EXPLANATORY MEMORANDUM TO

THE BARNSLEY, DONCASTER, ROTHERHAM AND SHEFFIELD COMBINED AUTHORITY (ELECTION OF MAYOR) (AMENDMENT) ORDER 2017

2017 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 To amend the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority (Election of Mayor) Order 2016 to make provision for the date of the first mayoral election to be delayed until 3 May 2018, with elections every four years thereafter.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 This instrument applies only to England.

3.3 The instrument applies only to England as it is entirely concerned with local government areas in England. Section 103(2) of the Local Democracy, Economic Development and Construction Act 2009 ("the 2009 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.

3.4 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.

3.5 The Department has reached this view because it considers that the primary purpose of the provisions in this instrument relate to local government, which is within the devolved legislative competence of the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales.

4. Legislative Context

4.1 The Barnsley, Doncaster, Rotherham and Sheffield Combined Authority ("the Sheffield City Region Combined Authority") was established by the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority Order 2014 (S.I. 2014/863).

4.2 Section 103 of the 2009 Act provides for the creation of combined authorities and section 107A of the 2009 Act, as inserted by section 2 of the Cities and Local Government Devolution Act 2016 ("the 2016 Act"), provides for the creation of the position of a mayor for the area of a combined authority and the necessary election. A combined authority is a corporate body on which can be conferred – by order – any functions of the local authorities within the area of the combined authority or of any public authority. Section 107D of the 2009 Act, as inserted by section 4 of the 2016 Act, provides that if a position of mayor is established for the area of the combined authority, the mayor can exercise individually some of the functions conferred on the combined authority, as specified in the order. Schedule 5B to the 2009 Act, inserted by Schedule 1 to the 2016 Act, provides that a mayor is elected by the local government franchise within the area of the combined authority.

4.3 Section 107B of the 2009 Act, as inserted by the 2016 Act, provides that a position of a mayor for the area of a combined authority can be established if the local authorities within the area make a proposal to the Secretary of State or if the existing combined authority and local authorities within the area consent.

4.4 Schedule 5B of the 2009 Act, as inserted by the 2016 Act, specifies the default date of the first election for the mayor for the area of the combined authority and the term of office of mayor, but these are subject to specific provision made by order.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales as the relevant powers being exercised extend to England and Wales.

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

6. European Convention on Human Rights

6.1 Andrew Percy MP, Parliamentary Under Secretary of State at the Department for Communities and Local Government, has made the following statement regarding Human Rights:

"In my view the provisions of the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority (Elections of Mayor) (Amendment) Order 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 On 2 October 2015 the Government and the Combined Authority announced a devolution agreement with the Sheffield City Region Combined Authority and local authorities which provided for an offer of powers and budgets from Government on the basis that the area will deliver certain reforms and measures, including adopting a model of a directly elected mayor covering the whole of the Combined Authority area.

7.2 The Barnsley, Doncaster, Rotherham and Sheffield Combined Authority (Election of Mayor) Order 2016 provided for the first election for the mayor of the Sheffield City Region Combined Authority to take place on 4 May 2017. This Order was made, following Parliamentary approval, on 21 July 2016 under the 2009 Act, as amended

by the 2016 Act. This was on the expectation that a further Order under the 2009 Act would be made by early 2017 conferring on the mayor and the Sheffield City Region Combined Authority the functions envisaged in the devolution deal.

7.3 Having undertaken a governance review, the Combined Authority published a scheme, in July 2016, in accordance with the 2009 Act containing proposals to confer powers to the mayor and the Combined Authority, and also proposals for a geographical extension to the Sheffield City Region Combined Authority area to include two new local areas, Chesterfield Borough (situated in Derbyshire) and Bassetlaw District situated in Nottinghamshire). Once the scheme was published on 1 July the Sheffield City Region Combined Authority launched a consultation on the scheme's proposals; the consultation ended on 12 August.

7.4 In August 2016 Derbyshire County Council challenged the Sheffield City Region Combined Authority's consultation by judicial review. The Court found on 21 December 2016 that the consultation carried out by Sheffield City Region Combined Authority was insufficient. The Court did not quash the consultation but gave a declaration that the consultation as it stood did not achieve its statutory purpose (i.e. was not a public consultation in connection with the scheme's proposals within the meaning of the 2009 Act), because it did not include a specific question seeking views about Chesterfield becoming part of the Sheffield City Region Combined Authority.

7.5 The Sheffield City Region Combined Authority leaders issued on 12 January 2017 a public statement (http://sheffieldcityregion.org.uk/2017/01/combined-authority-will-work-towards-2018-mayoral-election) that they wished to consult again and before doing so would take the time needed to ensure that any further consultation is robust. They have indicated that accordingly they do not expect to have developed and launched this further consultation until after the May 2017 local government elections; they have made a request to Government for the mayoral elections to be postponed by a year until May 2018.

7.6 The Government remains fully committed to the agreed devolution deal for the Sheffield City Region Combined Authority, and hence has decided to respond positively to the local leaders' request and to seek Parliament's approval to the Order that would provide for the requested postponement of the mayoral election.

7.7 Without further consultation, such as that which the Sheffield City Region Combined Authority is planning to undertake, the Secretary of State is unable to proceed with an order conferring powers on the Sheffield City Region Combined Authority and the mayor. If the May 2017 election is not postponed, there would thus be an election, with the associated costs, for a mayor who would only be the Chair of the Sheffield City Region Combined Authority, without any powers. Indeed, with such an election there would be considerable risk that there would be no credible candidates, and the whole exercise could weaken the public's confidence in the country's local democracy.

7.8 Hence, the Order, to which the four City Region councils and the Sheffield City Region Combined Authority have consented, and for which Parliamentary approval is sought, to change the date of the first mayoral election to the ordinary day of election for local councillors (3 May) in 2018.

7.9 The Order also provides that the second election takes place on the ordinary day of election in 2022, rather than in 2020, with four year terms thereafter. Without this provision the first mayoral term would be only two years; and providing for a 3 year

initial term by moving the second election only one year to 2021 would mean elections for the Sheffield City Region Combined Authority mayor and the Doncaster mayor would always coincide. Whilst this would have been the case in 2017 as a one-off occasion, the Government believes that, where possible, such alignment should be avoided as it risks causing confusion for voters in the Doncaster area given the different roles and functions of the two mayors.

8. Consultation outcome

8.1 The Order has been requested by the leaders of the Sheffield City Region Combined Authority and consented to by the four democratically elected councils of the area. There has been no further consultation on this Order. Moreover, as set out in 7.5-7.7, the rationale for this Order is to enable further consultation by the Sheffield City Region Combined Authority.

9. Guidance

9.1 No guidance is necessary to accompany this order

10. Impact

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

10.2 This Order will amend the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority (Election of Mayor) Order 2016 to make provision for the date of the first mayoral election to be delayed until 3 May 2018, with elections every four years thereafter. There is no impact on the wider public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

12.1 The Combined Authority will be required under the devolution agreements reached with Government, to put in place an extensive programme of evaluation, agreed with HM Government, of the devolution agreement.

13. Contact

13.1 Nicola Chissell at the Department for Communities and Local Government Telephone: 0303 444 41941 or email: jobshare.beckingham-chissell@communities.gsi.gov.uk can answer any queries regarding the instrument.