EXPLANATORY MEMORANDUM TO

THE GREATER MANCHESTER COMBINED AUTHORITY (FIRE AND RESCUE FUNCTIONS) ORDER 2017

2017 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument ("the Instrument") is to use powers conferred on the Secretary of State by the Local Democracy, Economic Development and Construction Act 2009 (the "2009 Act") to:

- transfer the fire and rescue functions, property, rights, and liabilities of the Greater Manchester Fire and Rescue Authority to the Greater Manchester Combined Authority;
- make those functions exercisable only by the elected Mayor of Greater Manchester and make provision in relation to the delegation by the Mayor;
- extend the financial year of the Greater Manchester Fire and Rescue Authority; and
- abolish the Greater Manchester Fire and Rescue 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 because it mainly concerns the Greater Manchester Combined Authority. In addition, articles 12 and 13 make provision in relation to combined authorities generally. Section 103(2) of the 2009 Act provides that a combined authority may be established in relation to local government areas in England only.

3.4 In view of the Department, for the purposes of House of Commons Standing Order 83P, the subject-matter of the 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, the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales. The instrument does not give rise to minor or consequential effects outside England.

3.5 The Department has reached this view because it considers that the primary purpose of the provisions in the instrument relate to fire and rescue or local government, which are both within the devolved legislative competence of the Scottish Parliament and Northern Ireland Assembly and the National Assembly for Wales; 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); the primary purpose of the subject matter of the instrument relates to a subject listed under the headings in Part 1 of Schedule 7 and does not fall within any of the exceptions specified in that Part of Schedule 7 and is not otherwise outside the legislative competence of the National Assembly for Wales (see section 108 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 105A of the 2009 Act, as inserted by section 7 of the Cities and Local Government Devolution Act 2016 (the 2016 Act), provides that the functions of a public authority that is exercisable in relation to a combined authority's area may be a function of the combined 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. Section 107D also provides that the mayor may arrange for the deputy mayor, member or officer of the combined authority, to exercise any general function of the mayor and for a committee of the combined authority to exercise any general function where this is authorised by the Order. Section 107D also enables the order to provide for members or officers of the combined authority to assist the mayor in the exercise of general functions.

4.3 When laying before Parliament an order which confers public authority functions on a combined authority, section 105B(9) of the 2009 Act requires that when laying an order under section 105A of that Act, the Secretary of State must also place a report before Parliament which sets out the effect of the Order and why the Secretary of State considers it is appropriate to make it. The report must include any consultation and information which has been taken into account, as well as any other evidence or contextual information that the Secretary of State considers it appropriate to include.

4.4 The report required by section 105B(9) of the 2009 Act is attached to this Explanatory Memorandum.

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 The Rt Hon Brandon Lewis MP, Minister for Policing and the Fire Service has made the following statement regarding Human Rights:

"In my view the provisions of the Greater Manchester Combined Authority are compatible with the Convention rights."

7. Policy background

What is being done and why

Transfer of functions of the Greater Manchester Fire and Rescue Authority

7.1 This instrument transfers all of the functions of the Greater Manchester Fire and Rescue Authority to the Greater Manchester Combined Authority, including functions and responsibilities set out by the Fire and Rescue Services Act 2004 and the Civil Contingencies Act 2004. These functions will be general functions of the Combined Authority that can only be exercised by the Mayor.

7.2 The Greater Manchester Combined Authority (Election of Mayor with Police and Crime Commissioner Functions to the Mayor) Order 2016 (S.I. 2016/448) established the position of elected Mayor for the Greater Manchester Combined Authority and provided that the Mayor is to exercise the functions of a police and crime commissioner. This Order will give the Mayor overall responsibility for fire and rescue in Greater Manchester together with the functions of a police and crime commissioner, which will promote a more joined-up approach to these vital public services, and providing direct accountability for their performance.

Provision as to how the Mayor may exercise these functions

7.3 This instrument identifies several fire and rescue functions which are considered of strategic importance, and prevents the Mayor from delegating them. The functions so identified include approving the local risk plan and fire and rescue declaration which are documents that a fire and rescue authority is required to prepare in accordance with the Fire and Rescue National Framework; appointing, dismissing and holding to account the person responsible for managing the fire and rescue service; resource sharing with other fire and rescue services, through reinforcement schemes, assistance or the discharge of functions; and approving contingency plans under the Civil Contingencies Act 2004.

7.4 This instrument also limits the number of members that may form a fire committee to assist the Mayor in delivering the fire and rescue functions to a total of 15, with one member being nominated by each of the constituent councils, and up to five additional members being appointed by the Mayor.

7.5 It is important that those on the fire committee reflect the communities they serve, and so this instrument mandates that the members of the fire committee, taken as a whole, must reflect the balance of the political parties prevailing among the constituent councils when taken together. Both the constituent councils and the Mayor must have regard to the political balance when nominating and appointing members to the committee, for whatever reason.

7.6 This ensures that those issues which are of strategic importance to the delivery of fire and rescue in Greater Manchester remain the direct responsibility of the Mayor, and also provides for the Mayor to appoint members of a committee to assist the Mayor in overseeing the provision of fire and rescue in Greater Manchester.

Abolishing the Greater Manchester Fire and Rescue Authority

7.7 When the Mayor takes office on 8 May 2017, all of the functions, property, rights and liabilities of the Greater Manchester Fire and Rescue Authority will transfer to the Greater Manchester Combined Authority, and the fire and rescue authority will be abolished.

Consolidation

7.8 This instrument makes limited amendments to two enactments and we therefore have not regarded this as a suitable opportunity for consolidation.

8. Consultation outcome

8.1 The Greater Manchester Combined Authority undertook a public consultation on its proposal to transfer fire and rescue functions from the Greater Manchester Fire and Rescue Authority in its second scheme and governance review from 4 July to 15 August 2016. This was planned in conjunction with the ten constituent local authorities of Greater Manchester.

8.2 The consultation on the second scheme ran for six weeks, and was offered in online and paper format, and responses were welcomed both electronic and hard copy formats. The Greater Manchester Combined Authority produced a summary document demonstrating that the majority of respondents were in favour of GMCA's second scheme.

8.3 The consultation summary document is available from the GMCA at Churchgate House, 56 Oxford Street, Manchester M1 6EU, or from the following website: https://www.greatermanchester-ca.gov.uk/download/meetings/id/1222/8_gmca_phase_2_consultation_outcome.

8.4 With specific reference to Greater Manchester Combined Authority's plans to assume fire and rescue functions, 55% of respondents to the consultation were supportive of the proposals, whilst 27% were not supportive. Representations on this issue were made by key stakeholders including the Greater Manchester Fire and Rescue Service, Greater Manchester Police and the North West Ambulance Service, which approved of the potential for efficiencies in Greater Manchester's public services, and the potential for strengthened political governance and decision making.

8.5 GMCA and all the constituent authorities have consented to the making of the Order.

9. Guidance

9.1 Given the nature of the amendments made by this instrument, it is not considered necessary to issue any guidance.

10. Impact

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

10.2 There is a minimal 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 Upon assuming the fire and rescue functions of the Greater Manchester Fire and Rescue Authority the Greater Manchester Combined Authority will be subject to the same scrutiny with regards to its performance in undertaking those functions.

12.2 No specific period of review is set out in the instrument. However, Mayoral elections will take place in Greater Manchester every four years, providing direct electoral accountability for the performance of the Mayor in discharging their responsibilities.

13. Contact

13.1 The following official at the Home Office will be able to answer queries regarding the instrument:

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