EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES (CONTRACTING OUT OF TAX BILLING, COLLECTION AND ENFORCEMENT FUNCTIONS) (AMENDMENT) (WALES) ORDER 2014

2014 No. XXXX

1. This explanatory memorandum has been prepared by the Welsh Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 To amend the Local Authorities (Contracting Out of Tax Billing, Collection and Enforcement Functions) Order 1996 (S.I. 1996/1880) ("the Contracting Out Order") to ensure that certain functions relating to the administration and enforcement of council tax can continue to be contracted out by a billing authority in Wales following the making of the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 (S.I. 2013/3029 (W. 301)), and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 (S.I. 2013/3035 (W. 303)) ("the 2013 Regulations").

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

3.1 This Order is being made by the Secretary of State in relation to Wales, on behalf of the Welsh Ministers, as the enabling powers relied upon to make this Order have not been transferred to the Welsh Ministers.

4. Legislative Context

4.1 Section 70 of the Deregulation and Contracting Out Act 1994 ("the 1994 Act") enables a Minister to provide, by order, that a function to which the section applies may be exercised by, or by employees of, such person (if any) as may be authorised on behalf of the local authority whose function it is. Section 70 applies to any function of a local authority; (a) which is conferred by or under any enactment; and (b) which, by virtue of section 101 of the Local Government Act 1972, may be exercised by an officer of the authority.

4.2 The Local Government Finance Act 1992 ("the 1992 Act") provides for council tax. Detailed provision for the administration and enforcement of council tax is provided for by the Council Tax (Administration and Enforcement) Regulations 1992 (S.I. 1992/613).

4.3 The Contracting Out Order, made under section 70 of the 1994 Act, makes provision which enables a billing authority in relation to council tax and non-domestic rates, and a local authority which has the functions of a charging authority in relation to community charges, to authorise another

person, or that person's employees, (a "contractor") to exercise functions relating to the administration and enforcement of council tax, community charges and non-domestic rates.

4.4 The exercise by a contractor of the functions described in Part 2 (council tax), Part 4 (community charges) and Part 6 (non-domestic rating) of the Contracting Out Order is subject to the conditions specified in Part 8, including, in particular—

(a) in article 71, requirements relating to the holding and use of information obtained by the contractor in the course of exercising functions which he has been authorised to exercise; and

(b) in article 72, a requirement that a contractor shall not appoint any other person to exercise any function which he has been authorised to exercise, unless that person has also been authorised to exercise the function concerned.

4.5 The Local Government Finance Act 2012 amended the 1992 Act by substituting a new section 13A and inserting a new Schedule 1B. The changes provide the Welsh Ministers with the power to introduce regulations which require billing authorities in Wales to introduce a scheme specifying the reductions which are to apply to amounts of council tax payable, in respect of dwellings situated in its area, by—
(a) persons whom the authority considers to be in financial need, or
(b) persons in classes consisting of persons whom the authority considers to be, in general, in financial need.

4.6 All County Councils and County Borough Councils in Wales are billing authorities and have the functions of a charging authority.

4.7 The Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012 (S.I. 2012/3144 (W. 316)) placed a duty upon billing authorities in Wales to introduce schemes, and set out certain matters which must be included within such schemes, including a number of procedural matters. A scheme had to be made on or before 31st January 2013 to take effect for the financial year commencing 1st April 2013. If a billing authority failed to make a scheme by this date, the default scheme prescribed by Welsh Ministers in the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2012 (2012/3145 (W. 317)) had effect. Those Regulations contain similar procedural provisions as the Prescribed Requirements Regulations. The Regulations are modelled on existing council tax benefit regulations.

4.8 The Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012 and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2012 ("the 2012 Regulations") were limited to 2013-14 by virtue of a sunset clause. Regulations have been made to govern the operation of the council tax reduction schemes in 2014-15 onwards. These were the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 (S.I. 2013/3029 (W. 301)), and the Council Tax

Reduction Schemes (Default Scheme) (Wales) Regulations 2013 (S.I. 2013/3035 (W. 303)) ("the 2013 Regulations").

4.9 The Local Authorities (Contracting Out of Tax Billing, Collection and Enforcement Functions) (Amendment) (Wales) Order 2013 ("the 2013 Order") amended the Contracting Out Order to enable billing authorities in Wales to authorise contractors to exercise additional functions relating to council tax. Those additional functions included giving notification of a decision about an application for a reduction of council tax and payment of a reduction under the 2012 Regulations; and collection of penalties under the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013.

4.10 This order substitutes all relevant references in the Contracting Out Order to the 2012 Regulations with references to the 2013 Regulations. This will result in the extension of the application of the 1996 Order to schemes made under the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 or the default scheme under the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 which will be in place in Wales from 1 April 2014. The functions added by the 2013 Order will be exercisable in relation to the 2013 Regulations.

4.11 The Council Tax (Administration and Enforcement) Regulations 1992 (S.I. 1992/613) ("the 1992 Regulations") make provision about the billing, collection and enforcement of council tax. They have been amended by the Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2013 (S.I. 2013/62 (W.13)) in particular to take into account the introduction of local council tax reduction schemes enabling these reductions to be billed for and enforced. It is intended that further amendment regulations will be made before 1 April 2014 to ensure the 2013 Regulations are also reflected within the 1992 Regulations.

