EXPLANATORY MEMORANDUM TO

THE GREATER MANCHESTER COMBINED AUTHORITY (FUNCTIONS AND AMENDMENT) 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 Order provides for certain functions of the Combined Authority's constituent councils and certain public authorities to be exercised by the Greater Manchester Combined Authority ("the Combined Authority"), certain specified functions of the Combined Authority's functions to be exercisable only by the Mayor of the Combined Authority and for certain governance arrangements of the Combined Authority.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This is the first exercise of the powers in section 105A(1)(a) and (b) of the Local Democracy, Economic Development and Construction Act 2009 (the 2009 Act), as inserted by section 7 of the Cities and Local Government Devolution Act 2016.

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

Other matters of interest to the House of Commons

3.3 This instrument applies only to England.

3.4 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.

3.5 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.

3.6 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 2009 Act provides for the establishment of combined authorities for the areas of two or more local authorities in England.

4.2 The Combined Authority was established by the Greater Manchester Combined Authority Order 2011; the position of interim Mayor for the Combined Authority was established by the Greater Manchester Combined Authority (Amendment) Order 2015 (S.I. 2015/960); and the position of elected Mayor for the Combined Authority is established by the Greater Manchester Combined Authority (Election of Mayor with Police and Crime Commissioner Functions) Order 2016 (S.I. 2016/448).

4.3 Combined authorities are bodies corporate which may be given power to exercise specified functions of a local authority, and power to exercise specified functions of any other public authority.

4.4 The Order cites the following powers:

- Section 104(1)(a) of the 2009 Act (constitution and functions: transport): enables the provisions relating to constitutional arrangements to be made in relation to a combined authority that may be made in relation to an integrated transport authority under section 84 of the Local Transport Act 2008 (constitutional arrangements).
- Section 105 of the 2009 Act (constitution and functions: local authority functions generally): provides for a function of a local authority that is exercisable in relation to the combined authority's area to be exercisable by the combined authority in relation to the combined authority's area.
- Section 105(3) of the 2009 Act (constitution and functions: local authority functions generally): enables provision to be made in relation to a combined authority that may be made in relation to an economic prosperity board under section 92 (funding).
- Section 105A(1)(a), (1) (b), (2) and (3)(b) of the 2009 Act (other public authority functions): provides for the Secretary of State to make provision by order for a function of a public authority that is exercisable in relation to a combined authority's area to be a function of the combined authority and to make provision by order conferring on a combined authority in relation to its area a function corresponding to a function that a public authority has in relation to another area.

  An order under subsection (1)(a) or 1(b) may include further provision about the exercise of the function including provision as to joint working arrangements between the combined authority and public authority in connection with the function (for example, provision for the function to be exercised by a joint committee). An order under subsection (1)(a) may include provision for the function to be exercisable by the combined authority concurrently with the public authority.
- Section 107D(1), (7)(c) and (7)(d) of the 2009 Act (functions of mayors general): The Secretary of State may by order make provision for any function of a mayoral combined authority to be a function exercisable only by the mayor; such an order may confer ancillary powers on the mayor for the purposes of the exercise of general functions and authorise the mayor to appoint one person as the mayor's political adviser.
- Section 107E(1) of the 2009 Act (Joint exercise of general functions): The Secretary of State may by order make provision for, or in connection with, permitting

arrangements under section 101(5) of the Local Government Act 1972 to be entered into in relation to general functions of a mayor for the area of a combined authority.

- Section 114 of the 2009 Act (Incidental etc provision): The Secretary of State may by order make incidental, consequential, transitional or supplementary provision for the purposes of, or in consequence of, an order under this Part or for giving full effect to such an order.
- Section 117(5) of the 2009 Act (Orders): An order under Part 6 of the 2009 Act may include provision amending, applying (with or without modifications), dis-applying, repealing or revoking any enactment whenever passed or made.

4.5 Orders under section 105 and 105A may make provision for the function to be exercisable by the combined authority either generally or subject to such conditions or limitations as may be specified in the order.

4.6 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.

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 Sajid Javid MP, 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 (Functions and Amendment) Order 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 This Order is a significant step in the implementation of the devolution deals which the Government has agreed with Greater Manchester, first in November 2014, and subsequently in February 2015, July 2015, and November 2015. These agreements provide for powers to be conferred on Greater Manchester Combined Authority, with certain powers to be exercised by the Mayor, including taking on the role of Police and Crime Commissioner, as well as devolving significant budgets, including investment funds of £900 million over 30 years.

7.2 In its 2015 manifesto Government committed 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" and more broadly, to

"devolve far-reaching powers over economic development, transport and social care to large cities which choose to have elected mayors".

