


Agenda Item No:	11	
Committee:	Cabinet	
Date:	17 May 2018	
Report Title:	<b>Cambridgeshire and Peterborough Combined Authority Business Rates Supplements Order</b>	

## 1 Purpose / Summary

This report provides the background to the request from the Ministry of Housing, Communities and Local Government (MHCLG) for consent to the making of an Order to confer the power to levy a Business Rate Supplement on the Mayor of Cambridgeshire and Peterborough Combined Authority in accordance with Sections 105B(1) and 107D(9) of the Local Democracy, Economic Development and Construction Act 2009.

## 2 Key Issues

- All Constituent Councils have been contacted by the Cambridgeshire and Peterborough Combined Authority (CPCA) in regards to agreeing the draft Cambridgeshire and Peterborough Combined Authority Supplement Order to be laid before parliament.
- If agreed this would provide the Mayor with the powers to levy an additional business rate on businesses with a rateable value above £50,000 to raise money for a project or projects that will promote economic development in the area.
- If all Constituent Councils agree to this proposal, this does not compel the Mayor to utilise the power, it provides a legal basis for a levy to be charged should the Mayor wish to do so. If the Mayor decides to exercise this power, the levy would only apply to businesses over a rateable value of £50,000 and there is a clear process, set out at 2.3 which must be followed before any additional business rate is levied.
- All Members have been engaged on this matter through an all Member Briefing Note that was circulated on 4th May 2018. This briefing note can be found at Appendix B.

## 3 Recommendations

- Approve the transfer of functions from central government to the Cambridgeshire and Peterborough Combined Authority ("CPCA") conferred by the Business Rates Supplement Act 2009.
- Give consent on behalf of Fenland District Council to the making of an Order giving effect to this transfer.
- Give delegated authority to the Chief Executive in consultation with the Leader of the Council and Section 151 Officer to approve the final draft Order to meet the timetable for transfer of the powers.
- Note that only the draft Order (Appendix A) can be approved, as the Order cannot be deemed finalised until it has been presented to and approved by Parliament.

<b>Wards Affected</b>	All
<b>Forward Plan Reference</b>	
<b>Portfolio Holder(s)</b>	Councillor Chris Seaton, Leader of the Council Councillor Mrs Anne Hay, Portfolio Holder for Finance
<b>Report Originator(s)</b>	Paul Medd, Chief Executive Brendan Arnold, Corporate Director Carol Pilson Corporate Director
<b>Contact Officer(s)</b>	Paul Medd, Chief Executive Brendan Arnold, Corporate Director Carol Pilson Corporate Director
<b>Background Paper(s)</b>	Business Rates Supplement Act 2009. Link to Website: <a href="https://www.legislation.gov.uk/ukpga/2009/7/pdfs/ukpga_20090007_en.pdf">https://www.legislation.gov.uk/ukpga/2009/7/pdfs/ukpga_20090007_en.pdf</a>  Draft Cambridgeshire and Peterborough (Business Rates Supplements Functions) Order 2018: (Appendix A) All Member Briefing Note (Appendix B)

#### **4 Background / introduction**

- 4.1 The raising of funds through business rates was referred to in the original CPCA Devolution Deal as follows: "Following the implementation of the necessary primary legislation, the Mayor will be given the power to place a supplement on business rates to fund infrastructure, with the agreement of the local business community."
- 4.2 The Local Government Finance Bill 2017 would have enabled the Mayor of Cambridgeshire and Peterborough Combined Authority to ask for an additional payment of up to 2p in the pound from local businesses. This would have allowed the Mayor to raise funds for infrastructure projects to promote economic development.
- 4.3 However, the Local Government Finance Bill 2017 was "lost" due to the interruption of business caused by the 2017 general election.
- 4.4 The Ministry of Housing, Communities and Local Government (MHCLG) has now produced the attached draft Statutory Instrument and is expected to write to relevant parties on 4 May to ask for the consents of the Mayor, the Combined Authority, and the constituent councils, to the making of an Order to confer the power to levy a Business Rate Supplement on the Mayor of the Combined Authority.

#### **5 The Making of the Statutory Instrument**

- 5.1 Sections 105B(1) and 107D(9) of the Local Democracy, Economic Development and Construction Act 2009 require that a mayor, combined authority, and each of its constituent authorities, give consent to any conferral of powers on the combined authority under that Act.

