EXPLANATORY MEMORANDUM TO

THE GREATER MANCHESTER COMBINED AUTHORITY (ADULT EDUCATION FUNCTIONS) ORDER 2018

2018 No. 1141

THE LIVERPOOL CITY REGION COMBINED AUTHORITY (ADULT EDUCATION FUNCTIONS) ORDER 2018

2018 No. 1142

THE WEST OF ENGLAND COMBINED AUTHORITY (ADULT EDUCATION FUNCTIONS) ORDER 2018

2018 No. 1143

THE WEST MIDLANDS COMBINED AUTHORITY (ADULT EDUCATION FUNCTIONS) ORDER 2018

2018 No. 1144

THE TEES VALLEY COMBINED AUTHORITY (ADULT EDUCATION FUNCTIONS) ORDER 2018

2018 No. 1145

AND

THE CAMBRIDGESHIRE AND PETERBOROUGH COMBINED AUTHORITY (ADULT EDUCATION FUNCTIONS) ORDER 2018

2018 No. 1146

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 Each of the instruments uses the Secretary of State's powers under the Local Democracy, Economic Development and Construction Act 2009 ("the Local Democracy Act"):

(a) to confer certain adult education functions of the Secretary of State under the Apprenticeships, Skills, Children and Learning Act 2009 ("the 2009 Act") on the specified combined authority in relation to the area of that authority, and to set conditions on the exercise of those functions; and

(b) to apply certain provisions of the 2009 Act with modifications to the combined authority for the purpose of the combined authority exercising the conferred functions.

2.2 In addition, various consequential amendments to legislation are made by Part 3 of the Greater Manchester Combined Authority (Adult Education Functions) Order 2018 ("the Greater Manchester Order").

3. Matters of special interest to Parliament

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

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 This entire instrument applies to England only.

3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P, the subject-matter of this 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; or the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament; or the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.4 Each instrument applies only to England as it is concerned with certain adult education functions to be exercised by the specified combined authority in relation to their local government area in England. Section 103(2) of the Local Democracy Act provides that a combined authority may be established in relation to local government areas in England. The instrument does not give rise to minor or consequential effects outside England.

3.5 The Department has reached this view because it considers that the primary purposes of the provision in these instruments relate to education and local government, which is within the devolved legislative competence of the each of the three devolved legislatures: the primary purpose of the subject matter of these instruments 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 these instruments 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 these instruments is not within Schedule 7A to the Government of Wales Act 2006 and is not otherwise outside the legislative competence of the National Assembly for Wales (see section 108A of that Act).

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

5. European Convention on Human Rights

5.1 The Rt Hon Anne Milton, Minister of State for Education and Skills, has made the following statement regarding Human Rights:

"In my view the provisions of each of the following Orders are compatible with the Convention rights: the Greater Manchester Combined Authority (Adult Education Functions) Order 2018; the Liverpool City Region Combined Authority (Adult Education Functions) Order 2018; the West of England Combined Authority (Adult Education Functions) Order 2018; the West Midlands Combined Authority (Adult Education Functions) Order 2018; the Tees Valley Combined Authority (Adult Education Functions) Order 2018; and the Cambridgeshire and Peterborough Combined Authority (Adult Education Functions) Order 2018."

6. Legislative Context

6.1 Part 6 of the 2009 Act provides for establishment of combined authorities for the areas of two or more local authorities in England. Under section 105A of the 2009 Act, a combined authority may be given power to exercise specified functions of any other public authority. An order under section 105A may make the conferral of functions subject to such conditions or limitations as may be specified in the order.

6.2 The Greater Manchester Combined Authority was established by the Greater Manchester Combined Authority Order (S.I 2011/908); the Liverpool City Region Combined Authority was established by the Halton, Knowsley, Liverpool, St Helens, Sefton and Wirral Combined Authority Order 2014 (S.I. 2014/865); the West of England Combined Authority was established by the West of England Combined Authority Order 2017 (S.I. 2017/126); the West Midlands Combined Authority was established under the West Midlands Combined Authority Order 2016 (S.I. 2016/653); the Tees Valley Combined Authority was established under the Tees Valley Combined Authority Order 2016 (S.I. 2016/449) and the Cambridgeshire and Peterborough Combined Authority was established under the Cambridgeshire and Peterborough Combined Authority Order 2017 (S.I. 2017/251).