7.3 The Government considers such devolution will boost economic growth, increase public service efficiency, improve Britain's weak productivity, and rebalance the economy, including strengthening further the Northern Powerhouse. Devolution will provide local leaders across the country with the levers they need to boost economic growth. It is local areas themselves who are often best placed to take decisions relating to the area about the use of public money and assets, support for business, infrastructure investment, and planning. With devolution, Government investment in economic development can be tailored directly to the individual challenges and opportunities particular places and communities face and can effectively be augmented by private sector investment. Devolution, particularly of health services, will allow greater local integration of public service delivery, increasing public service efficiency and improving outcomes.

7.4 This Order is part of the legislation necessary to deliver the Greater Manchester deals. In taking the decision to confer functions and make constitutional changes, the Secretary of State has in each case applied the statutory tests: that no further consultation is required on the proposals; that the proposals are likely to improve the exercise of statutory functions in the Combined Authority area; that where proposals relate to local authority functions and constitutional changes they are appropriate, having regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government. Specifically, this Order confers on the Combined Authority powers, and makes provision as described in the following paragraphs, which cover: housing and planning (7.7 – 7.14), transport (7.15 – 7.20), education and training (7.21 – 7.24), and culture (7.25 – 7.26)

7.5 The Greater Manchester Combined Authority (Election of Mayor with Police and Crime Commissioner Functions Order 2016), made on 29 March 2016, established the position of elected Mayor of the Combined Authority, with the first election on 4 May 2017 and the elected Mayor taking office, including taking over the functions of the Greater Manchester Police and Crime Commissioner, on 8 May 2017.

7.6 The Order confers a number of local authority and public authority functions on and exercisable by the Combined Authority in relation to the Combined Authority area. Provision in the 2009 Act enables functions to be conferred on the Combined Authority, to be exercisable by the Mayor individually, or by the Combined Authority (which is chaired by the Mayor).

7.7 The 3 November 2014 devolution deal agreed that the new directly elected Mayor would have powers to create a statutory spatial framework for Greater Manchester which would act as the framework for managing planning across the whole Greater Manchester area. The Greater Manchester Combined Authority constituent councils in 2014 decided to prepare jointly a strategic plan for the area and considered that the Combined Authority Mayor adopting a spatial plan which covers issues better decided jointly would improve this function. Greater Manchester is a highly developed urban area, in which cross boundary cooperation is vital.

7.8 This aspect of the deal is being implemented through conferring on the Combined Authority, to be exercisable by the Mayor, a duty to prepare a spatial development strategy. Providing the Mayor with this duty will enable an informed, integrated

approach to be taken to spatial planning across Greater Manchester, based on a clear understanding of the role of places in the city region and connections between them.

7.9 The Order enables this by conferring functions corresponding to those exercised by the Mayor of London under Part 8 of the Greater London Authority Act 1999 in Greater London, with necessary modifications to apply the provisions to Greater Manchester. The powers provide that development of the spatial development strategy is to be a function exercisable only by the Mayor, and that the plan must have unanimous agreement of the Combined Authority before it is adopted.

7.10 The Order confers powers of land acquisition and disposal on the Combined Authority; with compulsory purchase powers to be exercisable by the Mayor with agreement from Combined Authority members representing the area(s) in question. They support the Combined Authority's objective to stimulate economic growth, by driving development and enabling regeneration across the area. The powers would be particularly relevant to inner city developments where the complexity of easements and rights in the vicinity can otherwise prevent a development proceeding.

7.11 Land acquisition and disposal powers under the Town and Country Planning Act 1990 enable a local authority to acquire land for planning purposes and enable an authority to appropriate land acquired under other powers for planning purposes so that the land can be disposed of to developers. Land acquisition and disposal powers under the Housing Act 1985 are exercised by local housing authorities. These powers are exercised by local authorities, and will continue to be so when they are conferred on the Combined Authority who will exercise them concurrently with the local authority concerned.

7.12 Land acquisition and disposal powers under the Housing and Regeneration Act 2008 are exercised by the Homes and Communities Agency, and will continue to be so in Greater Manchester when they are conferred on the Combined Authority, who will exercise them concurrently with the Homes and Communities Agency.

7.13 Each instance of the Mayor's use of a Compulsory Purchase Order will be subject to the agreement of each Combined Authority member representing the constituent authority or authorities in which the purchased land is located. As with local authority and Homes and Communities Agency powers, the Mayor may only implement a Compulsory Purchase Order with consent of the Secretary of State.

7.14 The Greater Manchester Strategy 2013 sets out the Combined Authority's vision that "Greater Manchester must be competitive….ensuring land is available in locations attractive to the market" and to promote housing growth. Conferring land acquisition, regeneration and disposal powers onto the Combined Authority (to be exercised concurrently with the local authorities) will provide greater flexibility across Greater Manchester and enable development and regeneration to be driven across the functional economic area of Greater Manchester.

