EXPLANATORY MEMORANDUM TO

THE GREATER MANCHESTER COMBINED AUTHORITY (FUNCTIONS AND AMENDMENT) ORDER 2017

2017 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 GMCA's constituent councils and certain public authorities to be exercised by the Greater Manchester Combined Authority ("GMCA"), certain specified functions of the Combined Authority's functions to be exercisable only by the Mayor of GMCA and for certain governance arrangements of GMCA.

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 instrument applies only to England.

3.3 The instrument applies only to England as it is entirely concerned with local government areas in England. 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 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; 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.

3.5 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. 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.

4.2 The Greater Manchester Combined Authority was established by the Greater Manchester Combined Authority Order 2011(S.I. 2011/908; the position of interim Mayor for GMCA was established by the Greater Manchester Combined Authority (Amendment) Order 2015 (S.I. 2015/960); and the position of elected Mayor for the GMCA was established by the Greater Manchester Combined Authority (Election of Mayor with Police and Crime Commissioner Functions) Order 2016 (S.I. 2016/448). In addition, the Greater Manchester Combined Authority (Functions and Amendment) Order 2016, which was made in late December 2016, conferred further functions on the GMCA, some of which are exercisable individually by the Mayor.

4.3 Orders under sections 105 and 105A may make provision for the function to be exercisable by the GMCA either generally or subject to such conditions or limitations as may be specified in the order. 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 Andrew Percy, 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 (Functions and Amendments) Order 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 This Order further implements 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 upon the 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 the 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 with the levers they need to boost economic growth. It is local areas themselves that are often best placed to take decisions relating to the area about the use of public money and assets, support for business and infrastructure investment. With devolution, Government investment in economic development can be tailored directly to the individual challenges and opportunities particular places and communities face and can be augmented effectively by private sector investment.

7.4 This Order is part of the legislation necessary to implement 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 GMCA 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.

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. The Greater Manchester Combined Authority (Functions and Amendment) Order 2016, which was made on 22 December 2016, conferred a number of new functions on to the Greater Manchester Combined Authority.

7.6 This Order confers a number of local authority and public authority functions on the GMCA to be exercised in relation to the Combined Authority area. Certain functions are exercisable by the Mayor individually and others by the GMCA (which is chaired by the Mayor). Specifically, this Order confers on the GMCA powers, and makes provision as described in the following paragraphs, which cover: mayoral development corporations, (7.7 – 7.10), grants (7.11), waste disposal authority functions (7.12 – 7.15) and the ability to share data (7.16)

7.7 The Order provides for the conferral of the public authority functions (functions of the GLA, particularly the Mayor of London) to designate mayoral development areas and create Mayoral Development Corporations (MDCs) onto the GMCA. This is a function to be exercisable individually by the Mayor, and subject to agreement from the Combined Authority member(s) for the geographical area(s) concerned.

7.8 Conferring these functions is the first step in establishing an MDC in Greater Manchester and a further order would be necessary to create such a body. It is considered that providing the Mayor with this power will help drive regeneration and progress on complex schemes. The July 2015 Devolution deal between the Government and Greater Manchester agreed that the new directly elected Mayor would have such functions, subject to agreement from the combined authority

members from the boroughs in which the Mayoral development area would be designated.

7.9 The functions now being conferred on the Combined Authority are in the Localism Act 2011 ("the 2011 Act") (Part 8, Chapter 2; Schedule 21 and Schedule 22), specifically for the Mayor of London to exercise in relation to the Greater London area. The Order uses the provisions in the 2009 Act, as amended by the 2016 Act, to confer, appropriately modified, functions in the 2011 Act onto the GMCA to be exercised in relation to the Combined Authority area. The Order makes the following provisions:

- references in the 2011 Act to the GLA and the London Assembly are to be read as references to the GMCA or in some cases, the constituent council members of the GMCA;
- the Mayor to have in relation to its area the corresponding functions that the Mayor of London has in relation to London;
- the Mayor may only exercise the functions if the Combined Authority member for any constituent council whose council area contains any part of the area to be designated consents to the exercise of the functions (this is to ensure there is support for the proposed MDC from the local area – in London this is achieved by the involvement of the elected London Assembly in the process for establishing MDCs);
- the 2011 Act provides that the Mayor of London can designate an area if the designation of the area is considered expedient for furthering any one or more of the GLA's principal purposes. As the GMCA does not have "principal purposes" the Order replaces this with a condition that the GMCA must consider that such designation would further "economic development and regeneration in the GMCA area"; and
- the persons to be consulted before an area may be designated have been changed to reflect the conditions in the GMCA.

