EXPLANATORY MEMORANDUM TO

THE DURHAM, GATESHEAD, NEWCASTLE UPON TYNE, NORTH TYNESIDE, NORTHUMBERLAND, SOUTH TYNESIDE AND SUNDERLAND COMBINED AUTHORITY (ELECTION OF MAYOR) ORDER 2016

2016 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.

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

2. Purpose of the instrument

2.1 This instrument makes essential provision for the election of a mayor for the area of the Durham, Gateshead, Newcastle upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority (the North East Combined Authority).

2.2 The Order provides that the area of the North East Combined Authority is to have a directly elected mayor, and for the date of the first and subsequent elections to the role of mayor and the term of office.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Order is being made under section 107A (Power to provide for election of mayor) of the Local Democracy, Economic Development and Construction Act 2009 (the 2009 Act) by virtue of section 107B(3)(b), which provides that an order under section 107A may be made in the case of an existing combined authority, where there are one or more non-consenting constituent councils but the combined authority and at least two constituent councils consent.

3.2 Subsection (4) of section 107B of the 2009 Act provides that where an order under section 107A is made by virtue of subsection (3)(b) of that section, the Secretary of State must make an order under section 106 of that Act to remove the area of each non-consenting constituent council from the existing area of the combined authority. Section 106(1)(b) of the 2009 Act (Changes to boundaries of a combined authority's area) provides that the Secretary of State may by order change the boundaries of a combined authority's area by removing a local government area from an existing area of a combined authority. Subsection (3D) of section 106 of the 2009 Act disapplies the normal consent requirements for orders removing or adding local government areas to an existing area of a combined authority. Subsection (4) of section 106 provides that where by virtue of an order an area ceases to be part of the area of a combined authority, the order (a) must make provision for designating an authority to be a local transport authority for the area for the purposes of section 108(4) of the

Transport Act 2000, and (b) may transfer functions to that authority from the combined authority that was formerly the local transport authority.

3.3 Having gained the consent of six of the seven constituent councils of the North East Combined Authority for there to be a directly elected mayor the Government is seeking Parliamentary approval to the draft Order which would create the office of mayor for the North East Combined Authority. If Parliament approves that draft order, the Secretary of State will make the Order. Once the Order is made, the Secretary of State will lay a draft order under section 106 of the 2009 Act making provision for the removal of Gateshead from the area of the North East Combined Authority.

3.4 The Secretary of State recognises that during the Parliamentary consideration of the Order and the ensuing debates, Gateshead Council may decide to move from its current position and consent to an order establishing a mayor for the North East Combined Authority. Were Gateshead to do so before the making of the Order, the Secretary of State would not make it, but would instead seek Parliament's approval to a new modified order under section 107A of the 2009 Act recognising that all constituent councils have consented. The Secretary of State has adopted this approach to ensure certainty of the arrangements to establish a mayor for the constituent councils and to provide electors in the area of the Combined Authority and potential mayoral candidates with as much notice as possible of the date of the election of the mayor.

Other matters of interest to the House of Commons

3.5 The instrument applies only to England.

3.6 The instrument applies only to England as it is entirely concerned with local government areas in England. Section 103(2) of 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.

3.7 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.

3.8 The Department has reached this view because it considers that the primary purpose of the provisions in these instruments 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 North East Combined Authority was established by the Durham, Gateshead, Newcastle upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority Order 2014 (S.I. 2014/1012)[1].

[1] http://www.legislation.gov.uk/uksi/2014/1012/contents/made

4.2 Section 103 of the 2009 Act provides for the establishment 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 – functions of the local authorities within the area of the combined authority and 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(1) of the 2009 Act, as inserted by the 2016 Act, provides that 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 and section 107B(3)(a) of the 2009 Act provides that a mayor can also be established for the area of an existing combined authority if the combined authority and all the local authorities within the area (the constituent councils) consent. Section 107B(3)(b) of the 2009 Act further provides that in an existing Combined Authority, an order may be made under section 107A of the 2009 Act where there are one or more non-consenting constituent councils, but the Combined Authority and at least two constituent councils consent. However, once an order is made in these circumstances, section 107B(4) of the 2009 Act requires the Secretary of State to make an order under section 106 of that Act to remove the area of each non-consenting constituent council from the existing area of the combined authority. Section 106 also requires that an order made in these circumstances must designate an authority to be a local transport authority for the area for the purposes of section 108(4) of the Transport Act 2000[2], and may transfer functions to that authority from the Combined Authority that was formerly the local transport authority.

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[3] and the term of office of mayor[4], but these are subject to paragraph 3 which enables the Secretary of State and the Chancellor of the Duchy of Lancaster to make specific provision 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.

[2] Sections 108 to 113 of the Transport Act 2000 provide a statutory basis for local transport plans and bus strategies in England and Wales outside London. Subsection (4) of section 108 defines which authorities are to be transport authorities with responsibility for formulating transport policies and publishing them as a local transport plan.

