EXPLANATORY MEMORANDUM TO

THE TEES VALLEY 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 Tees Valley Combined Authority's ("the Combined Authority) constituent councils and a certain public authority function to be exercised by the Combined Authority, certain specified functions of the Combined Authority 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 The report required by section 105B(9) of the Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act") is attached to this Explanatory Memorandum.

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 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.

4. Legislative Context

4.1 Part 6 of the 2009 Act, as amended by the Cities and Local Government Devolution Act 2016 ("the 2016 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 Tees Valley Combined Authority Order 2016,1 and the position of elected Mayor for the Combined Authority was established by the Tees Valley Combined Authority (Election of Mayor) Order 2016.2

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): the Secretary of State may by order make provisions about the constitutional arrangements of a combined authority, this includes membership, remuneration voting powers and executive arrangements of a combined authority.
- Section 105(1) of the 2009 Act (Constitution and functions: local authority functions generally): the Secretary of State may by order provide 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 105A(1)(a), (1)(b), (2) of the 2009 Act (Other public authority functions): the Secretary of State may by order provide 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.
- Subsection 2 provides that an order under subsection (1)(a) or (1)(b) may include further provision about the exercise of the function, including provision for the exercise of the function to be subject to conditions or limitations.
- Section 107D(1), 7(a), 7(b), 7(c) of the 2009 Act (Functions of mayors; general): the Secretary of State may by order provide for any function of a mayoral combined authority to be a function exercisable only by the mayor; such an order may provide certain conditions or limitations on the exercise of functions, such as for members or officers of the combined authority to assist the mayor in the exercise of general functions and confer ancillary powers on the mayor for the purpose of exercising functions.
- Section 113A of the 2009 Act (General power of EPB or combined authority): a combined authority may do anything it considers appropriate for the purposes of the carrying-out of any of its functions (its "functional purpose"), incidental to its functional purpose, for purposes indirectly incidental to its functional purpose, or anything it considers to be connected with its functions.
- Section 114 of the 2009 Act (Incidental etc provision): the Secretary of State may by order make incidental, consequential, transitional or supplementary

[1] http://www.legislation.gov.uk/uksi/2016/449/contents/made
[2] http://www.legislation.gov.uk/uksi/2016/783/contents/made

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, 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.

4.7 Parliamentary approval (through a resolution of each House) is required before the Secretary of State can make the Order.

5. Extent and Territorial Application

5.1 This instrument extends to England as the relevant powers being exercised extend to England.

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 MP, 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 Tees Valley Combined Authority (Functions and Amendment) Order 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Government committed in its 2015 manifesto to "devolve powers and budgets to boost local growth in England….to large cities which choose to have elected mayors". The Government considers such devolution will boost economic growth, increase public service efficiency, improve Britain's weak productivity, and rebalance the economy, including contributing to the Northern Powerhouse. Devolution will provide local leaders 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 decisions on housing. 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 will allow greater local integration of public service delivery, increasing public service efficiency and improving outcomes.

7.2 This Order is a significant step in the implementation of the Devolution Deal3 which the Government agreed with local leaders in the Tees Valley on 23 October 2015. This agreement provides for powers to be conferred on the mayoral Tees Valley Combined Authority (established in April 2016 by the Tees Valley Combined Authority Order 2016), with certain powers to be exercised by the Mayor, as well as devolving significant budgets, including investment funds of £450 million over 30 years.

7.3 Combined authorities may exercise specified functions across a number of local government areas. Under the Devolution Deal, there will be a directly elected mayor for the Combined Authority from May 2017. The elected Mayor will become the Chair of the Combined Authority. The Tees Valley Combined Authority (Election of Mayor) Order 2016, made on 19 July 2016, established the position of elected Mayor of the Combined Authority, with the first election to take place on 4 May 2017 and the elected Mayor taking office on 8 May 2017. The first term of office of the Mayor is to be three years, with subsequent elections in May 2020, and then every four years thereafter.

