EXPLANATORY MEMORANDUM TO

THE GREATER MANCHESTER COMBINED AUTHORITY (TRANSFER OF POLICE AND CRIME COMMISSIONER FUNCTIONS TO THE MAYOR) 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 is to use powers conferred on the Secretary of State by the Local Democracy, Economic Development and Construction Act 2009 (the "2009 Act") to:

- make provision in relation to the transfer of police and crime commissioner ("PCC") functions from the Police and Crime Commissioner for Greater Manchester to the Combined Authority Mayor for Greater Manchester from 8 May 2017;
- transfer the property, rights and liabilities of the PCC to the Greater Manchester Combined Authority;
- extend the financial year of the Greater Manchester PCC.

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 Disregarding minor or consequential changes, the territorial application of this instrument varies between provisions.

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") established the position of 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. Section 107F(8) specifies that any PCC function exercisable by the mayor is to be taken to be a function of the combined authority exercisable by the mayor acting individually, or by a person acting under arrangements with the mayor in accordance with provision made under Schedule 5C of the 2009 Act. 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. The Greater Manchester Combined Authority (Election of Mayor with Police and Crime Commissioner Functions) Order (S.I.2016/448) ("the 2016 Order") exercised these powers in respect of Greater Manchester.

4.4 Schedule 5C to the 2009 Act (which was inserted by the 2016 Act) makes further provision for where an Order is made under 107F of the 2009 Act, and provides various powers and duties in relation to the detailed arrangements concerning the transfer of PCC functions from a PCC to a mayor. This is the first Order made pursuant to that Schedule.

4.5 Section 107G provides that the function of calculating the PCC component of the council tax requirement calculated under section 42A of the Local Government Finance Act 1992 in respect of the mayor's PCC functions is a PCC function of the mayor.

4.6 There is a link between this instrument and the Greater Manchester Combined Authority (Fire and Rescue Functions) Order 2017 (see further paragraph 7.16 below).

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales as the relevant powers being exercised extend to England and Wales.

5.2 The territorial application of this instrument varies between provisions. Most of the provisions apply only to England as they relate to Greater Manchester. Article 10(3) of the instrument applies to England and Wales as it makes a textual amendment to provisions of the Police Reform and Social Responsibility Act 2011 that apply to England and Wales.

6. European Convention on Human Rights

6.1 The Rt Hon Brandon Lewis, Minister of State 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 (Transfer of Police and Crime Commissioner Functions to the Mayor) Order 2017 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. This agreement included a commitment to transfer police and crime commissioner functions from the Greater Manchester PCC to the new directly elected mayor.

7.3 In March 2016, the 2016 Order made provision for the realisation of the devolution agreements between the Government and Greater Manchester. It contained three elements. Firstly, it created the position of elected mayor. Secondly, it set 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 provided in relation to the PCC functions: (a) that the mayor is to exercise PCC functions for Greater Manchester; (b) to abolish the PCC for Greater Manchester from the point that the mayor takes office; (c) for cancellation of future PCC ordinary elections in Greater Manchester; (d) for extension of the current PCC's term of office to cover the intervening period; and (e) to prevent any PCC by-election in Greater Manchester within 6 months of the date that the mayor will take office.

7.4 Following the 2016 Order, this instrument makes detailed provision in relation to the transfer of PCC functions to the mayor from 8th May 2017, which is when the mayor will take office, following the election on 4th May.

7.5 Article 3(1) of the instrument provides that the mayor is to be treated as a PCC for the purposes of all PCC-related legislation, with the effect that all legislation applying to PCCs is to apply to the mayor in relation to the mayor's PCC functions. This is subject to the modifications to certain legislative provisions in their application to the mayor set out in Schedule 1 to the Order and to the list of legislative provisions in Schedule 2 to the Order to which article 3(1) does not apply.

7.6 This is in line with our policy intention which is that the mayor will, alongside wider powers, exercise the role of PCC, taking on the powers set out in the Police Reform and Social Responsibility Act 2011 and other PCC-related legislation, with modifications to reflect the wider context of the mayoral combined authority governance model. This approach preserves the direct electoral accountability for police governance which exists under the PCC model.

7.7 In line with the position for PCCs, the mayor must personally exercise certain strategic functions as set out in the Police Reform and Social Responsibility Act 2011. These are issuing a Police and Crime Plan, appointing, suspending or calling on a chief constable to resign, and setting the council tax requirement in relation to policing.

7.8 In common with the position in London, and in line with powers for PCCs to appoint deputy PCCs, the mayor may appoint a deputy mayor for policing and crime. The mayor will be permitted to personally delegate certain PCC functions to the deputy mayor for policing and crime in line with the mode of delegation to deputy PCCs set out in the Police Reform and Social Responsibility Act 2011. Also in line with the position for PCCs, the mayor may personally delegate certain PCC functions to other persons. This could include individual members and staff of the Combined Authority.

