EXPLANATORY MEMORANDUM TO

THE NEWCASTLE UPON TYNE, NORTH TYNESIDE AND NORTHUMBERLAND COMBINED AUTHORITY (ADULT EDUCATION FUNCTIONS) ORDER 2019

2019 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 The instrument uses the Secretary of State's powers under the Local Democracy, Economic Development and Construction Act 2009 ("the Local Democracy Act"):

(a) to confer certain adult education functions of the Secretary of State under the Apprenticeships, Skills, Children and Learning Act 2009 ("the 2009 Act") on the specified combined authority in relation to the area of that authority, and to set conditions on the exercise of those functions; and

(b) to apply certain provisions of the 2009 Act with modifications to the combined authority for the purpose of the combined authority exercising the conferred functions.

2.2 In addition, amendments to the Counter-Terrorism and Security Act 2015 are made by Part 3 of the instrument.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 This entire instrument applies to England only.

3.3 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.

3.4 The instrument applies only to England as it is concerned with certain adult education functions to be exercised by the specified combined authority in relation to their local government area in England. Section 103(2) of the Local Democracy 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 The Department has reached this view because it considers that the primary purposes of the provisions in this instrument relate to education and local government, which is within the devolved legislative competence of each of the three devolved legislatures: the primary purpose of the subject matter of these instruments 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 that Act); the primary purpose of the subject matter of these instruments 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 that Act); the primary purpose of the subject matter of these instruments is not within Schedule 7A to the Government of Wales Act 2006 and is not otherwise outside the legislative competence of the National Assembly for Wales (see section 108A of that Act).

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is set out in Section 3 under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

5. European Convention on Human Rights

5.1 The Rt Hon Anne Milton, Minister of State for Education and Skills, has made the following statement regarding Human Rights:

"In my view the provisions of the following Order are compatible with the Convention rights: the Newcastle Upon Tyne, North Tyneside and Northumberland Combined Authority (Adult Education Functions) Order 2019."

6. Legislative Context

6.1 Part 6 of the 2009 Act provides for establishment of combined authorities for the areas of two or more local authorities in England. Under section 105A of the 2009 Act, a combined authority may be given power to exercise specified functions of any other public authority. An order under section 105A may make the conferral of functions subject to such conditions or limitations as may be specified in the order.

6.2 The Newcastle Upon Tyne, North Tyneside and Northumberland Combined Authority was established by The Newcastle Upon Tyne, North Tyneside and Northumberland Combined Authority (Establishment and Functions) Order 2018 (S.I 2018/1133).

6.3 When laying before Parliament an order which confers public authority functions on a combined authority under section 105A of the Local Democracy Act, section 105B(9) of that Act requires that 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 appropriate to include.

7. Policy background

What is being done and why?

7.1 The Order provides for the transfer to the specified combined authority of the following adult education functions under the 2009 Act in relation to the 2020/21 academic year onwards: section 86 which relates to education and training for persons aged 19 or over; section 87 which relates to learning aims for such persons and provision of facilities; and section 88 which relates to the payment of tuition fees for such persons. This is subject to an exception in relation to apprenticeship training, a person subject to adult detention or any power to make regulations or orders. The transferred functions will be exercisable by the combined authority instead of by the Secretary of State in relation to the area of the combined authority.

7.2 In addition, functions of the Secretary of State under section 90 of the 2009 Act, which relate to the encouragement of education and training for persons aged 19 or over, and section 100(1) of that Act which relate to the provision of financial resources, are transferred to the combined authority in relation to the area and will be exercisable concurrently with the Secretary of State.

7.3 The following conditions are set on the exercise of the transferred functions:

a. the combined authority must adopt rules of eligibility for awards by an institution to which it secures financial resources under section 100 of the 2009 Act in accordance with any direction given by the Secretary of State; and

b. in exercising the transferred functions, the combined authority must have regard to guidance issued by the Secretary of State (as amended from time to time or replaced by a subsequent document).

7.4 The Order is similar to those made in 2018 for the transfer of the same functions to Greater Manchester Combined Authority; the Liverpool City Region Combined Authority; the West of England Combined Authority; the West Midlands Combined Authority; the Tees Valley Combined Authority; and the Cambridgeshire and Peterborough Combined Authority[1].

7.5 The transfer to The Newcastle Upon Tyne, North Tyneside and Northumberland Combined Authority of the specified adult education functions (also referred to in this memorandum as the "devolution of adult education") forms part of the government's wider devolution agenda and is focused on giving local areas a prominent role in managing and shaping their own economic prosperity. Through the transfer of the specified adult education functions, the combined authority and their elected Mayor will be able to better shape adult education provision that is available to their residents to ensure it meets the needs of the combined authority's economy. The Orders form a key part of the delivery of the devolution deal agreed between government and the combined authority in 2018[2].

---

[1]The Greater Manchester Combined Authority (Adult Education Functions) Order 2018 (S.I 2018/1141) ; the Liverpool City Region Combined Authority (Adult Education Functions) Order 2018(S.I 2018/1142) ; the West of England Combined Authority (Adult Education Functions) Order 2018(S.I 2018/1143) ; the West Midlands Combined Authority (Adult Education Functions) Order 2018(S.I 2018/1144) ; the Tees Valley Combined Authority (Adult Education Functions) Order 2018(S.I 2018/1145) ; and the Cambridgeshire and Peterborough Combined Authority (Adult Education Functions) Order 2018(S.I 2018/1146).