[3] Paragraph 2(2) of Schedule 5A provides that the first election for the return of a mayor is to take place on the first day of ordinary elections of councillors of a constituent council to take place after the end of the period of 6 months beginning with the day on which the order under section 107A comes into force. Subparagraph (3) provides that subsequent elections for the return of a mayor are to take place in every fourth year thereafter on the same day as the ordinary election of councillors of that constituent council.

[4] Paragraph 2(1) provides that the term of office of a mayor is to be four years.

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

6. European Convention on Human Rights

6.1 The James Wharton 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 Durham, Gateshead, Newcastle upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority (Election of Mayor) Order 2016 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". To deliver this manifesto commitment the Government is reaching bespoke devolution deals with areas which are agreements in principle for a radical devolution of funding, powers and responsibilities for such matters as employment and skills, transport, planning and investment.

7.2 On 23 October 2015 the North East Combined Authority announced a devolution agreement which provided for an offer of powers and budgets from Government on the basis that the North East Combined Authority will deliver certain reforms and measures, including adopting a model of a directly elected mayor covering the whole of the North East Combined Authority area.

7.3 The agreement noted above sets out that the mayor for the combined authority area would individually exercise some functions in relation to transport and strategic planning. The combined authority would take on responsibility for the devolved funding (£30 million a year over 30 years for the North East Combined Authority); control of the devolved adult skills funding by 2018/19; joint responsibility with the Government to codesign employment support for harder-to-help-claimants; and a devolved approach to business support from 2017 to be developed in partnership with Government.

7.4 This Order now makes the provisions necessary for the next step of the implementation of the devolution agreements between the Government and the North East Combined Authority. First, by creating the position of elected mayor for the area, and secondly, by setting the date of the first election to be 4th May 2017 and the first term of office of the mayor to be three years, with subsequent elections in 2020 and then every four years thereafter.

7.5 The date of the first election – 4 May 2017 – is the ordinary day of election for local government. The mayor will take office on the fourth day after the election, which is consistent with the arrangements for a local authority mayor, as set out in Article 8 of the Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2012.

7.6 The Order specifies a first term of office for the mayor of 3 years, with the second mayoral election taking place in May 2020. This is because the cycle of local government elections means that the majority of local authorities within the North

East Combined Authority are not due to have local elections in 2021 (4 years after the first mayoral elections). Holding the second mayoral election in 2020 will ensure that second and subsequent mayoral elections in this area are aligned with the majority of local council elections and Police and Crime Commissioner elections, supporting improved efficiency and effectiveness of elections.

7.7 The Government will seek Parliament's approval later in 2016 to further secondary legislation necessary to devolve the functions and budgets to the North East Combined Authority as agreed in devolution deals.

8. Consultation outcome

8.1 This instrument will give effect to certain provisions of the devolution agreements made between the Government and the North East Combined Authority which were the result of negotiations between the Government and the authorities in the area. Before this Order, the Government sought the views of the North East Combined Authority and their constituent councils.

8.2 With the exception of Gateshead, the North East Combined Authority and the constituent councils have individually provided the consents required under section 107B of the 2009Act. At the point at which these consents were sought, Gateshead was in no position to reply as the Council had not ratified the Devolution Deal. This means that this Order is made under Section 107B(3)(b) of the 2009 Act which, as explained at 3.1 above provides that in an existing Combined Authority, an order may be made under section 107A where there are one or more non-consenting constituent councils, but the Combined Authority and at least two constituent councils consent.

8.3 The Government will maintain an open dialogue with Gateshead. Should the council have ratified the Deal and consented to the making of this Order before the date on which it is made, the Secretary of State will bring to the House a fresh Order to be made under section 107B(3)(a) of the 2009 Act on the basis that the Combined Authority and all its constituent councils had consented to the Order. Should the council's position remain unchanged when this Order is made, section 107B(4) of the 2009 Act requires the Secretary of State to make an order under section 106 of the 2009 Act removing the area of Gateshead Council from the existing area of the North East Combined Authority. Therefore, the Government anticipates that in these circumstances, such an Order would be brought to Parliament as soon as practicable in the autumn.

9. Guidance

9.1 No guidance is necessary to accompany this Order. The Government continues to work with colleagues in the North East to support their implementation of the devolution deal.

10. Impact

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

10.2 This Order will provide for the election of a mayor for the area of the Combined Authority and sets out the electoral cycle and term of office for this position. There will be 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 This Order provides for new governance arrangements suitable for powers to be devolved to the North East Combined Authority. This combined authority 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 agreement.

13. Contact

13.1 Ian Barber at the Department for Communities and Local Government Telephone: 0303 444 2578 or email: ian.barber@communities.gsi.gov.uk can answer any queries regarding the instrument.