EXPLANATORY MEMORANDUM TO

THE COMBINED AUTHORITIES (OVERVIEW AND SCRUTINY COMMITTEES, ACCESS TO INFORMATION AND AUDIT COMMITTEES) (AMENDMENT) REGULATIONS 2024

2024 No. 430

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 Paul Rowsell, Head of the Governance Reform and Democracy Unit and Deputy Director at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Gemma Penn at the Department for Levelling Up, Housing and Communities Telephone: 030 3444 3677 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 makes provision for the membership and proceedings of overview and scrutiny committees and audit committees of combined county authorities and for the payment of allowances to members of constituent councils of combined authorities and combined county authorities who are appointed to these committees.

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 the combined authority. A combined authority is a model comprising all principal councils within its area and is 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 both combined authorities and combined county authorities are required to appoint overview and scrutiny, and audit, committees. This principle of parity also applies to the provision for membership and proceedings of these committees, and to new powers, in the 2023 Act, to enable payment of allowances to members of constituent councils appointed to these committees.

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 could see the establishment of the first mayoral combined county authority in 2024. Legislation to establish this authority was laid before Parliament on 18 December 2023[2]. Two further deals were announced alongside the 2023 Autumn Statement, for a combined county authority in Lancashire[3] and a second mayoral combined county authority in Greater Lincolnshire[4]. A further deal for a new mayoral combined authority in Hull and East Yorkshire was announced at the same time.

5.3 These Regulations make provision for the membership and proceedings of overview and scrutiny committees, and audit committees, of combined county authorities by extending the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017[5] ("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, except for the addition of combined county authorities, reflecting the decision to apply the existing combined authority policy to combined county authorities to maintain parity.

5.4 To accommodate the constitutional difference between the two models, two sets of changes are made to the 2017 Order: to the definition of "independent person" (paragraph 5.5) and in relation to the referral of matters to, and the supply of related documents by, the combined authority or combined county authority (paragraph 5.6).

5.5 The definition of "independent person" at Article 5(2) of the 2017 Order is re-cast in terms of a council's location so that an "independent person" cannot be a person associated with any council within the area of a combined authority or combined county authority. This is because the original definition, in terms of the council's status as a constituent council or "parish council for which a constituent council is the principal authority", does not work in the context of a combined county authority. The amendment has no practical effect in relation to combined authorities and maintains parity between the two models. For consistency, the new definition of "independent person" is applied in relation to the requirement for an audit committee to include at least one independent member (Article 14 of the 2017 Order).

5.6 The Regulations extend the list of persons whose referral of a matter to an overview and scrutiny committee must be enabled by a combined authority (Article 6 of the 2017 Order). In the case of a combined county authority, such persons include "any

[1] East Midlands deal: https://www.gov.uk/government/publications/east-midlands-devolution-deal
[2] Draft East Midlands Combined County Authority Regulations: https://www.legislation.gov.uk/ukdsi/2024/9780348255614/contents
[3] Lancashire deal: https://www.gov.uk/government/publications/lancashire-devolution-deal
[4] Greater Lincolnshire deal: https://www.gov.uk/government/publications/greater-lincolnshire-devolution-deal-2023
[5] S.I. 2017/68

other principal council in the area of a combined county authority, but not a member of that council". Such referrals must concern matters related to the area of that council. This provision accommodates the legitimate interest of a district council within a two-tier area of a combined county authority in certain decisions which could be made by a combined county authority, where that council does not nominate a non-constituent member. The provision is followed through in relation to the supply of related documents to persons making referrals (Article 8).

5.7 The Regulations make some minor amendments to the 2017 Order to reflect changes to the constitutional arrangements for combined authorities introduced by the 2023 Act, in particular, for the appointment of non-constituent members and their nominating bodies. For example, the list of persons who may refer a matter to an overview and scrutiny committee mentioned in paragraph 5.6 is also extended to include members of councils which can nominate a non-constituent member. The Regulations clarify that substitute members are to be treated as members for the purposes of the definition of "independent person" and in relation to the referral of matters to an overview and scrutiny committee.