4.12 Section 14B of the 1992 Act (inserted by the Local Government Finance Act 2012) enables the Welsh Ministers to make regulations providing for the creation of offences that may be committed by a person in prescribed circumstances. This includes where a person intentionally delays or obstructs a person when exercising a power under section 14A(1) or refuses or fails to supply information when required to do so. Offences may also be created where, for instance, a person makes a false statement or representation in connection with their liability to pay council tax (new section 14B(1)). New section 14C enables provision to be made in regulations giving billing authorities in Wales powers to issue a penalty to a person where their act or omission results or could result in the amount of council tax a person is liable to pay being reduced and where no such discount or reduction should be given. Regulations may also provide that a penalty may be issued where a person's act or omission results in a dwelling being treated as exempt when no such exemption should be given. Any new penalties created in regulations will not affect the operation of the existing penalties that may be imposed under paragraph 1 of Schedule 3 to the 1992 Act.

4.13 The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013 were made under this power. They make provision for the creation of offences and for the imposition of penalties in relation to Council Tax Reduction Schemes in Wales. They also make provision for Billing Authorities to authorise individuals to exercise certain investigatory powers. It is intended that amendment regulations will be made before 1 April 2014 to ensure these Regulations are updated to reflect the 2013 Regulations.

4.14 Section 77(1)(c) of the 1994 Act enables the Welsh Ministers to make appropriate saving provisions. Article 3 of the Order provides that the amendments made by the Order will not have effect in relation to any applications made or reductions awarded in accordance with the provisions of a Scheme made by a billing authority under the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 or the default Scheme under Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013.

5. Territorial Extent and Application

5.1 This instrument applies to Wales.

6. European Convention on Human Rights

Brandon Lewis, Parliamentary Under Secretary of State at the Department for Communities and Local Government, has made the following statement regarding Human Rights:

In my view the provisions of the Local Authorities (Contracting Out of Tax Billing, Collection and Enforcement Functions) (Amendment) (Wales) Order 2014 are compatible with the Convention rights.

7. Policy background

7.1 The Government announced in the 2010 Spending Review that council tax benefit would be replaced by council tax reduction schemes from April 2013.

7.2 Council tax benefit was abolished by the Welfare Reform Act 2012 and council tax reduction schemes were introduced in Wales under provisions in the Local Government Finance Act 2012 and regulations made there under. The Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012 and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2012 made provision about the content of council tax reduction schemes in Wales.

7.3 The 2012 Regulations are limited to 2013-14 by virtue of a sunset clause. Regulations have been made to govern the operation of the council tax reduction schemes in 2014-15 onwards. These are the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013, and the

Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 ("the 2013 Regulations").

7.4 Billing authorities in Wales can contract out the administration of the collection of council tax under the Contracting Out Order and could contract out the operation of the council tax benefit system under the Contracting Out (Functions of Local Authorities: Income-Related Benefits Order) 2002 if they choose to do so.

7.5 The Local Authorities (Contracting Out of Tax Billing, Collection and Enforcement Functions (Amendment) (Wales) 2013 amended the Contracting Out Order for Wales to add new administrative functions in relation to (i) the issue of the council tax reduction decision letter; (ii) the payment of a reduction amount under certain circumstances where the billing authority is of the opinion that it would be appropriate; (iii) the service of a penalty notice in connection with an offence committed with a reduction; and (iv) the repayment of amount paid in connection with a penalty (in connection with a local scheme) that has been subsequently quashed.

7.6 This Order extends those additional administrative functions inserted by the 2013 Order so that they relate to the 2013 Regulations. As these are minor amendments it was considered that there was no need to make a consolidated regulation.

8. Consultation outcome

8.1 The Secretary of State has a statutory duty under section 70(3) of the Deregulation and Contracting Out Act 1994 to consult such representatives of local government as he considers appropriate. To comply with that duty, arrangements were made with the Welsh Ministers in accordance with section 83 of the Government of Wales Act 2006 for the Welsh Government to consult Local Authority Welsh Revenues and Benefits Managers for views and comments on the proposed amendments. In responding to the consultation, consultees confirmed that in their view the Order ensures provision for those functions relating to the administration of local council tax reduction schemes to apply to schemes under the 2013 Regulations, and did not raise any issue or suggest any further changes.

9. Guidance

9.1 No guidance is needed for this amending instrument.

10. Impact

10.1 This regulation has no impact on business, charities or voluntary bodies as the changes relate to the ability to contract out administrative functions.

10.2 The impact on the public sector is that billing authorities will be able to continue to contract out new administrative functions, prescribed by the introduction of local council tax support schemes, which form part of the council tax system.

10.3 An Impact Assessment has not been prepared for this instrument, as it is an amending instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Government will monitor the impact of this regulation as part of the ongoing maintenance of the system.

13. Contact

Please contact Joanna Valentine at the Welsh Government on telephone number 02920 823227 or by email at joanna.valentine@wales.gsi.gov.uk if you have any queries regarding the instrument.