EXPLANATORY MEMORANDUM TO

THE COMBINED AUTHORITIES (BORROWING) AND EAST MIDLANDS COMBINED COUNTY AUTHORITY (BORROWING AND FUNCTIONS) (AMENDMENT) REGULATIONS 2025

2025 No. 86

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Jim McMahon OBE MP, Minister of State for Local Government and English Devolution at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

2.2 Evi Bell, Deputy Director of the Governance, Reform and Democracy Unit, at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Alice Barker, Andrew Newton and Harry Davies at the Ministry of Housing, Communities and Local Government or email: alice.barker@communities.gov.uk; andrew.newton@communities.gov.uk; harry.davies@communities.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These Regulations confer additional borrowing powers on two mayoral combined authorities - the York and North Yorkshire Combined Authority ("YNYCA") and the North East Mayoral Combined Authority ("NEMCA"), and a mayoral combined county authority - the East Midlands Combined County Authority ("EMCCA"). These local authorities have each agreed debt agreements – also known as a "debt cap" – with HM Treasury. These Regulations will enable all three authorities to be able to borrow in respect of all of their existing functions. This expands the existing borrowing provisions for YNYCA (who currently are able to borrow in relation to transport, fire and police functions), NEMCA (transport only) and EMCCA (none).

4.2 These Regulations also confer upon the EMCCA its constituent councils' general power of competence for economic development and regeneration. This function will enable the EMCCA to undertake broader integral work to support its area, such as providing business support via access to Government grants and supporting tourism in the East Midlands.

4.3 Amendments will also be made via these Regulations to the East Midlands Combined County Authority Regulations 2024 ("the 2024 Regulations") to address a

typographical error and additional operational requirements which were identified after the 2024 Regulations were made.

4.4 Due to the typographical error, these Regulations will be issued free of charge to all known recipients of the 2024 Regulations in accordance with the free issue procedure in paragraph 4.7.6 of *Statutory Instrument Practice*[1].

Where does the legislation extend to, and apply?

4.5 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is to England and Wales.

4.6 The territorial application of this instrument (that is, where the instrument produces a practical effect) is to England.

5. Policy Context

What is being done and why?

5.1 The Government has emphasised its commitment to transferring power out of Westminster and into local communities, handing power to those with local knowledge and skin in the game. As part of this, the Government committed to introducing an English Devolution Bill as part of the King's Speech on 17 July 2024.

5.2 The YNYCA, NEMCA and EMCCA have now each agreed a debt cap with HM Treasury for the financial year 2024/25. These debt caps bring in to effect annual maximum limits on their long-term external debt. "External debt" refers to the closing balance for actual gross borrowing plus other long-term liabilities as defined in The Prudential Code for Capital Finance in Local Authorities. Short-term external debt (i.e. less than 12 months) does not count towards the agreed limits.

5.3 These Regulations via Part 1 of the Local Government Act 2003 ("the 2003 Act") enable the YNYCA, NEMCA and EMCCA to borrow money for purposes relevant to their functions. The Regulations allow the EMCCA to borrow in relation to all of its functions and extend the borrowing powers of the YNYCA and the NEMCA enabling the two authorities to borrow in relation to their remaining functions (previously both authorities had been able to borrow only in regards to transport, and police and fire for YNYCA, via their establishment Orders). The extension of borrowing powers will enable YNYCA, NEMCA and EMCCA to invest in economically productive infrastructure and maximise their delivery capabilities for their respective areas.

5.4 These Regulations in practice extend borrowing to the non-transport functions of YNYCA, NEMCA and EMCCA. Each of the local authorities has a bespoke set of powers depending on the devolution deals that were negotiated with the Government. In general terms, these further functions relate to housing, regeneration and planning; transport; education and skills. The specific remaining functions of each authority will be able to borrow against are summarised below.

5.5 For the YNYCA these Regulations confer borrowing powers for purposes relevant to the following functions:

- housing, regeneration and planning;

5.6 For the NEMCA these Regulations confer borrowing powers for purposes relevant to the following functions:

- housing, regeneration and planning; and

[1] legislation.gov.uk/pdfs/StatutoryInstrumentPractice_5th_Edition.pdf

- education, skills and training

5.7 For the EMCCA these Regulations confer borrowing powers for purposes relevant to the following functions:

- housing, regeneration and planning;
- transport; and
- health;

5.8 These Regulations also confer the EMCCA's constituent councils' general power of competence for economic development and regeneration upon the combined county authority. This function will be exercised concurrently with the constituent councils and will fulfil a commitment made as part of the East Midlands Devolution Deal signed on 30 August 2022 which committed to "the East Midlands MCCA [being] given powers in relation to: Economic development and regeneration functions." The EMCCA will only be able to exercise the general power of competence in relation to economic development and regeneration, and the function will continue to be held by the EMCCA's constituent councils. The function will enable the EMCCA to fulfil its ambitions, as outlined in the proposal submitted to the then Secretary of State for Levelling Up, Housing and Communities on 1 November 2023 to "support businesses to create more and higher paid sustainable jobs so that our citizens are able to access the jobs they want within the Area in which they live"; and "improve the environment for both residents and visitors and create a pride in place."