7.4 This Order is part of the legislation necessary to deliver the Tees Valley Devolution Deal under which powers are to be devolved to the area. Proposals to confer these powers on the Combined Authority, some to be exercised by the Mayor, were made by the Combined Authority in a statutory scheme4 pursuant to the provisions in the 2009 Act. The Combined Authority has undertaken a consultation on the proposals (see paragraph 8.1) and as required by the 2009 Act, the Combined Authority and its five constituent councils have consented to the making of the Order. The Order laid in draft will, if approved by Parliament, be made pursuant to the provisions of the 2009 Act, as amended by the 2016 Act.

7.5 The Secretary of State is satisfied that the statutory conditions for the Order, provided for in the 2009 Act, as amended by the 2016 Act, have been met. These conditions include 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; and 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.

7.6 The Order confers a number of local authority and a public authority functions on the Combined Authority to be exercised in relation to the Combined Authority area, as reflected in the Devolution Deal. Certain functions are to be exercisable by the Mayor individually, and others by the Combined Authority (which is chaired by the Mayor). Specifically, this Order makes provisions, as described in the following paragraphs, to confer on the Combined Authority functions, which cover transport (7.9– 7.10) and housing (7.11).

7.7 The Order provides for the funding of the Combined Authority. It does this by requiring the constituent councils to meet any reasonably incurred costs of the Combined Authority, to the extent that these costs are not to be met by other resources. The Order then provides that the constituent councils may agree the respective proportions they will pay; in absence of this agreement.

[3] https://www.gov.uk/government/publications/tees-valley-devolution-deal
[4] https://teesvalley-ca.gov.uk/wp-content/uploads/2016/07/Doc-B-Scheme-final-160716-1.pdf

7.8 The Order confers functions on the Combined Authority and makes amendments to the Combined Authority's constitution. The Order provides that these functions and the constitutional changes will come into force on 8 May 2017, except for the provisions related to the independent remuneration panel. These will come into effect on the day after the Order is made to allow the Combined Authority to proceed with setting allowances payable to the Mayor in advance of the Mayor taking office.

7.9 The Order makes provisions in relation to transport functions, so that the functions that were delegated to the Combined Authority in the Tees Valley Combined Authority Order 2016 are now conferred on the Combined Authority and no longer delivered by the constituent councils.

7.10 Reflecting the Devolution Deal's commitments that the Mayor of the Tees Valley will take responsibility for a devolved and consolidated transport budget and the preparation of a statutory transport plan for the area, the Order makes various provisions related to the Mayor's transport responsibilities in the Tees Valley. This enables the Mayor to:

- exercise the functions of a Minister of the Crown specified in section 31 of the Local Government Act 2003 (power to pay grant), to pay grants (in practice for highways maintenance) to the constituent councils of the Combined Authority, with the conditions that the Mayor has regard to the desirability of ensuring that a 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, or to be incurred, in relation to the exercise of highway functions; the section 31 functions are to be held concurrently with the Secretary of State.
- prepare a statutory transport plan, with the condition that the Mayor's proposed transport plan can be rejected by the Combined Authority if three-fifths of the members agree to do so. The Mayor will exercise functions of the Combined Authority specified in sections 108 (local transport plans), 109 (further provision about plans: England) and 112 (plans and strategies: supplementary) of the Transport Act 2000.

7.11 To support the ambitions in the Devolution Deal around housing, the Combined Authority will be empowered to take on the local authority duty to review housing needs from the Housing Act 1985, a power to be exercised concurrently with the constituent councils.

7.12 The Order provides that the functional power of competence exercisable by the mayoral Combined Authority under section 113A of the 2009 Act5 (general power of EPB or combined authority) 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 exercisable by the Mayor.

7.13 Finally, the Order makes constitutional amendments to the Combined Authority Establishment Order. These include:

- provisions reflect that from 8 May, the Mayor is to be the Chair of the Combined Authority;

[5] Section 113A was inserted by section 13 of the Localism Act 2011 and amended by paragraphs 17 and 25 of Schedule 5 to the 2016 Act.

