EXPLANATORY MEMORANDUM TO

THE DEVON AND TORBAY COMBINED COUNTY AUTHORITY REGULATIONS 2024

2024 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Minister McMahon, Minister of State in the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

2.2 Evi Bell, Head of the Governance Reform and Democracy Unit and Deputy Director in the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Coralie Blatchford-Neave in the Ministry of Housing, Communities and Local Government email: GradSubmissions@communities.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

4.1 These regulations provide for the establishment, including governance arrangements, of the Devon and Torbay Combined County Authority (DTCCA). A combined county authority (CCA) is a new type of local authority which was created via the Levelling-up and Regeneration Act 2023 ("2023 Act"). The regulations provide that DTCCA will be made up of the local authorities of Devon County Council and Torbay Council. They also provide for certain functions of local and public authorities to be exercised by DTCCA relating to: transport; housing; and regeneration and planning.

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 The Government has emphasised its commitment to transferring power out of Westminster and into local communities, handing power to those with local knowledge and who are incentivised to drive progress forward.

5.2 On 25 January 2024, a devolution agreement was made between the previous Government, Devon County Council and Torbay Council. This agreement offered powers and funding to enable Devon and Torbay to improve the economic, social and environmental well-being of people within the community by strengthening local leadership to act more flexibly and innovatively to respond to local need, including on transport, skills and regeneration. The Devon and Torbay Combined County Authority Regulations 2024, using the powers available from the 2023 Act, implement this agreement and establish a CCA for the area.

5.3 The purpose of the proposed Regulations, in accordance with the agreement, is to confer transport, planning, housing and regeneration, and economic functions, which currently sit with central government and other public and local authorities, onto DTCCA. Functions on adult education, skills and training set out in the agreement – including the devolution of the Adult Skills Fund – will be conferred by future Regulations made by the Secretary of State for Education, subject to readiness conditions being met.

What was the previous policy, how is this different?

5.4 This is the first devolution agreement implemented within the Devon and Torbay area. The purpose of the Regulations, in accordance with the agreement, is to establish DTCCA and its governance arrangements, and confer transport, planning, housing and regeneration, and economic functions onto it. Conferral of these functions has been part of other devolution statutory instruments, such as the North East Mayoral Combined Authority (Establishment and Functions) Order 2024 and the East Midlands Combined County Authority Regulations 2024. Most of the provisions of the Regulations will come into force on the day after the day on which the Regulations are made. The DTCCA will be made up of the local authorities of Devon County Council and Torbay Council, who have consented to the making of the Regulations.

5.5 Responsibility for the vast majority of public service delivery will remain with the constituent councils. The DTCCA will mainly use the functions conferred onto it to develop and implement strategic economic policy and programmes within DTCCA's area.

Part 2 Establishment of a combined county authority for Devon and Torbay

5.6 Part 2 of the Regulations provides for the establishment and naming of the combined county authority, and defines generically its functions.

5.7 Schedule 1 of the Regulations outlines the constitution of the DTCCA. It sets out the membership, voting arrangements, and payments of allowances for the members of the CCA.

5.8 Schedule 1 also sets out provision about proceedings, remuneration, records and the making of standing orders, and that the DTCCA overview and scrutiny committee Chair must be an independent person.

Part 3 – Housing, Regeneration and Planning

5.9 Part 3 of the Regulations relates to the housing, regeneration and planning functions under the Housing and Regeneration Act 2008 ("the 2008 Act") to be conferred on the DTCCA, which are exercisable concurrently with the Homes and Communities Agency.[1] Powers will be exercisable only within the area of the constituent councils of the DTCCA and apply to the providing of housing, regeneration of land, land acquisition and disposal. Powers are to be exercised for the purpose of: improving the quality and supply of housing; securing the regeneration of land or infrastructure; the development and/or continued well-being of communities; and achieving sustainable development and good design.

5.10 Part 3 of the Regulations also confers powers on to the DTCCA under the Town and Country Planning Act 1990 ("the 1990 Act") and the Housing Act 1985 ("the 1985 Act") for the acquisition and appropriation of land for planning and public purposes. These powers are exercisable concurrently with the DTCCA's constituent councils.

5.11 For any compulsory land acquisition to take place using powers in the 2008 Act, 1990 Act or 1985 Act, the consent of the DTCCA member, or substitute member, representing the constituent council in which the land sits will be required. If the land sits within either Dartmoor and Exmoor National Parks or a district council's area, the consent from these parties will also be required.