5.2 The Cambridgeshire and Peterborough Combined Authority (Business Rate Supplements Functions) Order 2018 will give effect to commitments in the area's devolution agreement by giving the Mayor the same powers as the Mayor of Greater London has to levy a supplement on business rates to raise money for a project that will promote economic development in the area.

5.3 These powers are provided in the Business Rates Supplements Act 2009 (see link provided under the source documents section).

Key features of the Business Rates Supplements Act 2009 are:

- Money raised from the supplement cannot be put towards the authority's day-to-day costs for services it has existing obligations to provide.
- Before levying any supplement, the mayor would be required to consult on and publish a prospectus setting out the benefits of the proposed project that the supplement would fund.
- The proposed supplement is then subject to a ballot of businesses that would be affected. Both a majority of affected individual rate-payers must approve it and the aggregate rateable value of those businesses in favour must exceed those against.
- The Business Rate Supplement may only be levied on business properties with a rateable value of £50,000 or more. The mayor may increase, but cannot reduce, this threshold, and can apply any other reliefs as may be set out in the prospectus.

5.4 The process for the making of the Order is as follows:

- MHCLG instructs its lawyers to prepare a draft Order
- The draft Order is given to the lawyers of the Joint Committee on Statutory Instruments (JCSI) to review.
- Once both sets of lawyers have agreed the draft, MHCLG will write to the Combined Authority, the Mayor and the Constituent Councils for consent to the Order. This is likely to be the day after the local elections (i.e. Friday 4th May 2018)
- Once consent from all parties has been confirmed, the draft will be laid in parliament. This gives the Order full status as a final 'Draft' order and will appear as a 'Draft' on the legislation website. The provisional date for the laying of the Order is Monday 4th June 2018.
- The Draft Order will then be considered by the Joint Committee on Statutory Instruments (likely to be Wednesday 6th June 2018 or Wednesday 11th June).
- If the JCSI agree to the Statutory Instrument, it will then be laid before each House of Parliament for approval.
- Once approved by each House, the Order will be signed by the Minister and is likely to come into force in the following week.

## **6 Legal Implications**

6.1 The Draft Order will be laid before Parliament under section 117(2) of the Local Democracy, Economic Development and Construction Act 2009, for approval by resolution of each House of Parliament.

*Draft Order laid before Parliament under section 117(2) of the Local Democracy, Economic Development and Construction Act 2009, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2018 No.**

**LOCAL GOVERNMENT, ENGLAND**

**The Cambridgeshire and Peterborough Combined Authority  
(Business Rate Supplements Functions) Order 2018**

*Made* - - - - *\*\*\**

*Coming into force in accordance with article 1*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 105A, 107D(1), (5) and (7)(a) to (e) and 117(5) of the Local Democracy, Economic Development and Construction Act 2009(a) (“the 2009 Act”).

In accordance with sections 105B(1) and 107D(9) of the 2009 Act, the county council and district councils whose areas are comprised in the area of the Cambridgeshire and Peterborough Combined Authority, the Cambridgeshire and Peterborough Combined Authority and the Mayor of the Cambridgeshire and Peterborough Combined Authority have consented to the making of this Order.

The Secretary of State considers that the making of this Order is likely to improve the exercise of statutory functions in the area to which this Order relates.

In accordance with section 105B(9) of the 2009 Act the Secretary of State has laid before Parliament a report explaining the effect of this Order and why the Secretary of State considers it appropriate to make this Order.

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 117(2) of the 2009 Act.

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(a) 2009 c.20. Section 105 was amended by the Cities and Local Government Devolution Act 2016 (c. 1) (“the 2016 Act”), sections 6, 9 and 14. Sections 105A and 107D were inserted by sections 4 and 7 of the 2016 Act. Section 114 was amended by Schedule 5 to the 2016 Act. Section 117 was amended by section 13(2) of the Localism Act 2011 (c. 20) and Schedule 5 to the 2016 Act.

## PART 1

### General

#### Citation and commencement

1. This Order may be cited as the Cambridgeshire and Peterborough Combined Authority (Business Rate Supplements Functions) Order 2018 and comes into force on the day after the day on which it is made.