5.8 The Regulations also enable combined authorities and combined county authorities to pay members of their constituent councils who are appointed to these committees (new article 10A for overview and scrutiny committees and new article 15 for audit committees). This provision was requested by some of the existing combined authorities to help ensure quoracy at committee meetings. Payments may only be made following a recommendation from an independent remuneration panel. Such a panel may be established by one or more constituent council(s) under regulation 20 of the Local Authorities (Members' Allowances) (England) Regulations 2003 or may be appointed by the combined authority or combined county authority itself in accordance with membership rules set out in new article 16. The specification of these two options for the independent remuneration panel reflects existing provision for such panels in relation to combined authorities' mayoral allowances.

5.9 The remuneration provision in each of the existing combined authority Orders[6] is amended as a consequence of the new payment provisions for clarification and to remove any conflicting provisions. These amendments have been discussed and agreed with officers from the combined authorities. Where a combined authority does not currently wish to make such payments, it is not obliged to do so. The removal of contradictory local provision will avoid any future local policy change requiring fresh legislation. The amendments to existing combined authority orders also include some minor corrections to the original drafting, and deletion of some text which is now redundant, as well as, in two cases, provision enabling either type of independent remuneration panel mentioned in paragraph 5.8 to make a recommendation as to the mayoral allowance as well as to the new allowance. These were requested by, or agreed with, the individual combined authorities.

What was the previous policy, how is this different?

5.10 A combined county authority is a new type of authority closely modelled on a combined authority; the constitutional difference from the combined authority models is designed to be better suited to non-urban areas with two-tier government (see

[6] Except for the Newcastle Upon Tyne, North Tyneside and Northumberland Combined Authority and the Durham, Gateshead, South Tyneside and Sunderland Combined Authority as legislation currently before Parliament (The North East Mayoral Combined Authority (Establishment and Functions) Order 2024) will, if made, replace these combined authorities with a single new combined authority as set out in the devolution deal announced on 28 December 2022: https://www.gov.uk/government/publications/north-east-devolution-deal--2.

paragraph 5.1). The policy is one of parity between the two models, including in relation to the legislative framework for overview and scrutiny committees and audit committees.

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 the membership and proceedings of overview and scrutiny committees, and audit committees, of combined authorities is set out in the 2017 Order.

6.2 The 2023 Act provides for the establishment of combined county authorities. The 2023 Act replicates provision related to overview and scrutiny, and audit, committees in the 2009 Act, including powers[7] to make secondary legislation to complete the legislative framework for the membership and proceedings of these committees.

6.3 The 2023 Act also amends the 2009 Act to make some changes to the constitutional arrangements for combined authorities (see paragraph 5.7) and to add new powers[8] enabling combined authorities to pay an allowance to members of their constituent councils who are appointed to an overview and scrutiny committee or an audit committee. Both sets of new provision also apply to combined county authorities.

6.4 The Regulations complete the legislative framework for the membership and proceedings of overview and scrutiny committees and audit committees of combined county authorities by extending the scope, with appropriate modifications, of existing provision for combined authorities (the "2017 Order"). Some minor amendments are included to reflect the new constitutional arrangements for combined authorities. In addition, new provision is included to enable payment of allowances to certain committee members and consequential amendments are made to existing combined authority Orders to ensure the new provision may have effect (see paragraphs 5.8 and 5.9).

Why was this approach taken to change the law?

6.5 Legislation is required to complete the statutory framework relating to overview and scrutiny, and audit, committees for combined county authorities to ensure parity with combined authorities. The Regulations make only essential amendments to the 2017 Order reflecting the constitution-related provisions in the 2023 Act and to give effect to the power to make provision enabling the payment of allowances to certain committee members.

