EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES (CONTRACTING OUT OF COMMUNITY INFRASTRUCTURE LEVY FUNCTIONS) ORDER 2011

2011 No. 2918

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

2.1 This Order permits the contracting out of certain functions of a charging or collecting authority in relation to the setting, charging, collection, enforcement and spending of the Community Infrastructure Levy.

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

3.1 None

4. Legislative Context

4.1 This Order is made under section 70(2) of the Deregulation and Contracting Out Act 1994 (c.40). Under this section a Minister may provide by order for a function of a local authority to be exercised by such person(s) as may be authorised by the local authority. This Order will allow the contracting out of functions under Part 11 of the Planning Act 2008 (c.29), which relate to the setting, charging, collection, enforcement and spending of the Community Infrastructure Levy. However, an authority may not contract out key functions concerning proposing, implementing and withdrawing a charge for their area.

4.2 The Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (S.I. 2010/948) establish a voluntary mechanism which enables authorities to make a mandatory charge on new development and to use the funds received to provide infrastructure to support the development of their area. The Act and regulations provide for local authorities to set, charge, collect, enforce and spend this levy. A local planning authority is the charging authority for its area, except for the Broads Authority, which is the only charging authority for the Broads, and the Council of the Isles of Scilly, which is the only charging authority for the Isles of Scilly. In Greater London, the Mayor of London is also a charging authority, but his powers are confined to raising funds to deliver roads or other transport facilities.

The London borough councils are the collecting authorities in respect of charges set by the Mayor.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 Bob Neill has made the following statement regarding Human Rights:

"In my view the provisions of the Local Authorities (Contracting Out of Community Infrastructure Levy Functions) Order 2011 are compatible with the Convention rights.".

7. Policy background

7.1 Allowing levy authorities to contract out functions will enable a competitive bidding process between suppliers; with the attendant potential to drive costs of services down and standards up. The objective is to support authorities and the Mayor to meet their duty to provide best value to the public. Levy authorities will be able to choose which, if any, of these functions they deem it appropriate to contract out.

7.2 The Order allows authorities who collect and/or charge a Community Infrastructure Levy to contract out (or 'outsource') most of their functions relating to the levy. This includes matters relating to the setting, charging, collection, enforcement and spending of the Community Infrastructure Levy.

7.3 Ultimately it is the authority and not the contractor that is responsible for ensuring that their functions under the Act and regulations are carried out; the Order simply allows them to contract another party to carry out some function or most of those functions. Where an authority does contract another party to carry out a function that party acts as the agent of the authority in doing that work. Article 4 makes this fact clear by providing that where a party enters into an agreement with any person, in carrying out a function that the authority has contracted it to do, that agreement must be entered into in the name of the authority not the contractor. That is, the agreement is between the authority and the person.

7.4 Article three of the Order makes clear that not all functions under the Act and regulations may be contracted out. Authorities and the Mayor are prevented by the Planning Act 2008 from contracting out any function where a meeting of the authority is required for approval or, in the case of the Mayor of London, the Mayor is required to personally approve something. There are three occasions where this

level of approval is required; the approval of the declaration to be submitted with the charging schedule for examination, the approval of the charging schedule following a successful examination and determining that a charging schedule is to cease to have effect. The charging schedule is the document that establishes a charge within the relevant local authority's area and these three functions are concerned with proposing, implementing and withdrawing a charge for an area. Article 3 of the Order provides that these functions cannot be exercised by a contractor, together with the function (at regulations 100 and 101 of S.I. 948/2010) of applying to a magistrates' court for a warrant to commit a debtor to prison.

8. Consultation outcome

8.1 Section 70(3) of the Deregulation and Contracting Out Act 1994 requires the Minister to consult appropriate local government representatives before making an Order. Local government representatives were consulted in accordance with the current agreement between the Government and the Local Government Association. Consultation letters were sent to 16 organisations on 18 and 19 January 2011 and the consultation was undertaken over a 6 week period. A wider public consultation was not undertaken as it was considered that, as the order was concerned with the contracting out of certain local authority functions, it was a matter for consultation only with local government.

8.2 Three responses were received from the consultation, although one was received after the consultation ended. All of the responses supported the preferred approach, of making an Order to allow authorities to determine which of the functions they wish to contract out, from all the functions that can be outsourced under the Planning Act 2008.

8.3 Only one issue was raised. A respondent requested that the Mayor should be required to consult with all the London borough councils before deciding to contract out any of the functions for which he is responsible. However, we are not convinced that this would be appropriate or proportionate. London borough councils do have a clear interest in any charge that the Mayor proposes and the Community Infrastructure Levy Regulations 2010 require the Mayor to consult them in setting a charge.

9. Guidance

9.1 No guidance will be issued in relation to this instrument. As the Order affects authorities who are charging a levy, the Department for Communities and Local Government will notify all such authorities of the existence of the Order.

10. Impact

10.1 A full Impact Assessment has not been prepared for this instrument as no impact on business, charities or voluntary bodies is foreseen.

10.2 The impact on the public sector is that local authorities will be given greater freedom and choice in how they carry out their levy functions. This is a deregulatory step for local authorities who charge a levy, with no associated new burden.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Community Infrastructure Levy will be reviewed in 2015; five years after the regulations enabling it came into force. The Order will be reviewed at the same time to assess whether the Order provides local authorities with sufficient freedoms to ensure local choice and the delivery of best value.

13. Contact

13.1 Steve Woolley at the Department of Communities and Local Government Tel: 030 3444 4317 or email: steve.woolley@communities.gsi.gov.uk can answer any queries regarding the instrument.