EXPLANATORY MEMORANDUM TO

THE GREATER MANCHESTER COMBINED AUTHORITY (PUBLIC HEALTH FUNCTIONS) ORDER 2017

2017 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order provides for local authority public health functions of the Greater Manchester Combined Authority's constituent councils to be conferred on the Greater Manchester Combined Authority ("the Combined Authority").

3. Matters of special interest to Parliament

Matter of 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 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. Additionally, the instrument relates to public health, which is also a devolved matter.

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 (SI 2011/908).

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 Cities and Local Government Devolution Act 2016 ("the 2016 Act") amended the 2009 Act to provide a broad enabling legislative framework for devolution of functions to combined and local authorities. To support implementation of bespoke devolution deals (and subject to certain exceptions), the amendments made by the 2016 Act to the 2009 Act enable the conferral of functions either:

- From a "public authority" (such as the Department of Health or NHS England) to a combined authority; or
- From a local authority to a combined authority. It is this particular type of conferral which is achieved by this Order which will support the Combined Authority's plans for health and social care devolution.

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 above, under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 The Rt Hon Jeremy Hunt MP, Secretary of State for Health, has made the following statement regarding Human Rights:

"In my view the provisions of the Greater Manchester Combined Authority (Public Health Functions) Order 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 Under section 2B of the National Health Service Act 2006 ("the NHS Act 2006"), which was inserted by the Health and Social Care Act 2012, every unitary and upper-tier local authority in England is under a duty to take appropriate steps for improving the health of people in its area. This Order confers equivalent public health functions on the Combined Authority and provides for these functions to be exercised concurrently. This is being done so that public health services and other measures to improve health can be delivered in an integrated way for the whole of the Greater Manchester area, where this is appropriate. The individual local authorities in the Greater Manchester area will however remain under the section 2B duty as regards their own areas, and will continue to act at a local level.

7.2 A number of consequential and related amendments are also made by the Order. Article 4 provides that regulations made under section 6C(2) of the NHS Act may prescribe the steps that the Combined Authority must take in exercising the public health functions conferred by article 3. It is not currently proposed to impose a similar obligation on the Combined Authority, but article 4 will make it possible to do so in the future.

7.3 Article 5(1) provides that when exercising the public health functions conferred by article 3, the Combined Authority must have regard to documents published, and guidance issued, by the Secretary of State as to the exercise of those functions. Article 5(2) requires the Combined Authority to prepare and publish an annual report on the health of the people in its area.

7.4 The effect of article 6 is that, once the Order has conferred local authority public health functions on the Combined Authority, the Combined Authority will be able to enter into partnership arrangements under section 75 of the NHS Act 2006 in respect of the health-related functions of NHS bodies in the same way that local authorities may currently enter into such arrangements. Article 6 ensures that this does not affect the position under sections 75(7A) to 75(7D) of the NHS Act 2006, under which the Combined Authority is treated as if it were an NHS body in certain circumstances. Article 6(2) provides that the Combined Authority may not enter into the same set of partnership arrangements in its capacities as both a local authority and an NHS body unless this is permitted by regulations made under section 75(1) of the NHS Act 2006.

7.5 Agreements made under section 75 of the NHS Act 2006 allow budgets to be pooled between local health and social care organisations and authorities. Resources and management structures can be integrated and functions can be reallocated between partners. Flexibility across health and social care budgets can allow resources to be used where they are most needed. For instance, health money could be used for preventative community services.

7.6 Article 7 provides that the Combined Authority must have regard to the NHS Constitution in the exercise of the public health functions conferred by article 3, consistently with the duty on its constituent councils imposed by section 2 of the Health Act 2009.

Further background

7.7 In July 2015, partner organisations in the Greater Manchester ("GM") area agreed a Memorandum of Understanding ("the MoU")[1] with the aim of ensuring the greatest and fastest possible improvement in the health and wellbeing of GM's 2.8 million residents. The MoU created a framework for achieving the delegation and eventual devolution of health and social care responsibilities to accountable, statutory organisations in GM. It set out the process for shadow working from 1 April 2015.

7.8 The parties to the agreement are: (a) all local authority members of the Association of Greater Manchester Authorities, (b) all GM Clinical Commissioning Groups, and (c) NHS England.

7.9 The Combined Authority was not a party to the MoU as it held no health functions. Conferring local authority health functions on the Combined Authority will enable it to provide a strategic, GM-wide view, with a view to further improving health and well-being outcomes.