6.3 When laying before Parliament an order which confers public authority functions on a combined authority under section 105A of the Local Democracy Act, section 105B(9) of that Act requires that the Secretary of State must also place a report before Parliament which sets out the effect of the order and why the Secretary of State considers it is appropriate to make it. The report must include any consultation and information which has been taken into account, as well as any other evidence or contextual information that the Secretary of State considers appropriate to include.

7. Policy background

What is being done and why?

7.1 These Orders provide for the transfer to each specified combined authority of the following adult education functions under the 2009 Act in relation to the 2019/20 academic year onwards: section 86 which relates to education and training for persons aged 19 or over; section 87 which relates to learning aims for such persons and provision of facilities; and section 88 which relates to the payment of tuition fees for such persons. This is subject to an exception in relation to apprenticeships training, persons subject to adult detention or any power to make regulations or orders. The

transferred functions will be exercisable by the combined authority instead of by the Secretary of State in relation to the area of the combined authority.

7.2 In addition, functions of the Secretary of State under section 90 of the 2009 Act, which relate to the encouragement of education and training for persons aged 19 or over, and section 100(1) of that Act which relate to the provision of financial resources, are transferred to the combined authority in relation to the area and will be exercisable concurrently with the Secretary of State.

7.3 The following conditions are set on the exercise of the transferred functions:

a. the combined authority must adopt rules of eligibility for awards by an institution to which it secures financial resources under section 100 of the 2009 Act in accordance with any direction given by the Secretary of State; and

b. in exercising the transferred functions, the combined authority must have regard to guidance issued by the Secretary of State (as amended from time to time or replaced by a subsequent document).

7.4 The transfer to these combined authorities of the specified adult education functions (also referred to in this memorandum as the "devolution of adult education") forms part of the government's wider devolution agenda and is focused on giving local areas a prominent role in managing and shaping their own economic prosperity. Through the transfer of the specified adult education functions, each of the combined authorities and their elected Mayors will be able to better shape adult education provision that is available to their residents to ensure it meets the needs of the combined authority's economy. The Orders form a key part of the delivery of the devolution deals agreed between government and the combined authorities in 2015 and 2016.

7.5 In accordance with the requirements of section 105B(1) of the Local Democracy Act, each combined authority and its constituent councils have consented to the making of this Order; and the Secretary of State considers that the making of each Order is likely to improve the exercise of statutory functions in the area to which that Order relates.

7.6 As a result of the devolution of adult education functions it will be the responsibility of the combined authorities to enable access to appropriate adult education provision in relation to their area. The combined authority will be responsible for commissioning and contracting with providers to deliver such adult education.

7.7 In order to ensure the continued stability of the provider sector the combined authority, the Department for Education and the Education and Skills Funding Agency (an executive agency of the Department for Education) will agree a collaborative approach through a Memorandum of Understanding that is intended to facilitate the alignment, where appropriate, of local and national policy. This arrangement is intended to ensure that decisions made by all parties will be made with a view to ensuring the effective delivery of adult education provision.

7.8 Each Order sets the following conditions on the exercise of the specified functions. It requires the specified combined authority to adopt rules of eligibility for awards by an institution to which it makes grants, loans or other payments under section 100 of the 2009 Act in accordance with any direction which may be given by the Secretary of State. Such a direction may be for the purpose of ensuring that a consistent approach is taken as to the eligibility of persons who have a specified connection to the United Kingdom. In addition, in exercising the conferred functions the combined authority is

required to have regard to guidance issued by the Secretary of State (as amended from time to time or as replaced by a subsequent document).

