EXPLANATORY MEMORANDUM TO

THE COMBINED AUTHORITIES (BORROWING) REGULATIONS 2022

2022 No. [XXXX]

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 Her Majesty.

2. Purpose of the instrument

2.1 These Regulations confer additional borrowing powers on three mayoral combined authorities (North of Tyne, South Yorkshire and West Yorkshire Combined Authorities) that have each agreed a debt agreement also known as a "debt cap"[1] with HM Treasury to allow them to borrow in respect of all their existing functions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 England.

5. European Convention on Human Rights

5.1 Minister Neil O'Brien has made the following statement regarding Human Rights:

"In my view the provisions of the Combined Authorities (Borrowing) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 Part 6 of the Local Democracy, Economic Development and Construction Act 2009 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 other 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.

6.2 Part 1 of the Local Government Act 2003 ("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

[1] "Debt cap" means an agreement between a combined authority and Her Majesty's Treasury which provides for annual maximum limits on the long term external debt (borrowing for more than 12 months) into which the authority may enter.

functions and for the prudent management of their affairs. Section 23(1) defines local authorities for the purposes of Part 1 as including principal councils, the Greater London Authority, waste disposal authorities, fire and rescue authorities and police and crime commissioners.

6.3 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) 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.

6.4 There are three combined authorities with elected mayors on whom extended borrowing powers have not yet been conferred:

- The Newcastle Upon Tyne, North Tyneside and Northumberland Combined Authority known as the North of Tyne Combined Authority (NTCA), which was established by the Newcastle Upon Tyne, North Tyneside and Northumberland Combined Authority (Establishment and Functions) Order 2018 (S.I. 2018 / 1133), which also included provisions for the position of an elected mayor for the NTCA and the conferral of functions on the NTCA, some of which are exercisable individually by the Mayor;
- The South Yorkshire Mayoral Combined Authority (SYMCA), which was established by the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority Order 2014 (S.I. 2014 / 863). The role of the Mayor was established by the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority (Election of Mayor) Order 2016 (S.I. 2016/800). The Barnsley, Doncaster, Rotherham and Sheffield Combined Authority (Functions and Amendment) Order 2020 (S.I. 2020 / 806) included provisions for the conferral of functions on the SYMCA, some of which are exercisable individually by the Mayor; the Authority was previously known as the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority but changed its name by resolution of 7th June 2021 with effect from 17th September 2021 in accordance with section 104(4) of the 2009 Act which applies section 97 of the Local Transport Act 2008(c. 26) (change of name of ITA) to a combined authority as it applies to an Integrated Transport Authority.
- The West Yorkshire Combined Authority (WYCA), which was established by the West Yorkshire Combined Authority Order 2014 (S.I. 2014 / 864). The West Yorkshire Combined Authority (Election of Mayor and Functions) Order 2021 (S.I. 2021 / 112) included provisions for the position of an elected mayor for the WYCA, the conferral of functions on WYCA, 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.

7. Policy background

What is being done and why?

7.1 These Regulations implement a commitment, made by the then Chancellor of the Exchequer, the Rt Hon Philip Hammond MP, in his Autumn Statement in November 2016, to extend the borrowing powers of mayoral combined authorities in England where they have agreed debt caps with HM Treasury. The commitment was: "The government will give mayoral combined authorities powers to borrow for their new functions, which will allow them to invest in economically productive infrastructure, subject to agreeing a borrowing cap with HM Treasury." This commitment to give them extended borrowing powers was also included in their individual devolution deals.[2]

7.2 The three mayoral combined authorities have now each agreed a debt cap with HM Treasury for 2021/22 and have entered negotiations on debt caps for 2022/23 onwards. These debt agreements 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*[3]. Short-term external debt (i.e. less than 12 months) does not count towards the agreed limits.

7.3 These Regulations list these three combined authorities and provide that all the functions of these combined authorities, other than their transport functions, are specified for the purposes of the 2003 Act and therefore are functions for which the combined authorities can borrow. In common with all combined authorities, the mayoral combined authorities already have borrowing powers for transport and, for WYCA, for Police and Crime Commissioner functions as well. The extension of borrowing powers will fulfil the Chancellor's aim of the mayoral combined authorities being able to invest in economically productive infrastructure.

7.4 These Regulations in practice extend borrowing for different functions for each mayoral combined authority, because each mayoral combined authority 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 economic development, and the main functions are summarised below for each of the mayoral combined authorities.