5.9 Amendments will also be made by these Regulations to the 2024 Regulations to ensure that the EMCCA is able to fully operate in line with the East Midlands Devolution Deal. These include enabling non-constituent members to have voting rights in an EMCCA committee, provided the non-constituent members have been given voting rights by EMCCA members, and; allowing for the EMCCA Mayor to arrange for functions to be exercised by an EMCCA committee. The Regulations also better clarify voting arrangements within the EMCCA and correct a typographical error in regulation 10(3) of the 2024 Regulations.

6. Legislative and Legal Context

6.1 The YNYCA was established by the York and North Yorkshire Combined Authority Order 2023 (SI 2023/1432), which also incurred provisions for the position for an elected mayor for the YNYCA and the conferral of functions on the YNYCA, some of which are exercisable individually by the Mayor, and also the conferral of Police and Crime Commissioner functions which are exercisable by the Mayor.

6.2 NEMCA was established by the North East Mayoral Combined Authority (Establishment and Functions) Order 2024 (SI 2024/402) which simultaneously abolished the previous two combined authorities in the area: The North East Combined Authority and the North of Tyne Combined Authority. This Order also has provisions for the position for an elected mayor for the NEMCA and the conferral of functions on NEMCA, some of which are exercisable individually by the Mayor.

6.3 The EMCCA was established by the East Midlands Combined County Authority Regulations 2024 (SI 2024/232), which also incurred provisions for the position for an elected mayor for the EMCCA and the conferral of functions on the EMCCA, some of which are exercisable individually by the Mayor.

6.4 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. These are bodies corporate that may be given power to exercise specified functions of a local authority, and power to exercise specified functions of any public authority. Mayoral combined authorities are chaired by a mayor for the area of the combined authority who is elected by the local government electors for the area of the combined authority.

6.5 Section 9 of the Levelling-up and Regeneration Act 2023 ("the 2023 Act") provides for the establishment for a combined county authority for an area that is wholly within England and consists of at least one two-tier county council and another upper tier local authority, such as a unitary authority. Combined county authorities are bodies corporate which may be given powers to exercise specified functions of a local authority, and powers to exercise specified functions of any other public authority.

6.6 The 2003 Act makes provision in respect of capital finance and accounts of local authorities. Section 1 of the 2003 Act provides for local authorities to be able to borrow for purposes relevant to their statutory functions and for the prudent management of their affairs. Section 23(5) of the 2003 Act provides for the application of Part 1 of that Act to a combined authority established under section 103 of the 2009 Act, with the limitation that those authorities may only borrow using the section 1 power for a purpose relevant to their transport functions and in relation to any other function which is specified by the Secretary of State in regulations. Section 23(6) of the 2003 Act provides that a function of a combined authority may only be specified in regulations with the consent of each county council the whole of, or part of whose area is within the area of the combined authority, each district council whose area is within the combined authority area and the combined authority itself.

6.7 Section 23(8A) of the 2003 Act, as amended by the 2023 Act confers borrowing powers on a combined county authority in relation to any other functions specified in regulations by the Secretary of State. Section 23(8B) of the 2003 Act provides that a function of a combined county authority may only be specified in regulations with the consent of the councils of the local government area, which for the EMCCA are – Derby City Council, Derbyshire County Council, Nottingham City Council and Nottinghamshire County Council.

6.8 The conferral of the EMCCA's constituent councils' general power of competence under section 1 of the Localism Act 2011 for economic development regeneration functions upon the EMCCA is undertaken via section 18 of the 2023 Act. Specifically the EMCCA will only be able to use the function for the purpose of economic development and regeneration within the geographical boundaries of the EMCCA.

6.9 As the conferral of the EMCCA's constituent councils' general power of competence for economic development regeneration function upon the EMCCA is a new function for the combined county authority it is subject to section 48 of the 2023 Act. Under section 48 of the 2023 Act the Secretary of State for Housing, Communities and Local Government can only make regulations to confer the function upon the EMCCA if she is satisfied that doing so is:

- likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the area; that
- to do so is appropriate to having regard to the need –
    - to secure effective and convenient local government; and
    - to reflect the identities of local communities, that

- its establishment will achieve the purposes of the combined county authority set out in its proposal (for which an adequate public consultation must have been undertaken); and
- that the constituent councils and the EMCCA have consented to conferral of the function.

6.10 The Secretary of State for Housing, Communities and Local Government is satisfied that the statutory conditions provided for in the 2023 Act have been met:

- having considered the EMCCA constituent councils' consultation (which ran from 14 November 2022 to 9 January 2023) and the summary of responses, the Secretary of State considers that no further consultation is necessary, as its consultation is sufficient and the provisions of section 48(3)(c) apply, namely that the requirement to carry out a consultation may be met;
- she considers that the making of Regulations to establish the EMCCA and the conferral of the proposed functions is likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the area, having regard to the need to secure effective and convenient local government, and to reflect the identities and interests of local communities; and
- the constituent councils and the EMCCA have consented to the conferral of the function and to the Regulations.

