EXPLANATORY MEMORANDUM TO

THE COMBINED AUTHORITIES (FINANCE) ORDER 2017

2017 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument makes provision for a precept to be set by the mayor of a combined authority to fund mayoral functions, the arrangements for setting and approving a combined authority mayoral budget, provision for a mayor's general fund, and transitional provisions, including transitional provisions relating to the Greater Manchester Combined Authority.

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 entire instrument applies only to England.

3.3 The instrument applies only to England as it is entirely concerned with 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 entire 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 Part 6 of the Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act"), sets the framework for the establishment of combined authorities for the areas of two or more local authorities in England. A number of combined authorities have been established under Part 6 of the 2009 Act, including the Greater Manchester Combined Authority. Part 6 of the 2009 Act was substantially amended

by the Cities and Local Government Devolution Act 2016 ("the 2016 Act") – in particular to provide for elected mayors for combined authorities, to broaden the range of functions that might be conferred on a combined authority, and to provide for mayoral precepting and budget arrangements for the mayor.

4.2 Section 107B(3) of the 2009 Act provides for there to be a mayor for the area of a combined authority with the consent of the constituent councils of the combined authority and any existing combined authority. Such authorities are referred to as "mayoral combined authorities". Mayoral combined authorities are major precepting authorities for the purposes of setting council tax under the Local Government Finance Act 1992 ("the 1992 Act") as amended by the 2016 Act (see section 39(1)(ab) of the 1992 Act).

4.3 This Order is the first piece of secondary legislation to be made under section 107G of the 2009 Act. Section 107G enables the Secretary of State, by order, to make provision for the costs of a mayor for the area of a combined authority that are incurred in, or in connection with, the exercise of mayoral functions to be met from precepts issued by the authority under section 40 of the 1992 Act. Section 107G(3) of the 2009 Act enables the Secretary of State, by order, to modify the application of Chapter 4 or 4ZA of Part 1 of the 1992 Act so far as applying to cases where the precepting authority in question under that Chapter is a mayoral combined authority. Section 39(11)(b) of the 1992 Act provides that the issuing and calculation of a precept under Chapter 4 is subject to any provision made in an order under section 107G.

4.4 Section 107G(5) of the 2009 Act provides that the Secretary of State may, by order, make provision requiring the mayor to maintain a fund in relation to receipts arising, and liabilities incurred, in the exercise of general functions (i.e. functions other than police and crime commissioner functions); and about the preparation of an annual mayoral budget in relation to the exercise of general functions.

4.5 A major precepting authority is required by section 40 of the 1992 Act to issue a precept to the billing authorities in its area (that is, those authorities that issue council tax bills). The precept is the amount that the authority needs to raise by way of council tax. Section 42A requires the authority to calculate its estimated income and estimated expenditure for the following financial year – the difference, if a positive amount, is the authority's council tax requirement. The council tax requirement calculated under section 42A is then used to calculate the authority's basic amount of council tax (its Band D council tax), the amount applicable to all other council tax bands and the applicable amount for each authority. These must all be stated in the precept issued under section 40. Chapter 4 is modified by the Schedule to this Order in cases where a mayor is given police and crime commissioner functions so that the council tax requirement in respect of PCC functions ("the PCC component") is calculated separately from the council tax requirement in respect of general functions ("the general component") (as required by section 107G(4)(a) of the 2009 Act).

4.6 Chapter 4ZA of the 1992 Act makes provision for referendums for excessive council tax increases. "Excessive" is determined by reference to a set of principles determined annually by the Secretary of State and laid before the House of Commons for approval. Any amount which exceeds the relevant principle must be approved in a referendum of local voters. The modifications in the Schedule to this Order provide that a principle can apply to either the PCC component or the general component (or

both) so that either or both may be subject to a referendum. This is similar to the Greater London Authority which also has two separate amounts.

4.7 Articles 5 to 10 provide for budget setting in respect of general functions. The mayor's PCC functions are subject to separate arrangements under the Police and Social Responsibility Act 2011. Article 11 provides for the mayor to keep a fund in respect of general functions – again PCC functions are accounted for under the Police Act 1996.

5. Extent and Territorial Application

5.1 The extent of this instrument is 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, 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 Combined Authorities (Finance) Order 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Government committed in its 2015 manifesto to "devolve far-reaching powers over economic development, transport and social care to large cities which choose to have elected mayors". The Cities and Local Government Devolution Act 2016 enables new powers to be transferred to combined authorities, and provides for mayors for an area of a combined authority, for financial arrangements to enable mayoral combined authorities to issue a mayoral precept to fund functions exercised by the mayor (in practice, usually newly transferred functions), and for arrangements for setting a mayoral budget and maintaining a mayor's general fund.

7.2 The Government has agreed devolution deals providing for directly elected mayors and the devolution of powers to the areas of: Greater Manchester; Liverpool City Region; Sheffield City Region; Tees Valley; West Midlands; Cambridgeshire and Peterborough; and the West of England; with the first elections for combined authority mayors taking place on 4 May 2017, although in the case of the Sheffield City Region, a draft Order is currently before Parliament, which if approved and made would defer the election for that combined authority's mayor to May 2018.