7.10 A March 2016 Combined Authority report set out the conclusions from its governance review[2], and a proposed scheme[3] on which it consulted over subsequent weeks,

[1] https://www.greatermanchester-ca.gov.uk/downloads/download/40/greater_manchester_health_and_social_care_devolution_memorandum_of_understanding

[2] Under s.111 of the 2009 Act.

regarding the conferral on the Combined Authority of a variety of functions including public health functions. The report concluded that the conferral on the Combined Authority of public health functions given to individual local authorities pursuant to s.2B of the NHS Act 2006 would be likely to improve the exercise of statutory functions in Combined Authority's area. It explained its rationale for likely improvement as:

7.11 "To enable the effective integration of health and social care provision across Greater Manchester, to deliver improved health and wellbeing outcomes to support and enhance GM's priority of reducing worklessness and supporting people back into employment and to ensure the financial sustainability of the health and social care system".

7.12 This Order is a significant step in the implementation of the devolution deals which the Government had agreed with the Combined Authority, first in November 2014 and subsequently in February 2015, July 2015, and November 2015. These agreements provide for powers to be conferred on the 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. The Combined Authority is not receiving powers conferred by statute on NHS England or on the Secretary of State, nor funding from either NHS England or the Secretary of State, save to the extent that it will be able to enter into a partnership arrangement under section 75 of the NHS Act 2006.

7.13 Devolution, particularly of health services, will allow greater local integration of public service delivery, increasing public service efficiency and improving outcomes.

7.14 This Order is part of the legislation necessary to deliver the Greater Manchester deals. In taking the decision to confer public health functions on the Combined Authority, 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 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.

7.15 The Combined Authority has provided to the Department documents which conclude that conferring public health functions on it is likely to improve health and other outcomes in its area, and improve decision-making. The Department has considered the evidence provided and considers that this is a reasonable conclusion.

8. Consultation outcome

8.1 The Combined Authority consulted on its overall devolution scheme which included housing, regeneration and land regeneration, transport, education and skills, culture, and a spatial plan as well as proposals for health. The health proposals were informed by an earlier survey[4] on health issues across the GM area, which identified priorities for action in order to deliver a radical upgrade in health [outcomes?].

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[3] Prepared and published under s.112 of the 2009 Act.
[4] http://www.gmhsc.org.uk/the-plan/

8.2 The consultation ran from 21 March to 18 May 2016, in conjunction with the ten local authorities comprising GM as well as other partners, such as Greater Manchester Fire and Rescue. The consultation was aligned with a promotional campaign to raise awareness of the Combined Authority. 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 The consultation was undertaken both digitally and on paper. The primary mechanism was through digital channels, although hard copies were also available at various locations such as regeneration offices, leisure centres and libraries.

8.4 A total of 238 responses to the consultation were received including 169 from members of the public, 19 from public bodies, 7 from business and 15 from representative bodies. The Combined Authority's summary of responses to the consultation[5] includes a demographic analysis of respondents and analysis of responses to each of ten questions.

8.5 The Government's assessment of the overall consultation is that it 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 e-mails); and the analysis of responses undertaken.

8.6 In terms of the health proposal, the following is an extract from the Combined Authority's on-line consultation:

We propose the Combined Authority should have the same duty to take any actions it thinks will improve the health of Greater Manchester residents that the Secretary of State and the ten GM local councils already have. Giving us a shared duty with the local councils and the Secretary of State to improve the health and wellbeing of Greater Manchester's 2.8 million people will help us and the NHS to respond together to health needs and focus on preventing ill health and promoting healthy lifestyles.

We will be able to use our new health improvement function to:

- *Work with NHS organisations and the ten GM local authorities to take health and social care decisions which reflect the health needs of Greater Manchester and which make the best use of Greater Manchester's £6 billion budget*
- *Produce a comprehensive plan for Greater Manchester's health and social care*

8.7 The Secretary of State for Health will retain core duties in relation to the health service and will continue to discharge his existing statutory duties. All national standards and accountabilities relating to health will remain unchanged including statutory guidance on the appointment of Directors of Public Health and the Public Health Outcomes Framework[6]

8.8 The majority of those that responded to the substantive proposal (138 responses) were in favour of the proposal to enable the Combined Authority to play an active role in commissioning across the GM area, enabling joint decision-making and responding together to health needs and focus on preventing ill health and promoting healthy

[5] https://www.greatermanchester-ca.gov.uk/devopowersconsultation
[6] http://www.phoutcomes.info/

lifestyles. 12% of respondents were from key stakeholders, all of which were supportive, while 22% of all respondents were not supportive. The comments from this latter group of respondents did not specifically object to the proposal to confer public health functions on the Combined Authority, but tended to raise unrelated points about the NHS and other matters.

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, voluntary bodies or the public sector.

10.2 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 conferred on 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 GM devolution agreement [7]

13. Contact

13.1 Alison Ross E: alison.ross@dh.gsi.gov.uk T: 020 7210 6308 can answer any query regarding the instrument.

[7] https://www.greatermanchester-ca.gov.uk/homepage/59/devolution