EXPLANATORY MEMORANDUM TO

THE LOCALISM ACT 2011 (LOCAL AUTHORITY GOVERNANCE TRANSITIONAL PROVISIONS) (ENGLAND) ORDER 2012

2012 No. 1023

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

The Localism Act 2011 (Local Authority Governance Transitional Provisions) (England) Order 2012 ("the Order") makes transitional provision for those local authorities in England currently operating alternative arrangements or the leader and cabinet executive (England) forms of governance. This is necessary because the Localism Act 2011 ("the 2011 Act") removed alternative arrangements as a possible form of governance for local authorities and also made changes to elections and terms of office of executive leaders. The Order provides that local authorities operating alternative arrangements are, from 4 May 2012, to be treated as operating the committee system instead. The Order also makes transitional provision to the effect that the old provisions relating to executive leader's terms of office and elections are preserved until such time as the local authority makes their own provision in their executive arrangements.

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

None.

4. Legislative Context

4.1 Sections 21 and 22 of, and Schedules 2 and 3 to, the 2011 Act inserted a new Part 1A (Arrangements with respect to local authority governance in England) into the Local Government Act 2000 ("the 2000 Act"), to apply to England only, and limited existing Part 2 of the 2000 Act to Wales. Under Part 1A of the 2000 Act it is no longer possible for particular district councils to operate alternative arrangements. Instead, all local authorities in England must operate either executive arrangements or the committee system (section 9B of the 2000 Act).

4.2 Section 23 of the 2011 Act provides for the Secretary of State, by order, to make such transitional, transitory or saving provisions as the Secretary of State considers appropriate with the coming into force of sections 21 and 22 to, and Schedules 2 and 3 of, the 2011 Act. In particular, an order may include provision relating to a local authority ceasing to operate

alternative arrangements, under Part 2 of the 2000 Act, and starting to operate a committee system under Part 1A of that Act.

4.3 At the time specified in the Order, local authorities currently operating alternative arrangements are to cease operating those arrangements and instead start to operate a committee system.

4.4 Additionally, Part 2 of the 2000 Act made specific provision about the elections and terms of office of executive leaders, whereas Part 1A of the 2000 Act allows a local authority to decide what provision should apply and include it in their executive arrangements. The Order provides that the old provisions are to apply until such time as the authority makes provision in their executive arrangements.

5. Territorial Extent and Application

This instrument applies to local authorities in England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 The Government believes that local authorities and the communities they represent are best placed to reach decisions on how their local authority should operate and be governed.

7.2 The 2011 Act, which received Royal Assent on 15 November 2011, implemented the Government's policy on giving local authorities greater flexibilities and freedoms in relation to their governance arrangements, including allowing local authorities in England to adopt the committee system model of governance and removing the previous prescription in relation to the election and terms of office of leaders under the leader and cabinet executive (England) governance model.

7.3 The 2011 Act extends the options available to local authorities, including by adding the committee system to the existing executive models set out in the 2000 Act. As a result, local authorities now have the freedom to choose and operate one of the following governance models:

a) the mayor and cabinet executive;
b) the leader and cabinet executive (England);
c) the committee system; or
d) prescribed arrangements (i.e. prescribed in regulations by the Secretary of State).

7.4 Given the similarities between the previous alternative arrangements (a model of governance which, under Part 2 of the 2000 Act, shire district councils in England with a resident population on 30 June 1999 of less than 85,000 were allowed to adopt) and the committee system of governance, the 2011 Act abolishes alternative arrangements.

7.5 The Order makes transitional provision so that from 4 May 2012 all local authorities which currently operate alternative arrangements will, without any changes to the arrangements actually in place, automatically start to operate the committee system. Hence, from 4 May, it will be open to those local authorities to continue to operate in the same way as they currently do, with the same number of committees etc., including having an overview and scrutiny committee. Equally, those local authorities may decide to take advantage of the greater freedoms and flexibilities afforded by the committee system, including deciding not to have an overview and scrutiny committee. Moreover, any of the local authorities could, if they so wished, resolve to move to one of the available executive governance models – either the leader and cabinet executive (England) or the mayor and cabinet executive, or resolve to hold a referendum on whether to make such a move.

7.6 The 2011 Act also removes from the 2000 Act the previous prescriptions in relation to the election and term of office of the leader in those local authorities which operate the leader and cabinet executive (England). Instead, new Part 1A of the 2000 Act, as inserted by the 2011 Act, provides that decisions on the arrangements for the election of the leader and the removal of the leader are for each local authority to make, who must then make provision in respect of these matters in their executive arrangements.

7.7 The Order makes transitional provision to ensure that arrangements remain in place for the election and removal of the leader during the transitional period between the coming into force of the new provisions in Part 1A and the local authorities concerned resolving to make provision in relation to these matters in their executive arrangements, as required by sections 9I and 9IA of the 2000 Act.

- ***Consolidation***

7.8 This is the first exercise of the enabling power.

8. Consultation outcome

Given the nature of the provisions in the Order, the Department has not undertaken any consultation on the Order. Officials at the Department wrote on 9 March to the chief executives of local authorities in England setting out the Department's intended approach.

9. Guidance

This Order is considered to be self explanatory and there is no intention to produce separate guidance.

10. Impact

An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The Order makes one-off provision in relation to the transition between local authorities operating under Part 2 of the 2000 Act and Part 1A of the 2000 Act. It is not intended therefore to put in place any formal mechanism for monitoring and reviewing the Order.

13. Contact

Tayo Peters at the Department for Communities and Local Government can answer any queries regarding the instrument (Tel: 0303 444 2551 or Email: tayo.peters@communities.gsi.gov.uk).