7.9 Part 3 of the Greater Manchester Order makes various consequential amendments to primary and secondary legislation. These amendments are only required in one of the specified orders specified orders as the amendments apply to all combined authorities. The amendments are as follows:

- section 100 of the 2009 Act (provision of financial resources) so as to provide that the Secretary of State may provide financial resources under that section in respect of functions under Part 4 of the 2009 Act which have been conferred on a combined authority.
- section 122 of the 2009 Act to make provision for information sharing following the conferral of such functions;
- section 123 of the Education and Inspections Act 2006 so as to make related provision for inspections.
- It also amends the Education (Fees and Awards) (England) Regulations 2007 so as to make provision with respect to the rules of eligibility for awards by an institution to which a combined authority makes grants, loans or payments under section 100 of the 2009 Act.

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

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

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 Unlike the legislation relating to the establishment of a combined authority, or the conferral of local authority functions on a combined authority, a consultation is not required to confer public authority functions on a combined authority.

10.2 An Order can be made to make provision for conferring on a combined authority in relation to its area a function corresponding to a function that a public authority has in relation to another area if the 'appropriate consent is given and the Secretary of State considers that the making of the Orders is likely to improve the exercise of statutory functions in the relevant area. The appropriate consent is that of the combined authority and constituent councils of the combined authority. Before laying each of the Orders referred to in this memorandum, the Government sought and obtained the consent of each specified combined authority and constituent council in relation to the Order. The Secretary of State considers, in relation to each Order, that the making of the Order is likely to improve the exercise of the statutory functions in the area of the specified combined authority.

10.3 Further consultation at this time is not considered necessary. However, as consultation have been undertaken by each specified combined authority in relation to their area it is described below.

10.4 Each combined authority consulted extensively on its overall devolution scheme which included housing, regeneration and land regeneration, transport, culture and a spatial plan as well as proposals for education and skills. Each devolution scheme included specific reference to the devolution of adult education.

10.5 Each consultation used a variety of methods to engage with the public and key local stakeholders including: proactive media releases, proactive engagement with regional and local media, web content summarising each policy area, social media, workshops with elected members and letters to key stakeholders. As part of the responses to these consultations, each combined authority has produced a strategic skills plan designed to demonstrate how they will meet the needs of their residents through the devolution of the adult education budget. A summary of the responses to each combined authority's consultation is set out below.

10.6 Greater Manchester Combined Authority conducted a public consultation over a six week period from 4 July to 16 August 2016. In total 291 responses were received. Comments in relation to devolution of adult education functions were primarily positive and focused on the opportunity for closer integration between skills and employment in Greater Manchester. Through their draft employment and skills strategy the Greater Manchester Combined Authority has set out its ambition in response to the consultation and work to integrate the education, skills and employment landscape[1].

10.7 The seven local authorities, led by the West Midlands Combined Authority ('WMCA') carried out a consultation on the functions set out through their devolution deal between 4 July 2016 to 21 August 2016, including the devolution of adult education functions. In total 1327 responses were received. Of those responses, 77% demonstrated they were supportive of the proposals set out in the devolution deal about skills and employment. This included supporting the WMCA's proposals to bring together partners from across education, industry and the third sector to deliver better skills and training for jobs now and in the future[2].

10.8 The seven local authorities of Cambridge and Peterborough, supported by the local enterprise partnership ('LEP') for Cambridge and Greater Peterborough, led a consultation on the proposals for the powers the constituent authority considered should be conferred to the Cambridgeshire Peterborough Combined Authority ('CPCA'); this included the powers in relation to the provision of adult education. This consultation ran for six weeks between 8 July and 23 August 2016. In total, through a combination of an independent survey poll of residents and an online survey, the CPCA noted that more than '4000 people had their say' in a letter to the Secretary of State for Communities and Local Government on 7 September 2016. The consultation asked for views on the CPCA having responsibility for adult education and skills training for people aged 19 and over: through the online survey 74% of those who responded demonstrated that they were supportive and through the independent survey poll 78% of responders demonstrated their support[3].