7.15 The Order makes several provisions related to transport in Greater Manchester, to enable the Combined Authority to:

a) make grants to bus service operators in Greater Manchester: section 154 Transport Act 2000, a power to be held concurrently with the Secretary of State;

b) promote road safety in the same way as a local authority: section 39(2) and (3) Road Traffic Act 1988, a power to be held concurrently with the Secretary of State;

c) engage with Highways England and local highway authorities about construction, improvement, and maintenance of roads: sections 6 and 8 of the Highways Act 1980, a power to be held concurrently with local authorities.

7.16 The Combined Authority has operated the transport function across Greater Manchester since 2011 when it was established and took over the functions of the integrated transport authority. The combined authority is taking an incremental approach in seeking transport functions, which is deliberate to "prevent unnecessary disruption to the network". This "approach to transport reform has been driven by recognition that an efficient transport system is absolutely fundamental to Greater Manchester securing its wider economic, social and environmental policy objectives, for example in relation to boosting economic productivity and growth and ensuring all residents can share in the benefits of that growth".

7.17 The Combined Authority has confirmed that "some powers and responsibilities are best managed by local governance structures and therefore the GMCA does not seek to interfere when local issues are best managed locally". The additional powers give greater discretion and flexibility to the area's management of transport issues.

7.18 The Combined Authority will administer the Bus Service Operators Grant, supporting their early engagement with bus operators in Greater Manchester, ahead of the proposed move to the local franchising model. The Combined Authority explains that having this power may "mitigate against unpredictable and potentially disruptive market behaviour in any transition to a franchised network" and that "transfer of BSOG administration may act as a deterrent to encourage high levels of professional conduct in the market being maintained during this period."

7.19 The Combined Authority have confirmed that "the transfer of powers proposed is simply an administrative function and no changes will be made to the methodology involved in calculating each operator's BSOG award which is prescribed by the DfT" and that these powers would assist "being able to gain valuable insight and the additional scrutiny may be able to encourage more efficient practices by the operators."

7.20 In relation to road safety, the Combined Authority have explained that it works within the Casualty Reduction Partnership; and that the "ability for GMCA to exercise additional powers is a natural extension of its current road safety initiatives…..intrinsic to the successful coordination of a safe transport network in Greater Manchester".

7.21 The Order empowers the Combined Authority to take a significant role in co-ordinating and promoting the effective participation in education or training of young people in Greater Manchester. It does so by providing the Combined Authority with powers, to be exercised concurrently with constituent local authorities, to: require further education institutions to provide suitable education for persons aged 16-17; to promote high educational standards, enable fair access, and promote fulfilment of learning for those aged under 20; to secure education opportunities for those aged 16-18 or with learning difficulties.

7.22 The Order also provides the Combined Authority with the duty, alongside constituent local authorities, to promote effective participation in education or training of less qualified 16-17 year olds; to arrange to identify 16-18 year olds not in education, employment or training; to make available support services to children and young adults to support their effective participation in education or training. The Greater

Manchester Combined Authority will agree a joint operating agreement with the constituent councils which sets out the ultimate accountability for fulfilling the duties.

7.23 The Greater Manchester Strategy 2013 sets out that one quarter of the productivity gap between Greater Manchester and rest of UK is due to high worklessness and low economic activity; and that low qualifications and high and worsening unemployment need to be tackled through co-ordinated action to broaden the opportunities available to young people and ensure that they can compete more effectively in a difficult labour market. Conferral on the Combined Authority of a duty to identify young people not in education, work or training will enable the Combined Authority to provide a strategic overview and leadership in shaping skills provision across Greater Manchester.

7.24 The Combined Authority will be empowered to take a role in cultural activities, in both provision and support of cultural events and entertainments, in its area, being given the same powers as local authorities to do so. They will do this concurrently with those local authorities.

7.25 When the Combined Authority was established in 2011 it was given a power to encourage visitors and provide conference and other facilities concurrently with the ten local authorities in the area. This complementary power within the same legislation to enable the Combined Authority to provide and support (including grants) cultural activities in Greater Manchester.

7.26 The Order provides that the functional power of competence exercisable by the mayoral Combined Authority under section 113A of the 2009 Act is also exercisable by the Mayor. This provision has the effect of confirming the Mayor's power to do things appropriate or incidental to those functions indicated as exercisable by the Mayor.

7.27 The Order provides for the funding of the Combined Authority for the functions within this Order. It does this by providing that the constituent authorities must meet the costs of the Combined Authority reasonably attributable to its functions. The Order then provides that the constituent councils may agree the respective proportions they will pay; in absence of this agreement, the proportions are to be calculated by reference to their respective shares of the total resident population, as estimated by the Statistics Board, as required by section 25 of the Statistics and Registration Services Act 2007.

