EXPLANATORY DOCUMENT TO
THE PUBLIC BODIES (ABOLITION OF PUBLIC WORKS LOAN COMMISSIONERS) ORDER 2019
2019 No. [XXXX]

1. Introduction
1.1 This explanatory document has been prepared by HM Treasury and is laid before Parliament under section 11(1) of the Public Bodies Act 2011.
1.2 This document contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument
2.1 The purposes of the Order are: to abolish the Public Works Loan Commissioners (the “Commissioners”), to transfer their functions to HM Treasury, to transfer all interests in land which they hold to the Public Works Loan Secretary (a new statutory office) to hold on behalf of HM Treasury, and to transfer all other rights, liabilities and property to HM Treasury.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments
3.1 The Committee will note article 7 of this Order, which repeals the entry in Schedule 1 to the Public Bodies Act 2011 (the “Act”) for the Commissioners. This is permitted by section 6(5) of the Act, and that section is cited as one of the enabling powers in the Order. Article 7 is not a consequential amendment. Consequential amendments are made under article 8 have a separate enabling power, namely section 6(1) of the Act.

4. Extent and Territorial Application
4.1 The territorial extent of this Order is England, Scotland, Wales and Northern Ireland.
4.2 The territorial application of this Order is England, Scotland, Wales and Northern Ireland.

5. European Convention on Human Rights
5.1 The Economic Secretary to HM Treasury has made the following statement regarding Human Rights:

“In my view the provisions of the Public Bodies (Abolition of Public Works Loan Commissioners) Order 2019 are compatible with the Convention rights.”

6. Legislative Context
6.1 The Public Works Loan Act 1875 (the “1875 Act”) consolidated the historical operations of the Commissioners and together with the National Loans Act 1968 (the “1968 Act”) provides the main legislative background to the current activities of the Commissioners.
6.2 The 1875 Act set out: the powers of the Commissioners to make loans, how they should be constituted, their ability to hire and remunerate staff, the ability of their secretary to have property vested in their person and for the secretary to execute documents on behalf of the Commissioners, the requirement on the Commissioners to assure themselves of adequate security when making loans, particulars relating to the taking this security and the power to make further regulations in respect of loans made under the Act and the procedures of the Commissioners.

6.3 The 1875 Act also permitted the Commissioners to hold an account at the Bank of England and required it to prepare an annual report of loans made to be delivered to HM Treasury, who in turn are required to place this before parliament.

6.4 The 1968 Act re-organised the accounting operations for virtually the whole of the government’s lending operations. It required the Commissioners to draw its loans from the National Loans Fund. It empowered the Commissioners to make advances and to undertake to grant loans up to a specified aggregate limit, which could be increased by Treasury Order (the limit is currently £95 billion). HM Treasury’s power to fix interest rates for loans made by the Commissioners was re-enacted in terms corresponding with those prescribed for other loans issued out of the National Loans Fund. Certain obsolete and duplicated powers of the Commissioners were consolidated in Schedule 4 of the Act.

6.5 Section 3 of the 1968 Act defined the loans made under the 1875 Act as “local loans” to distinguish them from other loans made under from the National Loans Fund. A further reporting requirement was placed on the Commissioners to prepare annual accounts for the “Comptroller and Auditor General” (in effect, the National Audit Office) who is required to scrutinise the accounts and report to Parliament.

6.6 Since the coming into force of the 1968 Act, further pieces of legislation have been passed which concern the Commissioners and their activities. Notable amongst these are the Local Loans (Procedure) Regulations 1968 which set out in detail the requirements (including quorum) by which the Commissioners make decisions and the House of Commons Disqualification Act 1975, which prevents Commissioners from becoming members of the House of Commons.

6.7 Section 54 of the Infrastructure Act 2015 added the Commissioners to the list of public bodies in Schedule 1 to the Public Bodies Act 2011, which can be abolished.

6.8 The Order uses the powers in: section 1(1) of the Act to abolish the Commissioners, sections 1(2) to transfer their functions to HM Treasury, sections 6(1) and 35(2) to make consequential changes to primary and secondary legislation, section 6(2)(a) to modify the functions of HM Treasury and the Public Works Loans Secretary, section 6(5) to remove the reference to the Commissioners in Schedule 1 of the Act, and sections 23(1)(a), (b) and (6) to make a transfer scheme for the transfer of property, rights and liabilities from the Commissioners to the new statutory office of the Public Works Loans Secretary (in respect of land) and HM Treasury (in respect of all other property).

7. Policy background

What is being done and why?

