the authority fails to comply with section 52U before the relevant date specified in section 52V(2)(b) (failure to make or substitute calculations) of the 1992 Act, by virtue of section 52V(4) until Warwickshire makes the necessary calculations any authority to which Warwickshire has power to issue a precept will have no power to pay anything in respect of a precept issued by Warwickshire for the financial year 2010-11. This means that if Warwickshire fails to make appropriate calculations by 1st March 2010, it will not receive any payments in respect of council tax for 2010-11 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: 0303 444 2089 or e-mail: richard.harries@communities.gsi.gov.uk with any queries regarding the draft Order.