Part 4 – Transport

5.12 Part 4 of the Regulations gives DTCCA a range of powers and functions to take overall responsibility for planning, delivering, maintaining and improving transport infrastructure and services in the DTCCA area. DTCCA will take on the local transport authority powers and functions currently held by the constituent councils, allowing for progressively stronger alignment between strategic spatial, economic and transport planning functions, ultimately delivering better outcomes for people and places. These powers and functions include: the responsibility to develop and implement a local transport plan; responsibilities relating to local transport services and ticketing; selected highways and traffic authority functions; and grant-paying powers to bus operators and constituent councils. By taking on these powers and functions, DTCCA will become the local transport authority for the area, with the constituent councils remaining the local highways and traffic authority for their respective area.

5.13 All transport functions being transferred to the DTCCA in these Regulations under the Transport Act 1985 and Transport Act 2000 will be subject to a transition period ending 31 March 2026, during which these functions will be held concurrently by DTCCA and the constituent councils. The transition period provides flexibility for DTCCA to choose the appropriate time to transfer over individual functions from constituent councils to the new institution, rather than them transferring immediately or at the same time. This will enable the new institution to exercise these functions effectively in step with its development of capacity and capability. After the transition period, these functions will be held by, and are exercisable exclusively by, DTCCA.

5.14 DTCCA will hold the following local transport functions under Part 2 of the Transport Act 2000:

[1] In 2018, the trading name for the Homes and Communities Agency became Homes England.

- the creation and delivery of the area's local transport plan (Sections 108 to 113B). The CCA's local transport plan will be subject to a unanimous vote in favour by all members of the CCA appointed by the constituent councils.
- bus partnerships (Sections 113C to 123 and 138A to 138S) and ticketing schemes (Sections 134C to 138).
- bus franchising schemes, if they are introduced (Sections 123A to 123X). The CCA will need to seek the approval of the Secretary of State to prepare a franchising assessment (Section 123C).

5.15 DTCCA will also have responsibility for local passenger transport services including concessionary fare schemes through Parts 4 & 5 of the Transport Act 1985.

5.16 Constituent authorities will remain the highway and traffic authorities for the area. DTCCA will have the following highways and traffic authority functions in relation to the CCA area, held concurrently with constituent councils and exercisable by the CCA with the consent of the constituent council where the function is to be exercised:

- to enter into agreements related to works on highways (Sections 6 and 8, Highways Act 1980);
- to issue penalty charge notices in respect of moving traffic and bus lane contraventions (Part 6 of, and paragraphs 9 and 10 of Schedule 8 to, Traffic Management Act 2004); and
- to operate a permit scheme designed to control the carrying out of works in the CCA area (Sections 33, 33A and 36, Traffic Management Act 2004. Part 3 of the 2004 Act applies in this regard with the modifications set out in Schedule 4 to the Order).

5.17 DTCCA will have the function of paying grants to the constituent councils (Section 31 Local Government Act 2003). This will enable DTCCA to pay funds to constituent councils, including any local transport funding which the CCA receives as part of a consolidated grant. The CCA must have regard to the desirability of ensuring that the constituent councils have sufficient funds to facilitate the effective discharge of their highways functions. This function is exercisable concurrently by the Minister of the Crown and the CCA.

Part 5 – Additional functions

5.18 The Regulations provide that the DTCCA is given powers to prepare an assessment of the economic conditions of the area. It also confers data sharing functions on the DTCCA. These functions are exercisable concurrently with the constituent councils.

5.19 Part 5 also confers on the DTCCA the local authority general power of competence function in relation to economic development and regeneration.

5.20 This part of the Regulations also makes incidental provisions as if the DTCCA were a local authority, to give it powers under the Local Government Act 1972; for example, it confers the power to prosecute and defend legal proceedings. The DTCCA also has the power to undertake research and collect information under section 88 of the Local Government Act 1985. Section 13 of the 1989 Act (voting rights of members of certain committees) has effect for the DTCCA.

5.21 This section also provides for employees of DTCCA to be part of the pension scheme administered by Devon County Council.

Part 6 – Funding

5.22 Under the Regulations, the constituent councils are required to meet the reasonably attributable costs of the DTCCA in the exercise of its functions, to the extent that these costs are not met by other resources. The amount payable by each constituent council will be determined by apportioning costs between them in agreed proportions or, if agreement cannot be reached, in proportion to the total resident population on 30th June two years prior.

5.23 The cost of functions relating to transport may be met by a levy issued by the DTCCA to its constituent councils. The amount would be formally decided as part of the budget setting process for each constituent council.

Schedules

5.24 Schedules 2 and 3 make the necessary modifications to apply, or disapply, legislation to the DTCCA in consequence of the provisions above.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 9 of the 2023 Act provides for the establishment of a CCA for an area that is wholly within England and consists of at least one two-tier county council and another upper tier local authority, such as a unitary authority. CCAs are "bodies corporate" which may be given powers to exercise specified functions of a local authority, and powers to exercise specified functions of any other public authority.