7. Consultation

Summary of consultation outcome and methodology

7.1 The purpose of the new Regulations is largely to extend the existing provisions for overview and scrutiny, and audit, committees of combined authorities to combined county authorities and to make the new allowances provision. As such the Government's position is not to re-open policy questions which were settled when the 2017 Order was made or to make substantive changes to the 2017 Order which do not flow directly from the changes to the constitutional arrangements for combined

[7] Powers are at paragraphs 3 and 4(3) of Schedule 1 to the 2023 Act.
[8] Section 70 of the 2023 Act amends paragraphs 3(2) and 4(3) of Schedule 5A to the 2009 Act to add the new powers in relation to combined authorities.

authorities or the constitutional difference between combined authorities and combined county authorities. The scope for new policy development therefore has been highly restricted. The Government undertook consultation before introducing the 2017 Order. The approach taken and a consideration of the responses are set out in section 8 of the Explanatory Memorandum to that Order[9].

7.2 In this context, the Government engaged officers from each of the existing combined authorities, from the East Midlands area and from Chartered Institute of Public Finance and Accountancy and the Centre for Governance and Scrutiny. We shared Keeling schedules of the draft legislation and held group and one-to-one online meetings to talk through the policy and proposed legislation and followed up via email.

7.3 Everyone with whom we engaged was supportive of the general approach and the rationale behind the essential changes described in paragraphs 5.3 to 5.9. In particular, the drafting of the changes to the individual remuneration provisions for existing combined authorities was agreed with officers from each combined authority. We also spoke with officers from the North East and the East Midlands where legislation to establish a new combined authority and combined county authority respectively were in development in parallel to ensure that the 'generic' provision in these Regulations and the area-specific provision in their establishment legislation dove-tails.

7.4 Despite the restricted scope for policy changes, several of the combined authorities with whom the draft legislation was discussed asked if provision could be included enabling committees to meet virtually or to reduce the quoracy requirement for the transaction of committee business from its current level of two thirds of committee members. The Government believes that face-to-face attendance of meetings at all tiers of government is important, not just to build strong working relationships, but to deliver good governance and democratic accountability and has no plans to change existing legislation on remote meetings. In addition, the Government is not minded to water down quoracy requirements and the robust accountability they ensure. However, the new allowances provisions were requested ahead of their inclusion in the 2023 Act by some existing combined authorities to help ensure quoracy at committee meetings.

8. Applicable Guidance

8.1 The Government's Overview and scrutiny: statutory guidance for councils and combined authorities[10], will be updated to include combined county authorities and published on the gov.uk website shortly. In addition, the Government has published the Scrutiny Protocol[11] which sets out non-statutory guidance regarding overview and scrutiny committees in English institutions with devolved powers, including combined authorities and combined county authorities.

[9] Explanatory Memorandum to the 2017 Order: https://www.legislation.gov.uk/uksi/2017/68/pdfs/uksiem_20170068_en.pdf

[10] Published May 2019; https://www.gov.uk/government/publications/overview-and-scrutiny-statutory-guidance-for-councils-and-combined-authorities

[11] Published November 2023; https://www.gov.uk/government/publications/scrutiny-protocol-for-english-institutions-with-devolved-powers

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.

9.4 There is no, or no significant, impact on the public sector. This is because where a combined county authority is established, it will be required, under the 2023 Act, to have an overview and scrutiny committee and an audit committee. The Regulations merely clarify the membership and procedural arrangements for these committees and in doing so replicate existing provision for combined authorities. The new allowances provision for both combined authorities and combined county authorities is enabling only and it is introduced at the request of some existing combined authorities to help with quoracy on these committees which should therefore aid efficiency.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Government has no plans actively to monitor this legislation; the majority of provisions are already in operation without problems for combined authorities and the new allowances provision is enabling only and so it will be for combined authorities and combined county authorities to decide whether or not to avail themselves of the provision. However, all areas seeking a devolution deal including a combined authority or combined county authority will be expected not only to comply with the legislation but actively to adopt the principles in the non-statutory Scrutiny Protocol mentioned in paragraph 8.1 which go beyond the statutory requirement.

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 for Levelling Up, Housing and Communities has made the following statement regarding Human Rights:

"In my view the provisions of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) (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").