EXPLANATORY MEMORANDUM TO

THE TRANSPORT LEVYING BODIES (AMENDMENT) REGULATIONS 2017

2017 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument further amends the Transport Levying Bodies Regulations 1992 ("the Principal Regulations") in consequence of the establishment of the Tees Valley and the West Midlands Combined Authorities. This is to enable the issuing of a levy by the respective Combined Authorities in order to meet the costs of carrying out their transport functions.

3. Matters of special interest to Parliament

Other matters of interest to the Joint Committee on Statutory Instruments

3.1 The 1992 regulations, and the subsequent amending instruments, were subject to the negative procedure. The Cities and Local Government Devolution Act 2016 inserted s.143(4B) into the Local Government Finance Act 1988 to make instruments under s.74 of the 1988 Act subject to the affirmative procedure.

Other matters of interest to the House of Commons

3.2 This entire instrument applies only to England.

3.3 (i) This instrument applies only to England because it applies only to the Tees Valley Combined Authority and the West Midlands Combined Authority.

(ii) The instrument does not give rise to minor or consequential effects outside England.

3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.5 The Department has reached this view because it considers the primary purpose of the instrument relates to local government finance which is within the devolved legislative competence of each of the three devolved legislatures: the primary purpose of the subject matter of the instrument is not within Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish

Parliament (see section 29 of that Act); the primary purpose of the subject matter of the instrument is not within Schedules 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act); the primary purpose of the subject matter of the instrument is within paragraph 9 of Schedule 7 to the Government of Wales Act 2006 and is not within one of the exceptions listed therein, nor is it otherwise outside the legislative competence of the National Assembly for Wales (see section 108 of that Act).

4. Legislative Context

4.1 Two new combined authorities were constituted in 2016. These were—

The Tees Valley Combined Authority (The Tees Valley Combined Authority Order 2016 (2016 No.449)); and

The West Midlands Combined Authority (The West Midlands Combined Authority Order 2016 (2016 No. 653)).

4.2 Combined authorities are levying bodies for the purposes of section 74 of the Local Government Finance Act 1988, by virtue of section 74(8) and (10) of that Act. Regulations may be made by the Secretary of State in relation to the expenses of the authority that are reasonably attributable to the exercise of its functions relating to transport.

4.3 In the case of the West Midlands, the Combined Authority superseded an Integrated Transport Authority (ITA) for that area. The West Midlands ITA had been a transport levying body for the purposes of section 74 of the Local Government Finance Act 1988.

4.4 Regulation 5 (3) of these Regulations amends the Principal Regulations by inserting regulation 7C which, for the reasons explained in paragraph 7.6 and 7.7 below, makes special provision for the assessment of levies by the Tees Valley Combined Authority.

5. Extent and Territorial Application

5.1 This entire instrument applies only to England.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 The Secretary of State for Transport has made the following statement regarding Human Rights:

6.2 "In my view the provisions of the Transport Levying Bodies (Amendment) Regulations 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Tees Valley and West Midlands Combined Authorities were established by Order in April and June 2016 respectively. The Orders gave effect to the joint desire of the local authorities in those areas to improve their joint working by establishing a

combined authority with functions relating to economic development, regeneration and transport.

7.2 A combined authority is able to levy for any of its transport functions, and the transport functions of a combined authority are set out in its establishment order, and any subsequent order conferring functions.

7.3 The level of the levy is for the combined authority to determine. The combined authority issues the transport levy to its constituent councils. The agreed levy (if any) will be divided up between the constituent councils in the proportions that the constituent councils agree, and if they cannot agree then the proportions set out in the draft legislation. The constituent councils determine how to fund the levy as part of their budget process. They may use monies from council tax or they may use Government grants or other sources of revenue. The council has to take the levy into account when determining whether any council tax increase is excessive.

7.4 In terms of council tax bills, on the face of the Demand Notice (bill) there are a series of lines listing all the charges set by the principal local authorities and any parishes in the area. Levies are not listed as separate items, but the Council Tax Demand Notice Regulations 2011 require levying bodies to supply the following information to the authority which issued council tax bills:

(a) the body's gross expenditure for—

(i) the year, and

(ii) the year before that year;

(b) the amount of its levy—

(i) for the year, and

(ii) for the year before that year if a levy was issued; and

(c) the body's reasons for any increase or decrease in expenditure and levy.