6.2 Section 45 of the 2023 Act provides that, where one or more authorities wish to establish a CCA, they may prepare a proposal and submit this to the Secretary of State. Before submitting their proposal, they must conduct a public consultation on the proposal and have regard to the results of the consultation in preparing their proposal for submission to the Secretary of State. The proposal must include details of the purposes to be achieved by the establishing of the CCA.

Why was this approach taken to change the law?

6.3 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 Section 46(3) of the 2023 Act requires that the Secretary of State must carry out a public consultation on a proposal for a combined county authority and its functions unless the constituent councils have done so, have provided a summary of responses to the Secretary of State, and the Secretary of State deems no further consultation is necessary. In accordance with those requirements, the Secretary of State has reviewed the consultation and summary of responses provided by the constituent councils and is of the view that no further consultation is necessary. The Secretary of State is satisfied that the consultation was sufficient in terms of its length (six week), and the mechanisms used (online form, email, letters, and in person events with stakeholders) to elicit responses from a diverse range of stakeholders across the CCA's proposed area.

7.2 An open public consultation on the proposal for DTCCA ran for six weeks in February and March 2024. In undertaking the consultation, Devon County Council and Torbay Council published the full text of the proposal, alongside a draft table of

powers, answers to frequently asked questions and a summary leaflet online. To ensure maximum engagement, hardcopies of the summary leaflet were made available in all 54 libraries across the area, and Devon County Council and Torbay Council utilised press releases and social media to publicise the campaign.

7.3 The consultation was open to all members of the public to respond to, and allowed residents, businesses and all other key stakeholders - including district councils, parish and town councils, voluntary and community organisations and other public sector bodies - to express their views on the draft proposal for the new DTCCA. There were three written channels through which individuals and stakeholder organisations could give their view: completing an online questionnaire, located in a dedicated online consultation portal; sending an email to a dedicated email address; or writing a letter to a specified address.

7.4 In addition to the options for written responses, a number of in person events were organised across the consultation period, with a total of 29 roundtable meetings, attended by over 700 people, being held across Devon and Torbay. These included: meetings with district councils; equality and diversity organisations; the Devon, Plymouth and Torbay Voluntary, Community and Social Enterprise Assembly; Devon Association of Local Councils; business representative bodies; transport providers and partners; health service providers and commissioners; and education and skills partners.

7.5 Overall, a total of 886 responses to the consultation were received. Of these, 95 were letters and 791 were completed online questionnaires. Each of the eight district councils submitted a response, along with 25 town and parish councils. Responses were also received from a wide range of partner organisations and stakeholders, including Devon Communities Together, Torbay and South Devon NHS Foundation Trust, and the Torbay, Plymouth and Devon Voluntary, Community and Social Enterprise Assembly.

7.6 The overall response to the consultation shows that there was significant support for the majority of proposals with more respondents supportive than not (46% of respondents expressed agreement or strong agreement on plans to address housing pressures; 52% expressed agreement or strong agreement on proposals to improving local transport; 46% expressed agreement or strong agreement on ways to deliver investment; and 49% expressed agreement or strong agreement on plans to support industries that are important locally).

8. Applicable Guidance

8.1 No guidance is necessary to accompany these Regulations. The government continues to work with the CCAs to support their implementation of devolution agreements.

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 there is no, or a low level of, impact on businesses.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because these Regulations do not relate to the legislation governing the establishment

or running of businesses, charities or voluntary bodies, and do not impose any requirements on these organisations.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is that conferring functions on the DTCCA should lead to operational efficiencies that could lead to reduced costs. Indeed, the statutory tests require the Secretary of State to consider that conferring the functions on the CCA is likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the area, and the Secretary of State is required to have regard to the need to secure effective and convenient local government and reflect the identities and interests of local communities. The Secretary of State is satisfied that these tests are met in relation to the provisions of the Regulations.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that CCAs are required under the devolution agreements reached with the government to put in place an extensive programme of evaluation, agreed with HM Treasury.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Section 20(6) of the 2023 Act provides that, at the same time as laying a draft of a statutory instrument containing Regulations under section 19(1) of the 2023 Act before Parliament, the Secretary of State must also lay a report explaining the effect of these Regulations which confer public authority functions on the CCA, and why the Secretary of State considers it appropriate to make the Regulations.

11.2 There are no other matters of special interest to Parliament.

12. European Convention on Human Rights

12.1 The Minister of State at the Ministry of Housing, Communities and Local Government has made the following statement regarding Human Rights:

"In my view the provisions of the Devon and Torbay Combined County Authority 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").