7.3 The Order makes provision enabling mayoral combined authorities to fund general functions: for a precept to be issued by a mayoral combined authority to fund those functions, for the arrangements for setting and approving a combined authority's mayoral budget, and for a mayor's general fund. The Order also includes transitional provisions including in relation to Police and Crime Commissioner and Fire and Rescue Authority functions in Greater Manchester.

7.4 The Order provides for the costs incurred by a combined authority mayor in 2018/19 and subsequent years for general functions to be met from precepts issued by the combined authority, except to the extent that these costs are met by other means,

including where Orders specific to individual combined authorities make funding provisions. In the case of the West of England, Government has agreed with the area that the mayor would not have the power to raise funds by a precept.

7.5 The Order sets out the process for setting budgets for the mayor's general functions. This will work in a similar manner to the process for budget setting in a local authority with an elected mayor. Each year, the combined authority mayor is to prepare a draft budget for the mayor's general functions by 1 February, including the relevant amounts and calculations to be used for the purpose of determining the precept to be issued by the combined authority. The combined authority is then to consider and report on the draft budget by 8 February. That report is to include any changes the combined authority thinks the mayor should make to the draft budget. The mayor will then decide whether to make all, some, or none of the changes recommended by the combined authority. The combined authority may then approve the mayor's draft budget, containing any revisions the mayor has chosen to make, or replace the draft budget with one containing the combined authority's amendments. Any vote to agree a budget other than that proposed by the mayor may only be carried by a majority that is two-thirds or more of the combined authority (three-fifths in Tees Valley where the combined authority has fewer members).

7.6 If the mayor fails to present a draft budget to the combined authority by 1 February, the combined authority must determine the relevant amounts and calculations itself. A precept must be set by 1 March preceding the financial year to which it relates. If the combined authority cannot agree the budget by a two thirds majority (or three fifths in the case of the Tees Valley Combined Authority) then they will need to agree a revised budget or face not being able to fund the mayor's general functions from precepts (thereby falling back on the default provision in individual combined authority orders requiring the constituent authorities to cover the costs). This provides a strong incentive to reach agreement. Failure to set a precept by 1st March would put the combined authority in breach of section 40(5) of the Local Government Finance Act 1992 – but as that subsection makes clear, a precept issued on or after that date is not invalid simply because the deadline has been passed.

7.7 The agreed budget defines the level of the precept to be issued by the combined authority to billing authorities in the area. Any increase to the sum proposed by the mayor to fund their functions through the precept will be subject to the same provision as for council tax: that any increases above the referendum threshold will be subject to a referendum of local people.

7.8 The Order provides for the mayor to maintain a fund for receipts and expenditure related to mayoral functions, ensuring costs are transparently attributable to the mayor.

7.9 The Order also provides for transparency and accountability for decisions, by requiring that the names of those combined authority members voting, and the nature of their votes, including abstention, must be recorded in the minutes of the meeting at which the combined authority's decision on the mayoral budget is taken.

7.10 The first combined authority mayors will not take office until 8 May 2017, some six weeks into the financial year. Therefore the mayor will not be present to set a budget and precept for their first year. In 2017/18, funding for the mayor's functions will be set by the combined authority, and funded through contributions from constituent authorities, as provided for in orders conferring functions on those areas. The level of

the precept to be set by the mayor is part of the budget setting process, which takes effect from 2018/19. The Order also makes provision for the subsequent creation of further combined authority mayors after 2017/18: that a mayor's costs may only be met by precepts in the year following the first election for a combined authority mayor if that election has taken place by 23 January.

7.11 As part of the devolution agreements to create mayoral combined authorities, Government has also provided significant additional funding, from which mayors may also agree with the combined authority to fund their functions.

7.12 The Order makes specific provision for the Greater Manchester Combined Authority, in which the mayor will take on police and crime commissioner and fire and rescue functions, recognising that the mayor is not in post until 8 May 2017. The Order ensures that funds allocated to these functions for the year 2017/2018 are available to the mayor once the mayor takes on responsibility for these functions. The Order also makes detailed provision to take account of precept raising for police and crime commissioner functions in mayoral combined authorities, in particular to ensure that the element of the mayor's precept relating to police and crime commissioner functions, and the element relating to the mayor's general functions, are dealt with separately.

8. Consultation outcome

8.1 The Government has sought and considered the views of relevant stakeholders before making this Order, including senior officers concerned with establishing the constitutional arrangements necessary to discharge functions on their combined authorities. In addition, a working group of senior finance officers of existing combined authorities and those involved with the new combined authorities then being established was convened to consider the content of this Order and other finance matters. The working group met on three occasions, and views of these practitioners were particularly helpful in refining the timetable for mayoral budget setting, so as to be workable within the context of local government frameworks and decision making, and in clarifying transitional provisions for mayoral combined authorities in their first year of existence.

9. Guidance

9.1 No guidance is necessary to accompany this Order. The Government will keep under review with the Chartered Institute of Public Finance and Accountancy whether any amendment to wider guidance is required.

10. Impact

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

10.2 There is no impact on the public sector. The Order is essential to enable efficient funding of mayoral combined authorities.

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 Mayoral combined authorities will be 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, including new devolved funding.

13. Contact

13.1 Luke Scofield at the Department for Communities and Local Government Telephone: 0303 444 2562 or email: luke.scofield@communities.gsi.gov.uk can answer any queries regarding the instrument.