#### Interpretation

2. In this Order—

“the 2009 Act” means the Local Democracy, Economic Development and Construction Act 2009;

“the BRS Act” means the Business Rate Supplements Act 2009(a);

“the CPCA” means the Cambridgeshire and Peterborough Combined Authority(b).

## PART 2

### Business Rate Supplements Functions

#### Conferral of BRS power of Greater London Authority

3.—(1) The CPCA has, in relation to its area, functions corresponding to the functions conferred on the Greater London Authority in relation to Greater London by the BRS Act.

(2) Paragraph (1) does not apply in relation to the function conferred by section 3(5) of the BRS Act.

#### General functions of the Combined Authority exercisable only by the Mayor

4.—(1) The functions of the CPCA specified in article 3 are exercisable only by the Mayor(c).

(2) The members or officers of the CPCA may assist the Mayor in the exercise of the functions specified in article 3.

(3) For the purposes of the exercise of the functions specified in article 3 the Mayor may do anything that the CPCA may do under section 113A of the 2009 Act (general power of EPB or combined authority)(d).

#### Adaptation of BRS Act in consequence of article 3

5. For the purposes of article 3, the BRS Act applies to the CPCA as if —

(a) references to the Greater London Authority in section 2(1) (levying authorities) and in section 5(2) (prospectus) of the BRS Act include references to the CPCA;

(b) subject to paragraph (c), references in that Act to a lower-tier authority include references to a district council whose area forms part of the CPCA’s area;

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(a) 2009 c. 7, as amended by Part 4 of the Localism Act 2011 (c. 20).

(b) The Cambridgeshire and Peterborough Combined Authority was established by the Cambridgeshire and Peterborough Combined Authority Order 2017, S.I. 2017/251.

(c) S.I. 2017/251, article 5, provided for there to be a mayor of the combined authority. The first mayor was elected on 4th May 2017.

(d) Section 113A was inserted by section 13 of the Localism Act 2011 and amended by section 23 of, and paragraph 25 of Schedule 5 to, the Cities and Local Government Devolution Act 2016.

- (c) reference to a lower-tier authority in section 6(1)(b) includes reference to a district council whose area forms part of the CPCA's area and to Cambridgeshire County Council.

## **Amendment of the Cambridgeshire and Peterborough Combined Authority Order 2017**

**6.**—(1) The Cambridgeshire and Peterborough Combined Authority Order 2017 is amended as follows.

(2) In paragraph (2) of article 6 after “article 12(1)” insert “and the functions conferred on the combined authority by article 3 of the Cambridgeshire and Peterborough Combined Authority (Business Rate Supplements Functions) Order 2018”.

Signed by authority of the Secretary of State for Housing, Communities and Local Government

	<i>Name</i>
	Parliamentary Under Secretary of State
Date	Ministry of Housing, Communities and Local Government

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order provides for the conferral of functions the Greater London Authority has under the Business Rate Supplements Act 2009 (“the BRS Act”) on the Cambridgeshire and Peterborough Combined Authority.

Part 6 of the Local Democracy, Economic Development and Construction Act 2009 (“the 2009 Act”) provides for the establishment of combined authorities for the areas of two or more local authorities in England. Combined authorities are bodies corporate which may be given power to exercise specified functions in their area.

*Article 3* of the Order provides that the Combined Authority is to have in relation to its area functions corresponding to the functions that the Greater London Authority has under the BRS Act to levy a supplement on business rates to raise money for expenditure on a project which will promote economic development in its area.

*Article 4* provides that the functions are exercisable only by the Mayor, that the Mayor may be assisted by members or officers of the authority in the exercise of the functions and that the general power of the combined authority under section 113A of the 2009 Act is conferred on the Mayor for the purposes of those functions.

*Article 5* provides for modification of the Business Rate Supplements 2009.

*Article 6* amends the Cambridgeshire and Peterborough Combined Authority Order 2017 to provide that the BRS functions of the combined authority will be funded in accordance with the arrangements specified in article 6 of that Order.

A full regulatory impact assessment has not been prepared as this instrument will have no impact on the costs of business and the voluntary sector.

### Appendix B - Briefing note on the Cambridgeshire and Peterborough Combined Authority Business Rates Supplements Order and Adult Education Budget Order

All Constituent Councils have been contacted by the Cambridgeshire and Peterborough Combined Authority (CPCA) in regards to agreeing two new sets of powers to be awarded to them by central government. This briefing note sets out what powers each Order will provide to the CPCA.

