EXPLANATORY MEMORANDUM TO

THE GREATER MANCHESTER COMBINED AUTHORITY (ELECTION OF MAYOR WITH POLICE AND CRIME COMMISSIONER FUNCTIONS) 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.

2. Purpose of the instrument

2.1 This instrument makes essential provision in preparation for the introduction of a directly elected mayor for the area of the Greater Manchester Combined Authority, whose functions will include functions previously exercised by the Police and Crime Commissioner (PCC) for Greater Manchester. The order provides: that the Greater Manchester Combined Authority area is to have a directly elected mayor; for the date of first and subsequent elections to the role of mayor and the term of office; that the mayor is to exercise PCC functions; for the cancellation of future PCC ordinary elections in Greater Manchester; for extension of the current PCC's term of office to cover the intervening period and to prevent any PCC by- election in Greater Manchester within 6 months of the date that the elected mayor will take office.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments or the Select 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 the area of the Greater Manchester Combined Authority, which comprises the local government areas of Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Stockport, Tameside, Trafford, and Wigan. 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, and of the Scottish Parliament, if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament. Policing is not within the devolved legislative competence 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 the instrument relate to local government or policing, which are both within the devolved legislative competence of the Scottish Parliament and Northern Ireland Assembly; the primary purpose of the subject-matter of the instrument is not within Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of the Act); the primary purpose of the subject matter of the instrument is not within Schedules 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of the Act).

4. Legislative Context

4.1 The Greater Manchester Combined Authority was established by the Greater Manchester Combined Authority Order 2011 (S.I. 2011/908).

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 The Police Reform and Social Responsibility Act 2011 (the 2011 Act) establishes the position of police and crime commissioner (PCC) and specifies the functions of a PCC. Section 107F of the 2009 Act, inserted by section 4 of the 2016 Act, provides that a mayor for the area of a combined authority can, by order, be conferred functions of a police and crime commissioner for the area.

4.4 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. PCC functions can be conferred on the mayor with the consent of the combined authority and the local authorities within the area of the combined authority (section 107F(4)).

4.5 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. Section 107F also specifies that an order providing for a mayor to exercise PCC functions must provide that there is to be no PCC in that area from a specified date and may: cancel any future PCC ordinary elections which would otherwise have taken place in that same area, extend the term of office of the current PCC to the specified date and prevent any PCC by-election taking place in that area within six months of the specified date.

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 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 Greater Manchester Combined Authority (Election of Mayor with Police and Crime Commissioner Functions) Order 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Government committed in its manifesto to "devolve far-reaching powers over economic development, transport and social care to large cities which choose to have elected mayors" and to "legislate to deliver the historic deal for Greater Manchester, which will devolve powers and budgets and lead to the creation of a directly elected Mayor for Greater Manchester".

7.2 On 3rd November 2014 the Government and Greater Manchester announced a devolution agreement which provided for an offer of powers and budgets from Government on the basis that Greater Manchester will deliver certain reforms and measures, including Greater Manchester adopting a model of a directly elected mayor covering the whole of the Greater Manchester area. Pending the necessary primary legislation, as an interim measure, the agreement stated that secondary legislation would be made to enable the appointment of an additional member to chair the Combined Authority until a mayor is elected.

7.3 The November 2014 agreement set out that the mayor would individually exercise some functions in relation to transport and strategic planning; would control the Housing Investment Fund; and take on functions currently covered by the PCC. The Combined Authority would take on responsibility for the devolved business support budget; control of Apprenticeship Grant for Employers and Further Education powers; control of an expanded Working Well pilot and have opportunity for joint Work Programme commissioning with Department for Work and Pensions; and development of plan for integration of health and social care.

7.4 Subsequent agreements have been made between the Government and Greater Manchester, including a memorandum of understanding in relation to health and social care (February 2015); and further devolution of powers agreed on 8 July 2015 and 25 November 2015.

7.5 In March 2015, having secured Parliament's approval, the Government made the Greater Manchester Combined Authority (Amendment) Order 2015 (S.I. 2015/960) which enabled the leadership capacity of the Combined Authority to be enhanced, by creating an eleventh, appointed member of the Combined Authority, following a

governance review by the Combined Authority and a consultation, as required in the 2009 Act.

7.6 This Order now makes the provision necessary for the next step of the implementation of the devolution agreements between the Government and Greater Manchester. It contains three elements. First, it creates the position of elected mayor for the area of the Greater Manchester Combined Authority. Secondly, it sets 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. Thirdly, it provides that the mayor is to exercise PCC functions; for cancellation of future PCC ordinary elections in Greater Manchester; for extension of the current PCC's term of office to cover the intervening period and to prevent any PCC by-election in Greater Manchester within 6 months of the date that the mayor will take office.

7.7 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.

7.8 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 ten local authorities within Greater Manchester are not due to have local elections in 2021 (4 years after the first mayoral election). Holding the second mayoral election in 2020 will ensure that second and subsequent mayoral elections in Greater Manchester are aligned with local government elections, supporting improved efficiency and effectiveness of elections.

7.9 The Order specifies that the mayor – when elected – will take on functions currently exercised by the PCC.

7.10 The PCC's current term runs to the next scheduled PCC election, which is due to take place on 5 May 2016. As the post will no longer exist and functions will be taken on by the elected mayor for the area of the Greater Manchester Combined Authority when the mayor's term of office commences on 8 May 2017, this would mean that the PCC's term would only run for one year from May 2016. An election for a Greater Manchester PCC costs an estimated £3 million (based on average election costs of £1.50 per elector, with an electorate for the combined authority area of almost 2 million), constituting a disproportionate cost for such a short term. It is for this reason that the Order extends the term of office of the current PCC for around one year, to cover the period until the post no longer exists. The order also provides that a by-election, which would otherwise be triggered by the PCC post becoming vacant, is not to take place if the vacancy occurs within a period of six months ending at 8 May 2017. This is consistent with the position in respect of PCC by-elections where a vacancy occurs in the six months before a scheduled PCC election.

7.11 The Government will seek Parliament's approval later in 2016 to further secondary legislation necessary to devolve the powers and budgets to Greater Manchester as agreed in devolution deals.

8. Consultation outcome

8.1 This Order gives effect to certain provisions of the devolution agreements made between the Government and Greater Manchester which were the result of

negotiations between the Government and the Greater Manchester authorities. Before making this Order the Government sought the views of the Greater Manchester Combined Authority and its constituent authorities, all of which have given their consent to this Order.

9. Guidance

9.1 No guidance is necessary to accompany this order. The Department for Communities and Local Government and the Home Office continue to work with colleagues in Greater Manchester to support their implementation of the devolution deals.

10. Impact

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

10.2 There is no impact on the 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 Greater Manchester Combined Authority. Greater Manchester will be required under the devolution agreements reach with Government, to put in place an extensive programme of evaluation, agreed with HM Treasury of the devolution agreement, including the new governance arrangements.

13. Contact

13.1 Helen Bamford at the Department for Communities and Local Government Telephone: 0303 444 3125 or email: helen.bamford@communities.gsi.gov.uk can answer any queries regarding the instrument.