10.9 Liverpool City Region Combined Authority ('LCRCA') undertook a consultation between 24 June and 5 August 2016. The consultation was led by LCRCA and delivered in partnership with the local authorities, the LEP and other stakeholders.

[1] https://www.greatermanchester-ca.gov.uk/download/meetings/id/1222/8_gmca_phase_2_consultation_outcome
[2] https://www.wmca.org.uk/media/1696/mayoral-wmca-consultation-report-for-upload.pdf
[3] https://www.cambridgeshire.gov.uk/council/devolution-for-cambridgeshire-and-peterborough/

This consultation sought views on the functions to be conferred on LCRCA including those in relation to the provision of adult education. They produced a full summary of the consultation responses. In total LCRCA received 930 responses, of which 184 made comments on their proposals in relation to skills and employment, of which 59% were positive, 14% negative and 27% out of scope. A number of significant local stakeholders welcomed the opportunity for the LCRCA to take on a direct role in commissioning adult education and saw the increased local flexibility as an opportunity to improve accessibility for disadvantaged people[4].

10.10 The West of England Combined Authority ('WECA') undertook a consultation for a period of six weeks between 4 July and 15 August 2016. 2011 individuals responded via a survey, and 14 organisations and individuals provided a response by email. The consultation set out the powers the WECA proposed to take on including those relating to adult education provision. 47% of respondents agreed that the WECA would ensure skills and training provision could be better tailored to meet local needs. Specific comments included support for the devolution of the adult education budget on the basis that it would be good for business and would better link adult education with employers' needs[5].

10.11 Local residents have been consulted through the development of proposals for a combined authority for Tees Valley. The constituent councils held a consultation from December 2014 – January 2015, which received 1911 responses. In addition, Government undertook a consultation for six weeks between 28 October and 9 December 2015 where they sought views on the functions that the combined authority was proposing take on as set out in their devolution deal. They received 28 responses in total, of which 67% were supportive of the proposal to establish Tees Valley Combined Authority[6].

11. Guidance

11.1 Each order requires the combined authority to have regard to guidance issued by the Secretary of State (as amended from time to time or as replaced by a subsequent document) in exercising the relevant functions. The guidance was published on 23rd July 2018 and is available at https://www.gov.uk/government/publications?departments%5B%5D=department-for-education. Copies of the guidance are also available on request from the Department for Education, Sanctuary Buildings, 20 Great Smith Street, London SW1P 3BT. This guidance will cover key areas that a combined authority are required to pay regard to when taking decisions in respect of commissioning adult education provision.

12. Impact

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

12.2 There will be an impact on the public sector. The transfer of the specified functions to the combined authorities will result in an associated transfer of funds to each combined authority to facilitate the exercise of those functions. This will take the form of a proportion of the overall adult education budget moving from the

[4] http://councillors.knowsley.gov.uk/documents/s44315/Item%206%20-%20Appendix%20One.pdf
[5] https://www.westofengland-ca.gov.uk/wp-content/uploads/2018/01/Devolution-Consultation-Final-Report_Aug-2016.pdf
[6] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/500840/160209_-_Summary_of_consultation_responses.pdf

Department for Education to the specified combined authority which will determine how that is spent as part of the exercise of these functions. The Department for Education will confirm the adult education budgets for each specified combined authority for the 2019/20 academic year in early 2019.

12.3 An Impact Assessment has not been prepared for this instrument as the impact of this instrument is on combined authorities.

13. Regulating small business

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

14. Monitoring & review

14.1 This order provides for functions to be conferred on the combined authority. The combined authority will be required, as part of their devolution deals reached with government, to agree with government an extensive programme of monitoring and evaluation in relation to the devolved adult education functions.

15. Contact

15.1 Simon Mason at the Department for Education Tel: 07391018337 or email: Simon.Mason@education.gov.uk can answer any queries regarding the instrument.

15.2 Dominic Hastings, Deputy Director for the devolution of adult education at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Anne Milton MP, Minister of State for Apprenticeships and Skills at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.