EXPLANATORY MEMORANDUM TO

THE LOCALISM ACT (CONSEQUENTIAL AMENDMENTS) ORDER 2012

2012 No. [XXXX]

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

2. Purpose of the instrument

This Order makes amendments to other pieces of legislation in consequence of provisions of the Localism Act 2011 relating to powers of local authorities, land compensation and neighbourhood planning.

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

None.

4. Legislative Context

4.1 The Localism Act 2011 received Royal Assent on 15 November 2011 and is being commenced in stages.

4.2 Chapter 1 of Part 1 of the Act provides local authorities in England with a general power of competence ("the general power"). It gives these authorities the same power to act that an individual has and provides that the power may be used in innovative ways, that is, in doing things that are unlike anything that a local authority has done before or may currently do.

4.3 Part 9 of the Act reforms the planning assumptions for assessing compulsory purchase compensation in the Land Compensation Act 1961. They have been simplified by being couched in terms of conditions known to the market on the relevant valuation date. Although the scheme underlying the compulsory purchase is still assumed to have been cancelled on the day the notices for the compulsory purchase were first issued (the "launch date"), the planning position is now considered on the valuation date instead of the launch date. Part 9 also reforms the certification system by which local planning authorities can be asked to certify which "appropriate alternative development" would have received planning permission in the absence of the scheme. The jurisdiction to hear appeals against the content of certificates has been transferred from the Secretary of State to the Lands Chamber of the Upper Tribunal.

4.4 Part 6, Chapter 3 of the Act amends the Town and Country Planning Act 1990 by inserting a number of new sections into it – and Schedules 10 and 11 which insert 2 schedules (Schedules 4B and 4C) into that Act. These new provisions will allow for planning permission to be granted through neighbourhood development orders, including a category to be known as "Community Right to Build Orders". Part 2 of

Schedule 9 amends the Planning and Compulsory Purchase Act 2004 to make provision in that Act for a new category of development plan – a neighbourhood development plan. These plans and development orders will be made by local planning authorities on the initiative of parish councils or neighbourhood forums.

4.5 This Order is aligned with commencement of the above provisions and will make minor and technical amendments to Acts and secondary legislation to take account of those provisions. This Order is the first use of the consequential modifications order making power contained in section 236 of the Act. Other relevant consequential amendments are contained in Schedule 1 (general power of competence) and Schedule 12 (neighbourhood planning) to the Act.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Localism Act (Consequential Amendments) Order 2012 are compatible with the Convention rights.

7. Policy background

What is being done and why

Schedule 1

7.1 Schedule 1 to this Order makes amendments consequential to the provisions of Chapter 1 of Part 1 of the Localism Act 2011. This Chapter provides local authorities in England with the general power. This power will replace the power to promote well-being (section 2 of the Local Government Act 2000) ("the well-being power") for those authorities. Section 2 of the Local Government Act 2000 is amended by Schedule 1 to the Localism Act 2011 so as to apply only to Welsh local authorities.

7.2 The amendment contained in paragraph 1 of Schedule 1 provides that restrictions on maximum shareholding in certain industrial and providential societies do not apply where shares are held under a local authority's general power, just as they do not apply where shares are held under the well-being power.

7.3 The amendments contained in paragraph 2 to 4 of Schedule 1 provide that limitations on the ability of local authorities to provide certain support using the well-being power are applied to the general power.

7.4 The amendments contained in paragraphs 5, 7 and 10 of Schedule 1 relate to definitions used in the amended legislation of certain bodies (known as Arm's Length Management Organisations), or agreements with such bodies, which are currently by reference to the well-being power.

7.5 The amendments contained in paragraph 6, 8 and 9 of Schedule 1 amend definitions of services or activities that include activities carried out under the well-being power, so as to include such activities if carried out under the general power.

Schedule 2

7.6. The reforms to the planning assumptions replace sections 14 to 16 of the Land Compensation Act 1961 with new sections 14 and 15. Paragraphs 1 and 3 of Schedule 2 to this Order remove references to section 16 in section 29 of the 1961 Act and section 262 of the Highways Act 1980. The reforms also mean that appropriate alternative development is now to be expressed in terms of "descriptions" of development, rather than "classes" of development. Paragraph 2 of Schedule 2 therefore makes the necessary changes to paragraph 55 of Schedule 16 to the Local Government Act 1972, which sets out the consultation arrangements between county and district planning authorities where this is necessary.

7.7 All the paragraphs in Schedule 2 are modified such that the amendments do not apply to compulsory purchase orders etc made before the commencement date of 6th April 2012. This aligns with the transitional provisions in the associated Commencement Order.

Schedule 3

7.8 The amendments contained in paragraph 1 of Schedule 3 amend Schedule 8 to the Planning and Compulsory Purchase Act 2004, which makes transitional provision in relation to old plans and policies. Amendments to the definition of a new planning policy inserts reference to a policy which is contained in a neighbourhood development plan.

Consolidation

7.9 There are no plans to consolidate the legislation amended by this order.

8. Consultation

8.1 In light of the nature of the amendments made by this instrument, public consultation was not thought to be appropriate.

9. Guidance

9.1 Bearing in mind the limited extent of the amendments made to existing instruments, there is no intention to issue guidance specifically on these consequential amendments. We are considering the need for guidance on the substantive provisions in relation to neighbourhood planning.

10. Impact

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

10.2 An Impact Assessment has not been prepared for this instrument because it is only making minor and technical amendments to ensure that other legislation retains its current meaning and relevance once the Act comes into force. Impact Assessments of the relevant provisions of the Localism Act 2011 are of some relevance to this instrument. [1]

11. Regulating small business

11.1 The legislation does not regulate small business.

12. Monitoring & review

12.1 There is no intention to review the impact of this instrument. However, there is a commitment to monitor and review the impact of the policies associated with the general power of competence and neighbourhood planning.

13. Contact

Schedule 1
Alison Morris at the Department for Communities and Local Government Tel: 030344 42613 or email: alison.morris@communities.gsi.gov.uk, who can answer any queries regarding the instrument.

Schedule 2
Robert Segall at the Department for Communities and Local Government Tel: 030344 41717 or email: robert.segall@communities.gsi.gov.uk, who can answer any queries regarding the instrument.

Schedule 3
.Gareth Bradford at the Department for Communities and Local Government Tel 030344 44277 or email: gareth.bradford@communities.gsi.gov.uk, who can answer any queries regarding this instrument

[1] http://www.communities.gov.uk/publications/localgovernment/localismcompetence
http://www.communities.gov.uk/publications/localgovernment/localismneighbourhoodplans