EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES (CONTRACTING OUT OF TAX BILLING, COLLECTION AND ENFORCEMENT FUNCTIONS) (AMENDMENT) (WALES) ORDER 2013

2013 No. 695

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) to add additional functions relating to the administration and enforcement of council tax which may be contracted out by a billing authority in Wales.

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 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 in that behalf by 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 Local Authorities (Contracting Out of Tax Billing, Collection and Enforcement Functions) Order 1996 ("the Contracting Out Order", made under section 70 of the Deregulation and Contracting Out Act 1994, makes provision which enables a billing authority in relation to the 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 the council tax, community charges and non-domestic rates. 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.

4.4 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.

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

4.6 The Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012 (S.I. 2012/3144 (W.316)) place 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 must be made on or before 31st January 2013 to take effect for the financial year commencing 1st April 2013. If a billing authority fails 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 (S.I. 2012/3145 (W.317)) has effect. That contains similar procedural provisions as the Prescribed Requirements Regulations. The Regulations are modelled on existing council tax benefit regulations.

4.7 The Council Tax (Administration and Enforcement) Regulations 1992 (S.I. 1992/613) 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. The changes enable these reductions to be billed for and enforced.

4.8 New 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.

4.9 The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013 (S.I. 2013/588 (W.67) have been made under this power.

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 2013 are compatible with the Convention rights.

7. Policy background

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

7.2 From April 2013 council tax benefit will be abolished by the Welfare Reform Act 2012 and council tax reduction schemes will be introduced in Wales under provisions in the Local Government Finance Act 2012 and regulations made thereunder. In future, support for council tax will be offered as reductions within the council tax system. The Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012 and the Council Tax Reduction Schemes (Default Scheme)(Wales) Regulations 2012 make provision about the content of council tax reduction schemes in Wales.

7.3 Currently, billing authorities in Wales can contract out the administration of the collection of council tax under the Contracting Out Order and can 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. While some of the functions related to

council tax reduction schemes are already covered by the Contracting Out Order, some are not. This Order therefore amends the Contracting Out Order for Wales to add those functions. The new administrative functions in these regulations are; (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

- Consolidation

7.4 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 through the Welsh Local Government Association for views and comments on the proposals. In responding to the consultation, the Welsh Local Government Association confirmed that in their view the Order, as amended, makes provision for those functions relating to the administration of local council tax reduction schemes, 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 contract out new administrative functions, prescribed by the introduction of local council tax support schemes, that 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.