

EXPLANATORY MEMORANDUM TO

THE TRANSPORT LEVYING BODIES (AMENDMENT) REGULATIONS 2018

2018 No. 641

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 The Cambridgeshire and Peterborough Combined Authority (“the Combined Authority”) was constituted in 2017 and, amongst its functions, has a number relating to transport. This instrument further amends the Transport Levying Bodies Regulations 1992 (“the 1992 Regulations”) to enable the issuing of a levy by the Combined Authority in order to meet the costs of carrying out its transport functions. This transport levy will be funded by Cambridgeshire County Council and Peterborough City Council (“the upper-tier authorities”).

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 originally 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 Combined Authority, encompassing the administrative areas of Cambridgeshire County Council, the City Councils for Cambridge and Peterborough and the District Councils for East Cambridgeshire, Fenland, Huntingdonshire and South Cambridgeshire (“the constituent councils”).

(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, 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 The Cambridgeshire and Peterborough Combined Authority was constituted by the Cambridgeshire and Peterborough Combined Authority Order 2017 (2017 No. 251) (“the 2017 Order”).
- 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 However, as the Combined Authority was not previously a levying body and the levy was not specified in its Establishment Order, the new authority needs to be added to the list of Transport Levying Bodies for the purposes of the 1992 Regulations.
- 4.4 Regulation 5 of these Regulations amends the 1992 Regulations by inserting regulation 7D, which adds reference to the Combined Authority and specifies the levy for the two upper-tier authorities (Cambridgeshire County Council and Peterborough City Council).
- 4.5 Cambridgeshire operates a two-tier system of local government, so despite the district councils being included within the definition of constituent councils (in article 2 of the 2017 Order), they do not have transport functions and so the levy will fall solely on the upper-tier authorities. For this reason, the inserted regulation 7D(5), despite referring to article 6(1) of the 2017 Order (which applies to all constituent councils), is limited to the upper-tier authorities as only they will be subject to transport levies.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 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:

“In my view the provisions of the Transport Levying Bodies (Amendment) Regulations 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 The Cambridgeshire and Peterborough Combined Authority was established by the 2017 Order in March of that year. The 2017 Order gave effect to the joint desire of the constituent councils to improve their joint working by establishing a Combined Authority with functions relating to economic development, regeneration and transport.
- 7.2 This instrument allows the Combined Authority to levy for any of its transport functions, as set out in Part 3 of the 2017 Order. The level of the levy is for the Combined Authority to determine and issue to the upper-tier authorities. As only the upper-tier authorities have transport functions, the levy will fall on these authorities instead of the Districts Councils for East Cambridgeshire, Fenland, Huntingdonshire and South Cambridgeshire.
- 7.3 Any transport levy will be apportioned as agreed with upper-tier authorities. If this is not possible, the Combined Authority will be able to apportion a levy based on the estimated relevant expenditure for the financial year in question, based on the same proportion as the amount spent by the authorities on transport functions in the financial year ending on 31st March 2018.
- 7.4 Should the Combined Authority incorrectly estimate its expenditure for the year it is required to adjust its estimate (and therefore levies) for the following financial year accordingly, to ensure that, as far as possible, levels reflect its actual expenditure.
- 7.5 The upper-tier authorities 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.
- 7.6 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.
- 7.7 This information is used to provide council tax payers with material about levies and levying bodies in the "Information supplied with demand notices", 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

Consolidation

- 7.8 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 section 110 of the Local Democracy, Economic Development and Construction Act 2009 (as amended by the Cities and Local Government Devolution Act 2016), prior to the establishment of a Combined Authority there must be a consultation.
- 8.2 The Cambridgeshire and Peterborough constituent authorities held a 6 week consultation on their proposal to create a combined authority between 8th July and 23rd August 2016. The consultation was undertaken via an Ipsos MORI telephone poll attracting 2280 responses and an online survey, which received over 1500 responses. There was also engagement with parish councils and direct face-to-face sector and business engagement.
- 8.3 A mayoral Cambridgeshire and Peterborough Combined Authority was supported by 61% of MORI respondents, with 23% opposed. 59% of online respondents opposed the creation of an elected mayor (in contrast with the majority support shown by the MORI survey). According to the analysis by Cambridgeshire County and Peterborough City councils, the numbers in the online survey 'aren't representative of the population as a whole' as 'the results represent a 'self-selecting' sample', the somewhat more negative responses to the Mayoral Combined Authority model from the online survey were considered to be outweighed by the more positive responses to the Mayoral Combined Authority model by the Ipsos MORI telephone poll.
- 8.4 Responses by the 8 parish councils who formally responded to the consultation were mixed but the business community and University of Cambridge were supportive. A majority of both Ipsos MORI and online respondents were supportive of the transport proposals, with 68% and 62% respectively supporting mayoral combined authority decision-making on 'how to spend funding on infrastructure projects, such as road and rail improvements'.
- 8.5 The constituent councils having held the above consultation, the Secretary of State determined that no further consultation was necessary.
- 8.6 In respect of the specific measures in this instrument, the levying arrangements are as proposed by the Combined Authority. Officers from the Combined Authority and its 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 these Regulations.

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 Authority should lead to operational efficiencies in a number of 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 businesses

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

12. Monitoring & review

12.1 The Combined Authority will be responsible for reviewing the levying arrangements in its area. It has established overview and scrutiny arrangements to enable review and challenge of the matters within its remit.

13. Contact

13.1 Charles Small at the Department for Transport. Telephone: 020 7944 2622 or email: charles.small@dft.gsi.gov.uk can answer any queries regarding the instrument.