7.5 For NTCA these Regulations confer borrowing powers for purposes relevant to further functions which include;

- Functions from the Localism Act 2011 including the functional power of competence and the power to designate mayoral development areas;
- Duty from the Housing Act 1985 to review housing needs and the functions to acquire land;
- Powers from the Housing and Regeneration Act 2008 that relate to the provision of housing, regeneration of land, infrastructure and sustainable development;

[2] https://www.gov.uk/government/publications/north-of-tyne-combined-authority-devolution-deal; https://www.gov.uk/government/publications/sheffield-devolution-deal; https://www.gov.uk/government/publications/west-yorkshire-devolution-deal

[3] https://www.cipfa.org/policy-and-guidance/publications/t/the-prudential-code-for-capital-finance-in-local-authorities-2017-edition-book

- Functions from the Education Act 1996 in relation to education and training for persons over compulsory school age;
- Powers from the Local Government Act 1972 to encourage visitors and provide conference and other facilities and arrange for publication of information relating to the functions of the authority.

7.6 For SYMCA these Regulations confer borrowing powers for purposes relevant to further functions which include;

- Functions from the Highways Act 1980 in relation to agreements with Highways companies;
- Power from the Local Government Act 2003 to pay grants to local authorities;
- Functions from the Education Act 1996 and the Apprenticeships, Skills, Children and Learning Act 2009 in relation to education and training for persons over compulsory school age;
- Duty from the Further and Higher Education Act 1992 to provide for named individuals;
- Duties from the Education and Skills Act 2008 that relate to education;
- Powers from the Housing and Regeneration Act 2008 that relate to the provision of housing, regeneration of land, infrastructure and sustainable development;
- Functions from the Localism Act 2011 including the general power of competence and the power to designate mayoral development areas

7.7 For WYCA these Regulations confer borrowing powers for purposes relevant to further functions which include;

- Duty from the Further and Higher Education Act 1992 to provide for named individuals;
- Functions from the Education Act 1996 and the Apprenticeships, Skills, Children and Learning Act 2009 in relation to education and training for persons over compulsory school age;
- Duties from the Education and Skills Act 2008 that relate to education;
- Duty from the Housing Act 1985 to review housing needs and the functions to acquire land;
- Powers from the Housing and Regeneration Act 2008 that relate to the provision of housing, regeneration of land, infrastructure and sustainable development;
- Functions from the Town and Country Planning Act 1990 in relation to acquiring land;
- Functions from the Localism Act 2011 including the functional power of competence and the power to designate mayoral development areas;
- Power from the Local Government Act 2003 to pay grants to local authorities;
- Power from the Transport Act 2000 to pay grants to bus service operators;
- Functions from the Highways Act 1980 in relation to agreements;
- Functions from the Road Traffic Regulation Act 1984 relating to traffic regulation orders, traffic light signals, pedestrian crossings and traffic reports;
- Functions from the Traffic Management Act 2004 in relation to permit schemes;
- Duty from the 2009 Act to prepare an assessment of economic conditions;

- Powers from the Local Government Act 1972 to allow for the discharge of the general functions of the Combined Authority.

8. European Union Withdrawal and Future Relationship

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 There is no requirement for consolidation as this instrument does not amend other legislation

10. Consultation outcome

10.1 In contrast to the legislation surrounding the establishment of a combined authority or the conferral of local authority functions on a combined authority, a consultation is not required for extending the borrowing powers of a combined authority in respect of these functions. In the consultations on the conferral of those functions, no issues were raised about the possibility of borrowing powers. The legislation does require the consent of the combined authority and each council in the area of the combined authority to a function being specified in regulations in relation to which that combined authority may borrow money. The consent of the three combined authorities and the councils within the area of those combined authorities has been provided.

11. Guidance

11.1 No guidance is necessary to accompany these Regulations. The Government continues to work with the mayoral combined authorities to support their implementation of the devolution deals.

12. Impact

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

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

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

13. Regulating small business

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

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that Mayoral Combined Authorities are required under the devolution agreements reached with the Government to put in place an extensive programme of evaluation, agreed with HM Treasury, of the devolution agreements. The debt agreements that have been made with HM Treasury commit to regular monitoring and reviews and that either party can request a review.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Michael O'Grady at the Department for Levelling Up, Housing and Communities Email: Michael.ogrady@communities.gov.uk can be contacted with any queries regarding the instrument.

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

15.3 Neil O'Brien MP at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.