EXPLANATORY MEMORANDUM TO

THE COMBINED AUTHORITIES (FINANCE) (AMENDMENT) REGULATIONS 2024

2024 No. 652

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Jacob Young MP, Parliamentary Under Secretary of State at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

2.2 Melissa Brown, Deputy Director for English Devolution and Institutions at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Luke Scofield at the Department for Levelling Up, Housing and Communities Telephone: 030 3444 2562 or email: GRADSubmissions@levellingup.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 This instrument provides for a precept to be set by the mayor of a combined county authority to fund the mayor's general functions (i.e. any functions exercisable by the mayor other than Police and Crime Commissioner (PCC) functions), for the arrangements for setting and approving a combined county authority mayoral budget, and for a mayor to keep a general fund reflecting inward and outward payments, and transitional provisions.

Where does the legislation extend to, and apply?

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

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

5. Policy Context

What is being done and why?

5.1 Before the Levelling-up and Regeneration Act 2023 ("the 2023 Act"), the main vehicle used for devolving powers and funding to local areas in England outside London was through a combined authority. A combined authority is a model

comprising all principal councils within its area and primarily designed for urban areas. The 2023 Act enables the establishment of a new model known as a combined county authority, comprising as constituent authorities upper tier local authorities only; this model is considered more appropriate for non-metropolitan areas with two-tier local government. In all other respects the two models are the same including that they may have a directly elected mayor who is empowered to set a precept to meet the costs of their functions and that the mayor's budget to meet those functions may be amended by a significant majority of the constituent authority members of the combined county authority.

5.2 On 30 August 2022 the Government announced[1] a devolution deal with four councils in the East Midlands – Derby City Council, Derbyshire County Council, Nottingham City Council and Nottinghamshire County Council - which saw the establishment of the first mayoral combined county authority, East Midlands Combined County Authority, in February 2024.

5.3 These Regulations make provision for the setting of combined county authority mayoral precepts and budgets by extending the Combined Authorities (Finance) Order 2017[2] ("the 2017 Order") so that it applies to combined county authorities as well as to combined authorities. The vast majority of the original Order is unchanged, reflecting the decision to apply the existing combined authority policy to combined county authorities.

What was the previous policy, how is this different?

5.4 A combined county authority is a new type of authority closely modelled on a combined authority; its constitutional difference from the combined authority model is that it is designed to be better suited to non-urban areas with two-tier government (see paragraph 5.1). Both types of authority remain equal and work in the same way, including in the legislative framework for mayoral finance which these Regulations extend to combined county authorities.

6. Legislative and Legal Context

How has the law changed?

6.1 The Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act") enables secondary legislation to establish combined authorities. Provision for funding of mayoral general functions is set out in the 2017 Order. That 2017 Order includes provision for a precept to be issued by a mayoral combined authority to fund those mayoral general functions, for the arrangements for setting and approving a combined authority's mayoral budget, and for a mayor's general fund. The 2017 Order makes provision where a mayor exercises PCC functions, for the PCC component of a council tax requirement to be separated from the general component. New provision is also made for transitional arrangements for new mayoral combined county authorities which mirrors that in the 2017 Order for combined authorities.

6.2 The 2023 Act provides for the establishment of combined county authorities. The 2023 Act replicates provision related to funding of mayoral general functions in the 2009 Act, including powers[3] to make secondary legislation to complete the legislative framework for that funding.

[1] https://www.gov.uk/government/publications/east-midlands-devolution-deal
[2] S.I. 2017/611
[3] Powers are at section 41(1), (3), (5) and (6) of the 2023 Act.

6.3 These Regulations complete the legislative framework for funding of mayoral functions of combined county authorities by extending the scope of the existing provision for combined authorities in the 2017 Order. One minor amendment is included to reflect the change to the constitutional arrangements for combined authorities introduced by the 2023 Act, which also applies to combined county authorities, namely provision for the appointment of non-constituent members and associate members.

Why was this approach taken to change the law?

6.4 Legislation is required to complete the statutory framework for a precept to be issued by a mayoral combined county authority to fund mayoral functions, for the arrangements for setting and approving a combined county authority's mayoral budget, and for a mayor's general fund for combined county authorities. This ensures parity of approach with combined authorities. The regulations make only essential amendments to the 2017 Order reflecting the constitution-related provisions in the 2023 Act.

7. Consultation

Summary of consultation outcome and methodology

7.1 The purpose of these regulations is to extend the existing provisions for funding of mayoral general functions of combined authorities to combined county authorities. As such, Government's position is not to re-open policy questions which were settled when the 2017 Order was made or to make substantial changes to the 2017 Order. The scope for new policy development therefore has been highly restricted.

7.2 Government undertook informal consultation with officers of constituent councils of then current and prospective combined authorities, including via a working group of senior finance officers preparing for mayoral governance, before introducing the 2017 Order. The approach taken is set out in section 8 of the Explanatory Memorandum to the 2017 Order[4].

7.3 While preparing these Regulations for combined county authorities, Government enquired with finance officers of existing mayoral combined authorities as to the operation in practice of the 2017 Order and no difficulties were reported.

8. Applicable Guidance

8.1 There is no applicable guidance for these Regulations.

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 no impact on businesses is anticipated.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the legislation has no implications for business, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

[4] Explanatory Memorandum to the 2017 Order: The Combined Authorities (Finance) Order 2017 - https://www.legislation.gov.uk/uksi/2017/611/pdfs/uksiem_20170611_en.pdf

9.4 There is no, or no significant, impact on the public sector because the regulations make "generic" provision which will only have a material effect where a mayoral combined county authority, where the mayor has precepting powers, is established under separate area-specific legislation which will be accompanied by its own impact assessment.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 Government has no plans to actively monitor this legislation; identical provisions are already in operation without reported problems for combined authorities. All areas seeking a devolution deal including a combined authority or combined county authority will be expected to comply with the legislation.

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 The Parliamentary Under Secretary of State at the Department for Levelling Up, Housing and Communities has made the following statement regarding Human Rights:

"In my view the provisions of the Combined Authorities (Finance) (Amendment) Regulations 2024 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").