EXPLANATORY MEMORANDUM TO

THE LOCALISM ACT 2011 (CONSEQUENTIAL AMENDMENTS) ORDER 2014

2014 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

To require the Greater London Authority to make substitute calculations if their council tax is found to be excessive and they have failed to approve a substitute consolidated budget or council tax requirement in accordance with the deadlines in Schedule 6 to the Greater London Authority Act 1999 ('the GLA Act 1999'), and to make other amendments consequential on changes made to the Local Government Finance Act 1992 and the GLA Act 1999 by the Localism Act 2011.

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

The draft Order amends provisions made by the Localism Act 2011 itself in exercise of the power contained in section 236(1) read with section 236(3).

4. Legislative Context

Articles 2 to 6

4.1 Sections 73 to 79 of the Localism Act 2011 made amendments to the calculations which billing authorities, major precepting authorities and local precepting authorities in England must make to determine their basic amounts of council tax for a financial year. The obligation to calculate a budget requirement for a year was replaced with an obligation to calculate a council tax requirement. Under the new provisions an authority's council tax requirement for a financial year is the amount that the authority requires from council tax alone in order to finance its budget for the year and this amount is used to calculate the authority's basic amount of council tax. Articles 2 to 6 make minor amendments consequential on the changes made by the Localism Act 2011.

4.2 Article 2 makes a consequential amendment to section 31A(5) of the Local Government Finance Act 1992 to ensure consistency between subsections (5) and (9) of section 31A of the Local Government Finance Act 1992, both inserted by section 74 of the Localism Act 2011. Section 31A(9)(b) excludes sums which have been or are to be transferred from an authority's collection fund to its general fund (other than the sums mentioned in

subsection (3)(aa), (b) and (c)) from the calculation of its income. This amendment ensures that subsection (5) excludes sums which have been or are to be transferred from an authority's general fund to its collection fund (other than the sums mentioned in subsection (2)(da), (e) and (f)) from the calculation of its expenditure.

4.3 Article 3 makes an amendment to section 42A of the Local Government Finance Act 1992 consequential on the insertion by section 76 of the Localism Act 2011 of section 86(2B) and (4B)(a) of the Greater London Authority Act 1999 to ensure that major precepting authorities in England when calculating their council tax requirement take into account the expenditure they estimate will be incurred in accordance with regulations under section 99(3). Section 42A(10) already provides that payments to a major precepting authority under regulations under section 99(3) are to be treated as income of that authority for the purposes of section 42A(3)(a), and section 86(2B) and (4B)(a) of the GLA Act 1999 provide for amounts paid by and to the GLA under regulations under section 99(3) to be taken into account under section 85(4)(a) and (5)(a) of the GLA Act 1999.

4.4 Article 5 makes an amendment consequential on the insertion of section 42A of the Local Government Finance Act 1992 by section 75 of the Localism Act 2011 to ensure that repayments of grants are taken into account as expenditure under section 85(4)(a) of the GLA Act 1999 rather than as income under section 85(5)(a) of that Act.

4.5 Article 6 makes a consequential amendment to reflect the fact that the reference to "relevant special grant" in section 102(2)(c) of the GLA Act 1999 was repealed by paragraph 39(a) of Schedule 7 to the Localism Act 2011. Section 102(8) of the GLA Act 1999 was substituted by S.I. 2011/313 but this substitution only had effect in relation to the financial year beginning on 1st April 2011 (S.I. 2011/313, regulation 1(3)).

Article 7

4.6 The Localism Act 2011 inserted a new chapter (chapter 4ZA) into the Local Government Finance Act 1992 ('the 1992 Act') to provide for council tax referendums to be held if an authority increases its relevant basic amount of council tax in excess of the principles (for example, a certain percentage) determined by the Secretary of State and approved by the House of Commons. If a billing authority (a district council, a London borough council, the Common Council of the City of London, the Council of the Isles of Scilly or a county council with the functions of a district council) excessively increases its relevant basic amount of council tax section 52ZF provides that the billing authority must make substitute calculations which produce a relevant basic amount which is not excessive. Section 52ZG provides that the billing authority must make arrangements for a referendum and section 52ZH provides that if the referendum result does not approve the proposed excessive relevant basic amount the substitute calculations have effect instead. Section 52ZI provides that if a billing authority fails to hold a referendum the substitute calculations have effect in relation to that financial year. Section

52ZJ and 52ZK (combined with sections 52ZN - 52ZP) make similar provisions for major precepting authorities (county councils in areas where there is a county council and a district council, police authorities, metropolitan county fire and civil defence authorities, combined fire and rescue authorities and the Greater London Authority) and sections 52ZL and 52ZM (combined with sections 52ZN – 52ZP) for local precepting authorities (parish, town or community councils, the chairman of a parish meeting where not formally constituted as a council, charter trustees, the sub-treasurer of the Inner Temple and the sub-treasurer of the Middle Temple).

4.7 Section 52ZJ (major precepting authority's duty to make substitute calculations) applies to the GLA as well as to other major precepting authorities. However, subsection (3) provides that substitute calculations made by the GLA comply with this section if they are made by applying the relevant London provisions and sections 47 and 48 of the 1992 Act to the Authority's substitute consolidated council tax requirement for the year. The relevant London provisions are defined in subsection (7) as sections 88 and (where applicable) 89 of the GLA Act 1999 and 'the Authority's substitute consolidated council tax requirement' is defined in subsection (7) as that agreed under Schedule 6 to the GLA Act 1999 or set out in its substitute consolidated budget as agreed under that Schedule.