7.10 Any Mayoral development corporation would be conferred some planning functions within the area. Before the Mayoral development corporation can be conferred any planning functions, the GMCA member representing the constituent councils of the area of a Mayoral development corporation must have consented to this transfer of powers. If the Mayoral development corporation includes the area of the Peak District National Park, the National Park Authority will have to consent before any planning powers can be transferred. This applies within the metropolitan borough of Oldham which contains part of the Saddleworth Moor area of the Peak District National Park.

7.11 The Order confers upon the GMCA the power to pay grants to the constituent local authorities, a function to be exercisable by the Mayor, mirroring the powers of a Minister of the Crown under section 31 of the Local Government Act 2003. When exercising this power in relation to highways functions, the Mayor must have regard to the desirability of ensuring that the council has sufficient funds to facilitate the effective discharge of those functions and has regard to any other sources of funding available to the council for expenditure incurred. The Order also includes provision for the decisions relating to the use of the "earn back" fund, which will be under the control of the Mayor, as set out in the devolution agreement between the Government and Greater Manchester on 3 November 2014. It provides that the Mayor cannot delegate any decision about the amount of earn back that will be allocated to fund the

cost of exercising general functions of the Mayor; and that where earn back is to be used to support the exercise of non-mayoral functions, the Mayor's vote must be carried for any decision to be made.

7.12 The Order also makes provision for the functions, property, rights and liabilities of the Greater Manchester Waste Disposal Authority to transfer to the GMCA on 1 April 2018, and to abolish the Waste Disposal Authority, supporting Greater Manchester's public sector reform agenda.

7.13 The Greater Manchester Waste Disposal Authority was established in the Waste Regulation and Disposal (Authorities) Order 1985, which was made under powers within Section 10 of the Local Government Act 1985. The Greater Manchester Waste Disposal Authority is responsible for waste disposal across nine of the ten local authorities within the area of the Greater Manchester Combined Authority (all local authorities except for Wigan which remains responsible for its own waste disposal).

7.14 As part of their consultation the Greater Manchester Combined Authority outlined advantages that the transfer of the WDA functions would have for the area of Greater Manchester including 'streamlining governance of GM functions and reduce the administrative burden of retaining a separate joint authority independent of the GMCA. Back-office WDA functions such as finance, HR and ICT would be integrated with the GMCA delivering efficiencies that would benefit district councils'.

7.15 The Order transfers the waste disposal functions – including the powers to borrow and levy the nine local authorities for waste disposal purposes - to the GMCA; the Order does not modify the powers.

7.16 The Order makes a number of provisions to enable the GMCA to share data and have data shared with it in the same way that the constituent councils can. These are powers within:

a) sections 17A and 115 (sharing and disclosure of information) of the Crime and Disorder Act 1998;

b) section 113 of the Environment Act 1995, allowing the GMCA to share with and receive data from: a Minister of the Crown, the Environment Agency and another local enforcing authority in relation to its functions around air quality;

c) sections 14 and 16, 17 and 77 of the Education and Skills Act 2008, putting the GMCA in the position of a local authority in relation to the sharing of relevant data for educational purposes with educational institutions, service providers and certain public bodies;

d) section 17 of the Education and Skills Act 2008, allowing the GMCA to provide and receive relevant information to local education authorities in England and a service provider of that authority;

e) section 77 of the Education and Skills Act 2008, allowing the GMCA to supply and receive relevant information about a young person or relevant adult to certain persons and bodies involved in the provision of support services; and

f) section 122 of the Apprenticeship, Skills, Children and Learning Act 2009, allowing the GMCA to share relevant information with local authorities and service providers for education and training purposes.

7.17 The Order specifies that a number of functions which are conferred onto the GMCA by this Order and earlier Orders are to be exercisable personally by the Mayor. In particular, the 2011 Order conferred upon the GMCA a power under the Transport Act 2000 to prepare local transport policies and a local transport plan. This Order specifies that this will be a function to be exercisable by the Mayor, subject to a vote in favour by 7 of the 10 Combined Authority members appointed by the constituent councils. Finally the Order makes necessary amendments to the 2011 Order and to the GMCA's funding and remuneration arrangements, to support the GMCA's exercise of the functions.