7.1 The Commissioners originated in 1793 and became established on a permanent basis in 1817. They are responsible for issuing central government loans to local authorities
and other authorised borrowers, from the National Loans Fund. Since 1946, the Commissioners have consisted of up to twelve independent Commissioners who are unpaid by law and appointed by the Crown.

7.2 The Commissioners were originally responsible for approving loan applications, including assessing the appropriateness of any security, and collecting the repayments. Currently, their functions are delegated to the Commissioners’ Secretary, who is a civil servant in the UK Debt Management Office (DMO), an executive agency of HM Treasury. The Commissioners policy is set by HM Treasury, but the day-to-day lending functions are carried out by the DMO (and have been since July 2002). The DMO also manage the National Loans Fund, which finances loans from the Commissioners.

7.3 Since 2004, local authorities have been responsible for making their own borrowing decisions without government consent, under the prudential regime. Any borrowing is automatically secured against the authorities’ revenues.

7.4 The Commissioners are the main source of debt financing for local authorities. In 2018-19, net lending by the Commissioners to local authorities was £7.4bn.

_The Order_

7.5 The Order transfers the functions and powers from the Commissioners to HM Treasury and abolishes the Commissioners.

7.6 The concept of “local loans” in the 1968 Act will be retained, albeit clarified so that only loans of the type listed in Schedule 4 to that Act may be made and the power to make them is transferred to HM Treasury.

7.7 The 1875 Act will be amended so that the powers in that Act may only be exercised in relation to local loans.

7.8 In order to ensure continuity and so that any security taken by the Commissioners subsists, a transfer scheme is made under the Order to transfer the rights, obligations and liabilities from the Commissioners to the office of the Public Works Loans Secretary (in respect of interests in land) and HM Treasury (in respect of any other property).

7.9 The office of the Public Works Loans Secretary is created by way of the functions of the previous secretary of the Commissioners continuing under a new office, provided for under an amended section 6 of the 1875 Act.

7.10 The person who was appointed as the secretary of the Commissioners, immediately before the transfer date, will continue as the newly appointed Public Works Loans Secretary, and subsequent appointments will be made by, and on the terms of, HM Treasury.

7.11 The Public Works Loans Secretary will retain the powers of the previous secretary of the Commissioners and will hold land on behalf of HM Treasury.

7.12 The identity of the assistants to the previous secretary of the Commissioners will be changed to those appointed by Treasury, so that the role of the Public Works Loans Secretary can be fulfilled in cases of absence. In practice this will entail HM Treasury appointing a list of responsible persons who can act on behalf of the Public Works Loans Secretary in these circumstances.
7.13 Where any documents, enactments or instruments, not specifically amended by the Order, refer to the Commissioners or the Public Works Loans Board, these references will be amended by an appropriate reference to either the Public Works Loans Secretary or HM Treasury.

7.14 HM Treasury will be required to present a report annually (with accounts annexed) to Parliament in respect of local loans and to provide a copy to the Comptroller and Auditor General, so that it may present a further audited report to Parliament.

7.15 Acts relating to housing and local government (including three that affect Scotland) are amended so that they refer in future to local loans made by HM Treasury, as opposed to loans made by the Commissioners under the 1875 Act.

8. Compliance with section 8(1) of the Public Bodies Act 2011

8.1 In line with the requirements of the Act, a Minister may only make an Order under section 1 of the Act, abolishing a body, if the Minister considers that the Order serves the purpose of improving the exercise of public functions. In considering this, the Minister must have regard to efficiency, effectiveness, economy, and securing appropriate accountability to Ministers.

8.2 This has been considered. The key to this decision is that the Commissioners now exercise no decision-making powers and are, by law, unremunerated. Their recruitment is usually difficult and from a relatively small field as the vacancies tend to attract few applicants. This risks a poor and incomplete board. Although the Commissioners currently exercise no decision-making power, they are legally able to block or approve individual loans and this is a potential risk to the local government finance system.

8.3 In particular to note are that:

- **Efficiencies** to be realised by formalising the existing arrangements between HM Treasury and the DMO, and ensuring the governance reflects those arrangements. The requirement to hold an annual meeting with, and appoint, Commissioners would be removed.

- **Effectiveness** will be improved as Ministers will be able more directly to influence delivery, including addressing any issues that occur, and the implementation of policies.

- **Economies** – small economies will be achieved by removing the requirement to appoint Commissioners. Vacancies typically attract only a small field of candidates and appointing 12 Commissioners involves a drawn-out process with approval required from HM Treasury’s Permanent Secretary, the Cabinet Secretary, the Prime Minister and the Chancellor before appointments are made by Royal Warrant.