6.11 These Regulations make further provision under section 30(3)(c)(ii) of the 2023 Act upon the Mayor of the EMCCA, enabling the mayor to arrange for a committee of the CCA, consisting of members appointed by the mayor (whether or not members of the CCA) to exercise mayoral functions. The composition of committees established via section 30(3)(c)(ii) of the 2023 Act is subject to the direct requirements of section 30(6) of that Act in that such a committee must not solely consist of non-constituent or associate members.

7. Consultation

Summary of consultation outcome and methodology – conferral of borrowing regulations

7.1 In contrast to the legislation surrounding the establishment or conferral of local or public authority functions on a combined authority or combined county authority, a consultation is not required for extending the borrowing powers to the YNYCA, NEMCA and EMCCA. All three local areas agreed borrowing powers as part of their devolution deals that were then subject to a public consultation.

7.2 In contrast to the legislation surrounding the establishment or conferral of local or public authority functions on a combined authority or combined county authority, a consultation is not required for extending the borrowing powers to the YNYCA, NEMCA and EMCCA. All three local areas agreed borrowing powers as part of their devolution deals that were then subject to a public consultation.

Summary of consultation outcome and methodology for the establishment and conferral of functions upon the EMCCCA including the conferral of the EMCCA's constituent council's general power of competence for economic development and regeneration

7.3 A public consultation must be undertaken prior to the conferral of the EMCCA's constituent councils' general power of competence for economic development regeneration upon the EMCCA in accordance with section 48 of the 2023 Act. The Secretary of State is satisfied that the EMCCA's constituent councils' public

consultation on their proposal to establish a CCA, the aims of the CCA and the functions to be conferred on the CCA between 14 November 2022 and 9 January 2023 (eight weeks) sufficiently outlined the proposed use by the EMCCA of the constituent councils' general power of competence for economic development and regeneration. In the proposal to establish the EMCCA, which was submitted to the Secretary of State for consideration, describes how: "The [EM]CCA will work as one democratically accountable body on key priorities such as economic development, regeneration and transport, enhancing the investment capability of the CCA Area and individual authorities to support growth including in areas such as housing." Throughout the proposal, frequent reference is made to how the EMCCA will support economic development and regeneration within the area.

7.4 The consultation was undertaken utilising various mechanisms – including online forms, paper responses, letters and direct communication with stakeholders and the public. The consultation methods utilised by the constituent councils included an online survey on the creation of the EMCCA, with options to cater for participants needs (e.g. translations, paper copies); engagement with stakeholders, including local businesses and the voluntary sector; as well as two online events in which residents and stakeholders could make their views heard.

7.5 To ensure that the consultation process was robust and accessible the constituent councils undertook an equality impact assessment to inform engagement. Additionally, a communication plan was developed for each constituent council in order to support and promote the consultation within their areas.

7.6 A report on the consultation outcomes was authored by Ipsos UK for the constituent councils and has been made publicly available via the councils' websites[2].

7.7 Public and local stakeholders who participated in the consultation were supportive of the economic development activities outlined by the EMCCA's constituent councils as part of the consultation. For the economic development and regeneration proposals relating to housing, of the 4,849 who responded, 2,239 were in favour of the proposal, whilst 1,913 disagreed (the remaining 697 did not express an opinion). In relation to economic development and regeneration activities related to reducing carbon and achieving net zero of the 4,849 who responded to the consultation 2,484 were supportive of the proposal whilst 1,580 were opposed (the remaining 785 did not express an opinion). The outcome of the consultation shows that where consultees were asked about policies which related to economic regeneration and development they were broadly supportive.

8. Applicable Guidance

8.1 No guidance is necessary to accompany these Regulations. The government continues to work with combined authorities and combined county authorities to support their implementation of their devolution deals.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because it does not directly affect the business and voluntary sectors.

[2] https://committee.nottinghamcity.gov.uk/documents/s145902/Appendix%203%20-%20Nottinghamshire%20Derbyshire%20Devolution%20Ipsos%20Consultation%20Report%20V7_.pdf

Impact on businesses, charities and voluntary bodies

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

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is the enabling of mayoral combined authorities and mayoral combined county authorities to borrow for further functions that have been conferred through earlier legislation which will allow them to invest in economically productive infrastructure.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The mayoral combined authorities and mayoral combined county authorities are required under the devolution agreements reached with Government to put in place an extensive programme of evaluation, agreed with HM Treasury, of the devolution agreements. The debt arrangements that have been made with HM Treasury commit to regular monitoring and reviews and that either party can request a review.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Jim McMahon OBE MP, Minister of State for Local Government and English Devolution, has made the following statement regarding Human Rights:

"In my view the provisions of the Combined Authorities (Borrowing) and East Midlands Combined County Authority (Borrowing and Functions) (Amendment) Regulations 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").