8. Consultation outcome

8.1 The GMCA has undertaken two consultations, which between them included proposals on all matters within this Order. The GMCA's consultations were in relation to proposals in two governance reviews and two schemes prepared by the GMCA.

8.2 In each case, the GMCA led the consultation, which were 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 first consultation ran for 8 weeks from 21 March to 18 May 2016 and the second consultation ran for 6 weeks from 4 July to 15 August 2016. The GMCA provided each local authority and partner organisation with a toolkit to aid local engagement, in line with their individual communication strategies.

8.3 The first consultation received 237 responses, including: 169 from members of the public, 19 from public bodies, 7 from businesses, and 14 from representative bodies. The GMCA's summary of responses to the consultation includes a demographic analysis of respondents and analysis of responses to each of 10 questions.

8.4 The second consultation received 291 responses of which 278 were responses to the specific consultation questions. This included: 229 from members of the public, 17 from public bodies, and 4 from businesses. The GMCA's summary of responses to the consultation includes a demographic analysis of respondents and analysis of responses to each of 10 questions.

8.5 In accordance with the requirements at section 113(2) of the 2009 Act, the Secretary of State has reviewed the GMCA's consultations, and is of the view that no further consultation is necessary. The Secretary of State is satisfied that the GMCA's consultations in connection with the proposals in each scheme were sufficient in terms of length (8 weeks for the first consultation and 6 weeks for the second); 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 GMCA's summaries of responses to the consultations, to which he has had regard.

8.6 The outcomes of consultations on the GMCA's proposals were generally favourable. Of the 50 respondents who expressed a view on the GMCA's housing and regeneration proposals (which included the proposal to enable the Mayor to propose Mayoral Development Corporation) within the first scheme, 37 (74%) were supportive. Of the 17 key stakeholders who commented on this proposal, 12 (71%) were supportive (including the Homes and Communities Agency); and only 1 key stakeholder did not support the proposals on the basis that the Government should not

be involved. In its summary of responses, GMCA committed to continue to work with building and development partners in Greater Manchester in delivering the housing, planning and regeneration opportunities that devolution brings.

8.7 261 respondents commented on the GMCA's transport proposals in the second scheme, of which 183 (70%) were supportive, 48 (18%) were not, and 30 neither supported nor did not support. Of the 26 key stakeholders that commented on the proposals in the scheme, only 2 were unsupportive, citing concerns that nothing will change.

8.8 There was general support for the proposal within the second scheme to transfer the waste disposal function and close the Waste Disposal Authority. 278 respondents responded to this part of the consultation; of the 231 that expressed a view, 179 (77%) were supportive the proposal and 52 (23%) were not. The majority of key stakeholders also agreed with the proposals (including the Waste Disposal Authority) – of the 19 that expressed a view, all but one were supportive. Supportive comments include that it would "deliver better outcomes for the citizens of Greater Manchester" but one non supportive respondent considered that "It is neither here nor there who has oversight. The current system has existed for a long time and has worked well. It isn't broken and doesn't need fixing.".

8.9 Seventy one respondents commented on data sharing proposals which were included within the first scheme, of which 47 (66%) respondents were supportive of proposals whilst 24 (34%) respondents were not supportive. Supportive comments include that "this is a no brainer and has been too long in the coming", while concerns exist around the confidentiality of data and whether information would be sold to private companies, with one respondent commenting that "We have no idea which services have what information on each individual". GMCA have responded to the concerns by committing to an integrate approach to data sharing, ensuring that information held by a wide range of public services is secure, but that when appropriate, it is shared. GMCA stated that a key element of the work will be "ensuring the public is well informed about [our] plans and assured that their data is safe and secure".

9. Guidance

9.1 No guidance is necessary to accompany this Order. The Government continues to work with colleagues in the GMCA 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 As regards impact on the public sector, conferring functions on the GMCA 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 Combined Authority is likely to improve the exercise of statutory functions in the area concerned, and the Secretary of State is required, to have regard to the need to secure effective and convenient local government. As explained at paragraph 7.4, the Secretary of State is satisfied that these tests are met in relation to the provisions of the Order.

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 of Communities and Local Government Telephone: 0303 444 3125 or email: Helen.bamford@communities.gsi.gov.uk can answer any queries regarding the instrument.