7.5 This information is used to provide council tax payers with material about levies and levying bodies in the "Information supplied with demand notices". This is the explanatory leaflet which accompanies council tax bills. Further information on these council tax regulations can be found at www.legislation.gov.uk/uksi/2011/3038/pdfs/uksi_20113038_en.pdf

7.6 The constituent authorities of the Tees Valley Combined Authority are the councils for Darlington, Hartlepool, Middlesbrough, Redcar and Cleveland, and Stockton-on-Tees. The Tees Valley Combined Authority was a new body – there was not an Integrated Transport Authority – and it is understood that it may, in the future, use the transport levy for a new project, but the intention is that the transport functions that the Tees Valley Combined Authority are currently delivering will continue to be funded by contributions from the constituent councils, and these contributions may be made up of Government grants, council tax and other sources of revenue. If in the future the Combined Authority did issue a levy, this would not make a significant difference for local authorities except in the event that they collectively decided to make a significant increase in transport provision, and this would be captured under any council tax threshold.

7.7 In the case of the Tees Valley Combined Authority, the calculation and apportionment of any levy is subject to a bespoke arrangement that takes into account the different

levels of transport expenditure across the local authorities. The decision on the levy in the Tees Valley Combined Authority is a unanimous one.

7.8 The constituent councils of the West Midlands Combined Authority are the councils for Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton. In the West Midlands Combined Authority the decision on a levy will require a two thirds majority of the constituent council members of the West Midlands Combined Authority (and a simple majority of all members of the West Midlands Combined Authority who have been given voting rights).

7.9 In the case of the West Midlands, there was no change to the area of the Combined Authority compared with the earlier ITA. This means that the amounts raised by any levy will continue to be apportioned to the constituent authorities by population size.

7.10 The West Midlands levy in 2016/17 amounted to £44.45 per resident. As an example, in Wolverhampton, one of the West Midlands Combined Authority constituent councils, their budget for the West Midlands Integrated Transport Authority levy (the predecessor of the Combined Authority levy) in 2016/17 amounted to £11.25 million, out of a total Wolverhampton council expenditure of £637 million. This would have been met by a combination of government grant and council tax. Levy levels have been going down in the West Midlands.

7.11 The West Midlands Integrated Transport Authority, which held the functions and the levying power prior to its abolition, levied to cover such costs as concessionary fares, providing socially necessary bus services not provided by bus operators, accessible transport (i.e. ring and ride services), the running costs of bus stations, providing local transport information, and financing costs of any borrowing for public transport schemes. Constituent councils are responsible for most local roads in their areas, and rail functions are generally not local authority functions.

Consolidation

7.12 Given that further combined authorities are likely to be created in the near future, there are no plans at this time to consolidate this legislation.

8. Consultation outcome

8.1 As required by statute, prior to the establishment of a combined authority there is a consultation. The Local Democracy, Economic Development and Construction Act 2009, as amended by the Cities and Local Government Devolution Act 2016, requires a consultation, and for the Secretary of State to determine that no further consultation is necessary. The West Midlands constituent authorities held a consultation in January – February 2016 on their scheme to create a combined authority. The Tees Valley constituent authorities held a consultation on their proposals in December 2014 – January 2015, followed by a Government public consultation in December 2015 – January 2016. These consultations showed a majority in support of the establishment of the two combined authorities.

8.2 In respect of the specific measures in this instrument, the levying arrangements are as proposed by the two Combined Authorities. Officers from the Combined Authorities and their constituent councils have had the opportunity to comment on the instrument and have confirmed that they are content with the provisions.

9. Guidance

9.1 There is no guidance associated with this Order.

10. Impact

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

10.2 There is no impact on the public sector other than the transactional costs associated with agreeing the levy which are likely to be minimal, and where necessary incorporated into the current council tax administration.

10.3 The Combined Authorities should lead to operational efficiencies in these areas that could lead to reduced costs, for instance in the reduction of duplication of services by the constituent councils and seeking economies of scale in any joint transport arrangements.

10.4 An Impact Assessment has not been prepared for this instrument because no impact on business or the public sector is foreseen.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The Combined Authorities will be responsible for reviewing the levying arrangements in their areas. Each Combined Authority has established overview and scrutiny arrangements to enable review and challenge of the matters within the remit of the Combined Authority.

13. Contact

13.1 Carl Sutcliffe at the Department for Transport. Telephone: 020 7944 4683 or email: carl.sutcliffe@dft.gsi.gov.uk can answer any queries regarding the instrument.