All Constituent Councils are requested to consider and agree to the granting of these Orders during May to allow the CPCA to make a final decision at the Combined Authority Board meeting on 30 May. The Combined Authority has advised that the agreement of these Orders is a Cabinet decision and accordingly the decision is scheduled for the 17 May meeting, however, as with the CPCA Borrowing Statutory Instrument which was agreed in March 2018, it is important for all Members to be aware of the powers that the CPCA are requesting and have the opportunity to ask questions and provide comments on the proposals ahead of their consideration by Cabinet on 17 May.

#### 1. Business Rates Supplements Order

- 1.1 This Order is seeking to provide the Mayor with the power to levy an additional business rate above the amount that is currently levied and collected by local authorities to raise money for a project(s) that will promote economic development in the area.
- 1.2 This is a power that local authorities already possess and it was the intention in the original devolution deal<sup>1</sup> that this power should also pass to Combined Authorities. Government wishes to convey this power to all Combined Authorities, not just CPCA.
- 1.3 If all Constituent Councils agree to this proposal, this does not compel the Mayor to utilise the power, it provides a legal basis for a levy to be charged should the Mayor wish to do so. If the Mayor decides to exercise this power, the levy would only apply to businesses over a rateable value of £50,000 and there is a clear process which must be followed before any additional business rate is levied, for instance:
  - a) Before levying any supplement, the mayor would be required to consult on and publish a prospectus setting out the benefits of the proposed project that the supplement would fund.
  - b) The Business Rate Supplement may only be levied on business properties with a rateable value of £50,000 or more. The mayor may increase, but cannot reduce, this threshold, and can apply any other reliefs as may be set out in the prospectus.
  - c) The proposed supplement is then subject to a ballot of businesses that would be affected. Both a majority of affected individual rate-payers must approve it and the aggregate rateable value of those businesses in favour must exceed those against.
- 1.4 Money raised from the supplement cannot be put towards the authority's day-to-day costs for services it has existing obligations to provide.

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<sup>1</sup> The raising of funds through business rates was referred to in the original CPCA Devolution Deal as follows: "Following the implementation of the necessary primary legislation, the Mayor will be given the power to place a supplement on business rates to fund infrastructure, with the agreement of the local business community."

### 2. Adult Education Budget Order

- 2.1 The Devolution Deal of June 2016 included the transfer of the Adult Education Budget (AEB) to the CPCA and the subsequent Order establishing the Combined Authority contained details of a number of Adult Education powers although it did not deal with the devolution of funding.
- 2.2 The principal purpose of AEB is to engage adults in learning that supports wider economic and social priorities. Devolution of AEB will only be applied within constituent member areas and the indicative budget will be approximately £12.1m from 2019 based on current spend on residents.
- 2.3 Devolution of the AEB will mean that the CPCA will have the duty and responsibility to deliver the government's commitment to statutory entitlements for fully funded qualifications at Levels 2 and 3, English and Maths and the future digital entitlements for learners, free of charge.
- 2.4 The Order will not cover apprenticeships, adult offender learning or provision for people aged 16 -18. Subject to these exceptions, it is proposed that the following functions contained in the Apprenticeships, Skills, Children and Learning Act (ASCAL) 2009 will transfer to the CPCA in relation to constituent member areas:

I. S86 – Duty to provide appropriate FE to learners aged 19 and over (not to include apprenticeships, prisoner education or traineeships).

II. S87 – Duty to provide appropriate FE to learners aged 19 and over, who do not have certain specified qualifications

III. S88 – Duty to ensure that provision is free for relevant learners who do not have certain specified qualifications

The following powers will be exercised concurrently with the Secretary of State:

IV. S90 – Duty to encourage learner and employer participation in education and training of people aged 19 and over (except those in adult detention) (to be exercised concurrently with the Secretary of State)

V. S115 – Duty to consider/have regard to the needs of learners aged 19 and over, with Special Education Needs ( other than those aged 19-25 with Educational Health Care plans, who will remain the responsibility of the LAs as they are treated as 16-18 year old learners).

VI. S122 – Power to exchange information with providers to enable provision of FE to learners aged 19 and over (to be exercised concurrently with the Secretary of State).