- **Accountability** as Ministers will be directly accountable to Parliament. There will no longer be a separation between Ministers and the operations of the Commissioners in providing loans to local authorities.

9. Compliance with section 8(2) of the Public Bodies Act 2011

9.1 The Order will transfer the functions of the Commissioners to HM Treasury. This change will not by itself alter the financing arrangements for local authorities, or how much they are able to borrow, and will formalise the existing arrangements between HM Treasury and the DMO.
9.2 In accordance with section 8(2) of the Act, it can be confirmed that the Economic Secretary to the Treasury’s view is that these changes will not alter or remove any necessary protection, nor do they prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise. The abolition of the Commissioners will remove the requirement to have Commissioners and place responsibility for local loans with HM Treasury. HM Treasury will continue to provide reports and accounts to Parliament and Treasury Ministers will be directly responsible for accounting for any local loans made.

10. Consultation outcome

10.1 In 2015 the government announced plans to abolish the Commissioners and transfer its lending functions to another body using powers set out in the Public Bodies Act 2011.

10.2 Following this announcement, a public consultation ran from 12 May 2016 to 3 August 2016 proposing the abolition of the Commissioners and the transfer of its functions to another body with a suggestion that the body to whom the functions are transferred should be the Commissioners of HM Treasury. The consultation was available on HM Treasury’s gov.uk website.

10.3 HM Treasury received 35 responses to the consultation, of which three were received after the deadline but were included in the response document. Thirty responses were from local authorities, parish councils and local authority associations; two responses were from private sector bodies; two from members of the public; and one from a Commissioner.

10.4 Most responses to the consultation accepted the case for abolishing the Commissioners. Two responses felt there is a role for independent oversight of loans requested by major local authorities. However, the Commissioners no longer carry out this function and have not done so for many years. Under the prudential regime, decisions on borrowing are devolved to local authorities.

10.5 22 out of 26 respondents agreed that the Commissioners’ functions should be transferred to HM Treasury, though one authority did comment they also see advantages in transferring responsibility to the Department for Communities and Local Government (now Ministry of Housing, Communities and Local Government) as the lead department for local government finance. Of the four respondents who did not agree, only one provided a reason, stating they would prefer to have representatives from the public, civil society, academia, and various regulators such as the Prudential Regulation Authority (PRA), Financial Conduct Authority (FCA) and Bank of England overseeing loans as well as HM Treasury.

10.6 Most responses agreed that the proposals would not give rise to any devolution issues. The two respondents who disagreed to the question disagreed on wider policy issues on devolution, so were outside the scope of the consultation.

10.7 The final question in the consultation asked if the respondents agreed that the change would have a negligible impact on borrowing. Of the 20 responses received, 18 agreed that the proposed changes will have a negligible impact on borrowers. The remaining two disagreed; one indicated that it depends on how HM Treasury implements the changes, while the other stated that there would be a significant impact but did not specify how or why. The government has made clear that the proposed governance changes will not affect existing local loans, the government’s
policy on lending to local authorities, or the process by which the loan applications or repayments are handled. As set out in the consultation, interest rate policy will remain the responsibility of HM Treasury.

10.8 The full consultation response document was published in November 2016 and is publicly available on gov.uk:

11. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

11.1 This Order does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

12. Consolidation

12.1 There are no current plans for consolidation of the statutory instruments amended by this Order.

13. Guidance

13.1 It is the department’s view that additional guidance on this Order is not required. The change will not affect the delivery of services.

14. Impact

14.1 This Order abolishes the Commissioners and effectively transfers their functions to HM Treasury. The proposed governance changes will not by themselves affect existing Commissioners’ loans, the government’s policy on lending to local authorities, or the process by which the loan applications or repayments are handled.

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

14.3 There is no, or no significant, impact on the public sector.

14.4 A full Impact Assessment has not been prepared for this Order as the SI proposes changes purely for governance purposes and these will not affect lending to local bodies.

15. Regulating small business

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

16. Monitoring & review

16.1 The department will review the impact of this SI in the year following it coming into force and will keep the operations of the of the former Commissioners under review following its abolition.

17. Contact

17.1 Oscar Williamson, Senior Policy Advisor at HM Treasury, Telephone: 020 7270 1878 or email: oscar.williamson@hmtreasury.gov.uk, can be contacted with any queries regarding the Order.

17.2 Sophia Oliver at HM Treasury can confirm that this Explanatory Document meets the required standard.
17.3 The Economic Secretary to HM Treasury can confirm that this Explanatory Document meets the required standard.