7.28 The Greater Manchester Combined Authority (Amendment) Order 2015(S.I. 2015/960) provided the Combined Authority with an interim Mayor as a necessary transitional step towards supporting the devolution of powers, chairing the Combined Authority's board, before the Mayor can be elected. The interim Mayor enhanced the leadership capacity of the Combined Authority, assisting it to deliver the additional responsibilities provided under the devolution agreement and supporting the promotion of economic development and transport in the area. The Greater Manchester Combined Authority (Election of Mayor with Police and Crime Commissioner Functions) Order 2016 provides the Combined Authority with an elected Mayor in this role, so this Order removes provisions for an interim Mayor, which had been put in place as a temporary measure to assist the Combined Authority in its decision making and operation. The effect of these provisions being removed is that the interim Mayor's role ceases and the post is removed.

7.29 The Order permits the Mayor to appoint one person to act as political adviser, for the period of the Mayor's term; or until the Mayor leaves office, if the Mayor leaves before the end of their term. This ensures the Mayor has access to political advice, in addition and separately to appropriate officer support, and within proportionate resource.

8. Consultation outcome

8.1 The Combined Authority undertook consultation on the proposals contained in the review the Combined Authority had carried out on its governance arrangements and the scheme setting out powers the Combined Authority considered should be conferred. The Combined Authority led the consultation, delivered in conjunction with constituent local authorities and other partners (such as, for example, the fire and rescue authority), who managed public communications locally. The consultation ran for 8 weeks from 21 March to 18 May 2016.

8.2 The Combined Authority provided each local authority and partner organisation with a toolkit to aid local engagement, in line with their individual communication strategies.

8.3 238 responses were received, including: 169 from members of the public, 19 from public bodies, 7 from businesses, and 15 from representative bodies. The Combined Authority's summary of responses to the consultation includes a demographic analysis of respondents and analysis of responses to each of 10 questions.

8.4 In accordance with the requirements at section 113(2) of the 2009 Act, the Secretary of State has reviewed the Combined Authority's consultation, and is of the view that no further consultation is necessary. The Secretary of State is satisfied that the Combined Authority's consultation on the first scheme was sufficient in terms of its length (8 weeks); the mechanisms used (online and paper versions and responses); the promotional activity (posters, media releases, intranet articles, social media, direct emails to key stakeholders and reminders); and the analysis undertaken. The Secretary of State has also been sent the Combined Authority's summary of responses to the consultation, to which he has had regard.

8.5 The outcome of consultation on the Combined Authority's proposals was generally favourable. Of the 50 respondents to the Combined Authority's housing and regeneration proposals within the scheme, expressing preference, 37 (74%) were supportive. Of the 17 key stakeholders, 12 (71%) were supportive (including the National Housing Federation and the Homes and Communities Agency); and only 1 key stakeholder did not support the proposals.

8.6 One hundred and thirty nine respondents commented on highways issues. Of the 30 responses on highways proposals within the scheme, 21 (70%) were supportive, (including all of the key responding stakeholders. One hundred and fifty respondents commented on bus franchising, of which 57 commented on the bus franchising proposals within the scheme: 44 (77%) respondents expressing preference were supportive while 13 (23%) were not.

8.7 Support was less clear cut on the Combined Authority's education and skills proposals, with 30 respondents being positive, 36 not. 80% (12 of 15) of key stakeholders were supportive of these proposals; they welcomed the opportunity for greater collaboration between employers, skills provides and others. Concerns were expressed about academisation, accessibility of education, and standards; and

decisions being taken centrally and not reflecting local circumstances. In response the Combined Authority committed to address the concerns in the GM employment and skills strategy, and emphasised the benefits of integrated pathways through the education and skills landscape. GM stated that "of paramount importance…is ensuring that GM residents are able to access high quality skills provision.

8.8 Of the 55 that responded to proposed constitutional arrangements for the mayoral combined authority, 21 were supportive whilst 34 were not. Many unsupportive respondents commented on the need for a mayor - for example, 13 respondents thought there was no need for a mayor; and other comments were made in support of the principle of devolution and transfer of powers from central Government to Greater Manchester, and concerns over local capacity and transparency. In its summary of responses to the consultation, the Combined Authority restated its previous agreement that the "role of the Mayor will be a valuable addition to the political leadership of GM, working alongside the 10 Leaders of the GMCA constituent authorities".

9. Guidance

9.1 No guidance is necessary to accompany this Order. The Government continues to work with colleagues in the Combined Authority area 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 functions to be devolved to the Combined Authority. The 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, 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 query regarding the instrument.