4.8 Schedule 6 to the GLA Act 1999 provides for a substitute consolidated budget or council tax requirement to be agreed in various circumstances. It provides for a substitute consolidated budget to be prepared by the Assembly under paragraph 4(1A) in circumstances where the Mayor has failed to present a draft consolidated budget on or before 1st February in the preceding financial year and the Assembly has prepared a draft consolidated budget which does not comply with the relevant principles. However, it doesn't require the Assembly to agree it. Schedule 6 also provides for a substitute consolidated council tax requirement to be agreed by the Assembly under paragraph 7 in circumstances where the Mayor has failed to present a draft final budget before the last day in February and the Authority has agreed the consolidated council tax requirement. However, it requires the substitute consolidated council tax requirement to be agreed at a particular meeting. Finally, it requires a substitute consolidated budget to be agreed by the Assembly under paragraph 8(6B) or 8B(2) in circumstances where the Mayor has presented a final draft budget to the Assembly and this final draft budget has been approved by the Assembly. However, it requires the substitute consolidated budget to be agreed at a particular meeting which has to take place before the last day in February. Therefore, whereas substitute calculations can be made at any time for other authorities, for the GLA they can only be made in accordance with the statutory deadlines set out in Schedule 6 to the GLA Act 1999.

4.9 Section 52ZP applies if a billing authority that is required to be notified of an excessive increase by a major precepting authority or a local precepting authority fails to hold a council tax referendum. If a major precepting authority fails to notify an excessive increase to the billing authority in accordance with section 52ZK, the precepting authority must issue a precept

based on substitute calculations to the billing authority and this precept shall have effect for the financial year. Section 52ZP(4) and (5) provide that from the point at which the referendum should have been held to the point at which the precepting authority issues the substitute precept a period of restriction operates during which no billing authority can pay anything in respect of a precept issued by that precepting authority. The only way of bringing the period of restriction to an end and ensuring the precepting authority is paid its precept is by the precepting authority issuing a precept based on substitute calculations. This means that if the GLA were to breach the excessiveness principles having failed to meet the deadlines for making substitute calculations they would have no mechanism for making the substitute calculations at a later date and bringing to an end the period of restriction.

4.10 Article 7 amends Schedule 6 to the GLA Act 1999 to provide that if, having approved a consolidated budget or council tax requirement, the GLA's relevant basic amount of tax is found to be excessive but it has not approved a substitute consolidated budget or council tax requirement, the Assembly must agree a substitute consolidated budget or council tax requirement which complies with the relevant principles and this may be done at any time before or after the end of the financial year. This will bring to an end the period of restriction and put the GLA in the same position as other major precepting authorities who may find that they have breached the excessiveness principles without having notified the billing authority in time to trigger a council tax referendum.

5. Territorial Extent and Application

This instrument applies to England only.

6. European Convention on Human Rights

The [Name of Minister] has made the following statement regarding Human Rights:

In my view the provisions of the Localism Act 2011 (Consequential Amendments) Order 2014 are compatible with the Convention rights.

7. Policy background

7.1 The Coalition Programme for Government set out the Government's intention to abolish the centralised capping regime and introduce council tax referendums. Capping was the system where Government took a view on the potential excessiveness of budgets set by local authorities. This occurred after budgets had been set and so led to uncertainty on the part of authorities over their potential income for the year. The Localism Act 2011 replaced this system with one where local authorities are provided with information in advance of budget setting on what would constitute an 'excessive' increase in council tax. The authority is free to set an increase above this level, but must seek local agreement via a binding referendum before doing so.

7.2 The Localism Act also imposed a requirement on any local authority which opted to set an excessive council tax increase, to draw up substitute budget calculations at a lower non-excessive level which would take effect if the referendum was lost or otherwise did not take place.

7.3 So called 'billing authorities' issue council tax bills for themselves and also on behalf of any other local authority which the council tax payer has a liability towards. These other authorities are known as 'precepting authorities' and include Fire Authorities, Police and Crime Commissioners and the GLA. The billing authority collects council tax payments for these bodies and then transfers the funds across to them at regular intervals. However these transfers are not allowed to take place until the precepting authority has set a valid budget.

7.4 For the GLA there are specific time periods defined in the GLA Act 1999 for setting and revising their budget, so it is possible for the GLA through error or oversight to set an excessive increase in council tax and then not have the ability to revise their budget or draw up substitute calculations. This combination would leave the GLA without a valid budget and so each of the London Boroughs would for the remainder of the year be unable to transfer the council tax receipts which had been collected on behalf of the GLA. Article 7 provides a method for the GLA to recover from such a situation.

8. Consultation outcome

The Greater London Authority was invited to offer a view on the Order and this final instrument takes their views into account.

9. Guidance

As these are minor consequential amendments guidance is not necessary.

10. Impact

The Order does not have an impact on the public sector, business, charities or voluntary bodies. As such an Impact Assessment is not required.

11. Regulating small business

The Order does not apply to small business.

12. Monitoring & review

The Department does not intend to put in place any formal mechanism for monitoring and reviewing this Order. The Department maintains dialogue and liaison with the Greater London Authority. Any issues relating to the Order will be identified through these channels.

13. Contact

Leon Bond at the Department for Communities and Local Government Tel: 030344 44422 or email: leon.bond@communities.gsi.gov.uk can answer any queries regarding the instrument.