[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/754719/North_of_Tyne_Deal.pdf

7.6 In accordance with the requirements of section 105B(1) of the Local Democracy Act, the combined authority and its constituent councils have consented to the making of this Order; and the Secretary of State considers that the making of each Order is likely to improve the exercise of statutory functions in the area to which that Order relates.

7.7 As a result of the devolution of adult education functions it will be the responsibility of the combined authority to enable access to appropriate adult education provision in relation to their area. The combined authority will be responsible for commissioning and contracting with providers to deliver such adult education.

7.8 In order to ensure the continued stability of the provider sector the combined authority, the Department for Education and the Education and Skills Funding Agency (an executive agency of the Department for Education) will agree a collaborative approach through a Memorandum of Understanding (MoU) that is intended to facilitate the alignment, where appropriate, of local and national policy. This arrangement is intended to ensure that decisions made by all parties will be made with a view to ensuring the effective delivery of adult education provision. Similar MoUs have been entered into with the combined authorities given at 7.4 already subject to an Order.

7.9 The Order sets the following conditions on the exercise of the specified functions. It requires the combined authority to adopt rules of eligibility for awards by an institution to which it makes grants, loans or other payments under section 100 of the 2009 Act in accordance with any direction which may be given by the Secretary of State. Such a direction may be for the purpose of ensuring that a consistent approach is taken as to the eligibility of persons who have a specified connection to the United Kingdom. In addition, in exercising the conferred functions the combined authority is required to have regard to guidance issued by the Secretary of State (as amended from time to time or as replaced by a subsequent document).

7.10 Part 3 of the Order makes amendments to the Counter-Terrorism and Security Act 2015 to omit the reference to the Chief Executive of Skills Funding; and to insert a reference to a combined authority so as to ensure the application of the relevant duties to adult education providers which are funded by a combined authority.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 Unlike the legislation relating to the establishment of a combined authority, or the conferral of local authority functions on a combined authority, a consultation is not required to confer public authority functions on a combined authority.

10.2 An Order can be made to make provision for 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 if the 'appropriate consent is given and the Secretary of State considers that the making of the Orders is likely to improve the exercise of statutory

functions in the relevant area. The appropriate consent is that of the combined authority and constituent councils of the combined authority. Before laying the Order referred to in this memorandum, the Government sought and obtained the consent of the specified combined authority and constituent councils in relation to the Order. The Secretary of State considers that the making of the Order is likely to improve the exercise of the statutory functions in the area of the combined authority.

10.3 Further consultation at this time is not considered necessary. However, as consultation has been undertaken by the combined authority in relation to their area it is described below.

10.4 The three North of Tyne councils undertook a consultation on the proposals contained in their scheme. The consultation ran for seven weeks from 14 December 2017 to 5 February 2018.

10.5 The combined authority consulted extensively on its overall devolution scheme which included housing, regeneration and land regeneration, transport, culture and a spatial plan as well as proposals for education and skills.

10.6 The devolution scheme included specific reference to the devolution of adult education. The scheme proposed that the new mayoral combined authority will have powers to control the Adult Education budget from 2019/20 onwards. However, the three councils concluded that the most appropriate route for the successful devolution of these powers and budget was for this to take place from 2020/21.

10.7 The consultation exercise was undertaken via an online and paper survey as well as face-to-face public events and a number of bespoke sessions for stakeholders. The consultation exercise was promoted via print, radio, TV and online media as well as social media and press adverts. There was also a dedicated website to provide news and information about the devolution process, which generated over 6,000 visitors to the consultation page during the period of the consultation.

10.8 In total, 1,087 responses to the survey were received, with the vast majority being provided online. 902 (83 per cent) of these responses were from residents.

11. Guidance

11.1 The order requires the combined authority to have regard to guidance issued by the Secretary of State (as amended from time to time or as replaced by a subsequent document) in exercising the relevant functions. The guidance was published on 23rd July 2018 and is available at https://www.gov.uk/government/publications?departments%5B%5D=department-for-education. Copies of the guidance are also available on request from the Department for Education, Sanctuary Buildings, 20 Great Smith Street, London SW1P 3BT. This guidance will cover key areas that a combined authority are required to pay regard to when taking decisions in respect of commissioning adult education provision.

12. Impact

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

12.2 There will be an impact on the public sector. The transfer of the specified functions to the combined authority will result in an associated transfer of funds to the combined authority to facilitate the exercise of those functions. This will take the form of a proportion of the overall adult education budget moving from the Department for

Education to the specified combined authority which will determine how that is spent as part of the exercise of these functions. The Department for Education will confirm the adult education budgets for each specified combined authority for the 2020/21 academic year in early 2020.

12.3 An Impact Assessment has not been prepared for this instrument as the impact of this instrument is on combined authorities.

13. Regulating small business

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

14. Monitoring & review

14.1 This order provides for functions to be conferred on the combined authority. The combined authority will be required, as part of their devolution deals reached with government, to agree with government an extensive programme of monitoring and evaluation in relation to the devolved adult education functions.

15. Contact

15.1 Liam Chittenden at the Department for Education Tel: 07384452213 or email: Liam.Chittenden@education.gov.uk can answer any queries regarding the instrument.

15.2 Dominic Hastings, Deputy Director for the devolution of adult education at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Anne Milton MP, Minister of State for Apprenticeships and Skills at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.