7.9 Articles 4 to 8 of this instrument make transitional provision in relation to the transfer of PCC functions to the mayor - in particular, in relation to transfer of property, rights and liabilities. The property, rights and liabilities of the PCC for Greater Manchester are to transfer to the Greater Manchester Combined Authority. In relation to such property, rights and liabilities (and any acquired in relation to the mayor's PCC functions after the transfer) the mayor is to exercise all functions relating to them and make all decisions (although the mayor may delegate in line with the general position on delegation set out above). Any receipts arising from such property, rights and liabilities are to be paid into the police fund. This ensures that police funding is protected.

7.10 Article 9 provides that the financial year of the PCC and Chief Constable for Greater Manchester are to be extended from 31st March until 7th May 2017. This is in order to rationalise accounting processes and avoid preparing additional accounts for the one month interim period.

7.11 Schedule 1 makes a series of modifications to PCC-related legislation to make them suitable in their application to the mayor, who will be exercising PCC functions in the context of a wider mayoral combined authority governance model. This includes ensuring that in respect of scrutiny of the mayor's exercise of PCC functions, a new Police and Crime Panel (PCP) is to be created which will exercise broadly the same functions as PCPs under the PCC model. The new PCP for Greater Manchester will incorporate some minor modifications, such as ensuring the panel only scrutinises the policing element of the precept (which forms a separately identifiable component of a wider Combined Authority precept), rather than the whole precept.

7.12 In respect of complaints, the mayor and deputy mayor for policing and crime will be treated in line with the position in London. This means that complaints of criminal conduct will be dealt with by the Independent Police Complaints Commission. Otherwise complaints will be dealt with via local authority channels unless the deputy mayor for policing and crime is a staff member of the Combined Authority (that is, not an elected member of the Combined Authority), in which case they would be handled by the Police and Crime Panel.

7.13 In respect of disqualification criteria, the criteria for PCCs will apply to the mayor in addition to the standard mayoral criteria, given that the mayor will exercise PCC functions. The criteria, from sections 64-68 of the Police Reform and Social Responsibility Act 2011, have been modified to enable their suitable application to the mayoral post. PCCs (or those standing for election as PCC) will be disqualified from standing for election as the mayor. Article 10 of the instrument makes an additional textual amendment to section 64 which ensures that combined authority mayors with PCC functions (or those standing for election as such a mayor) will be disqualified from being elected as a PCC.

7.14 The instrument provides that where the PCP suspends the mayor from the exercise of PCC functions due to that person being charged with a serious criminal offence, the PCC must appoint a person to exercise the mayor's PCC functions; ordinarily we would envisage this being the deputy mayor for policing and crime.

7.15 The instrument also provides that where the deputy mayor of the combined authority is acting up for the mayor because the mayor is unable to act (which does not include where the mayor is suspended by the PCP from the exercise of PCC functions as described in paragraph 7.14 above) and, after a period of six months, the mayor remains unable to act, the mayoral post becomes vacant and a by-election is therefore triggered. This is in line with the position for PCCs and ensures that a person that has not been directly elected to exercise PCC functions cannot exercise them for an extended period of time where a PCC is incapacitated.

7.16 The Greater Manchester Combined Authority (Fire and Rescue Functions) Order 2017 will also give the mayor overall responsibility for fire and rescue in Greater Manchester. Together with the functions of a police and crime commissioner, this will promote a more joined-up approach to these vital public services, and providing direct accountability for their performance.

8. Consultation outcome

8.1 This instrument 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 input from the Greater Manchester Combined Authority, the Greater Manchester Police and Crime Commissioner and Greater Manchester Police.

9. Guidance

9.1 No guidance is necessary to accompany this instrument. The Home Office continues 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 The impact on the public sector is likely to be minimal. PCC functions and budgets, which are currently exercised by the Police and Crime Commissioner for Greater Manchester, will, from 8 May 2017, be exercised by the Combined Authority Mayor for Greater Manchester.

10.3 An Impact Assessment has not been prepared for this instrument. The transfer of PCC functions from one public body to is likely to have no impact on business and the third sector.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 No specific period of review is set out in the instrument. However, after the initial three year term up to 2020, Mayoral elections will take place in Greater Manchester

every four years, providing direct electoral accountability for the provision of policing in Greater Manchester. In addition, the Home Office is contributing to cross-Government analytical support to local areas to develop evaluation and monitoring plans.

13. Contact

13.1 Louise Fennell, Police Strategy and Reform Unit, Home Office. Telephone: 0207 035 5790 or email: louise.fennell@homeoffice.gsi.gov.uk for answers to any queries regarding the instrument.