- providing the Mayor with a vote on all matters, and that the Mayor is to be in the majority of the three-fifths of constituent council members required for a decision;
- that decisions subject to a unanimous vote in favour by constituent council members must also include the Mayor's vote;
- amending the quorum of the overview and scrutiny committee to be at least two-thirds of the total number of the committee members present; and
- providing that the Combined Authority may establish an independent remuneration panel to recommend allowances payable to the Mayor of the Combined Authority, and that the Combined Authority can fund such remuneration.

7.14 In addition to this Order, the draft Tees Valley Combined Authority (Functions) Order 2017 was laid before both Houses of Parliament on 23 January 2017. The intention of that draft Order is to confer on the Combined Authority in relation to its area functions (corresponding to those of the Mayor of London in relation to Greater London) relating to the establishment of mayoral development corporations (MDCs). The aim is to allow for the establishment of an MDC in the area of the Combined Authority by Summer 2017, following the recommendations made in Lord Heseltine's independent report 'Tees Valley: Opportunity Unlimited'. This reiterated the need to establish an MDC in the South Tees area as quickly as possible in order to drive regeneration, jobs and growth in the local area.[6] The need for an MDC to be established as quickly as possible and the detailed statutory process that must be followed, for its establishment including consultation by the Combined Authority, made it imperative for the draft Tees Valley Combined Authority (Functions) Order 2017 to be laid in advance of this draft Order.

8. Consultation outcome

8.1 The Combined Authority undertook a consultation for the purposes of the 2009 Act on the proposals for conferring powers on the mayoral Combined Authority. The Combined Authority led the consultation, delivered in conjunction with the five constituent local authorities. The consultation ran for six weeks from 11 July to 22 August.

8.2 1160 responses were received with 92 per cent from local residents and 3 per cent from businesses; the remaining 5 per cent included 5 responses from representative organisations. A summary of responses compiled by the Combined Authority was submitted to the Secretary of State. The Combined Authority's summary of responses7 to the consultation includes analysis of two profile based questions and analysis of responses to the two questions that had free text responses.

8.3 Of those who gave views on the consultation question on the powers and responsibilities being proposed to be conferred on the mayoral Combined Authority (220), a majority overall (160) were generally in support. 67 respondents used the question to give their view on the elected Mayor, and over 90 per cent opposed an elected Mayor for Tees Valley, and around 200 respondents referred to wider governance issues such as the risk of unnecessary bureaucracy, opposition to the

[6] https://www.gov.uk/government/publications/tees-valley-opportunity-unlimited
[7] https://teesvalley-ca.gov.uk/tees-valley-combined-authority/combined-authority-board-papers/

former Cleveland County Council and whether Tees Valley was an appropriate geo-political area.

8.4 Of those who gave views on the consultation question on the way in which the Mayor should work within the Combined Authority (535), the largest group (around 170) were generally supportive with a theme of comments around the need for transparency and to ensure that there were adequate checks and balances on the power of the Mayor and adequate scrutiny. There were also a significant number of responses (133) that focused on whether or not there should be a Tees Valley Mayor, and the vast majority were negative, and in particular from Hartlepool respondents. A smaller number of responses (around 90) expressed views on wider governance issues, such as whether there should be a combined authority, concerns over the distribution of resources and an additional layer of bureaucracy.

8.5 Responses from business organisations and other representative organisations were generally supportive. For example, the Confederation of British Industry said, "our members are clear that the government's devolution agenda can deliver real benefits for business, the economy and society if implemented effectively, with a long term focus on economic growth."

8.6 As statute requires, the Secretary of State was sent the Combined Authority's summary of responses to the consultation, to which he has had regard when deciding the provisions to include in the Order. 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 consultation was sufficient in terms of its length (six weeks); the mechanisms used (online and paper versions and responses); the promotional activity (press releases, social media, direct communications with local stakeholders, resident and community groups, awareness raising through councils' resident panels and staff newsletters, direct mailings and Hartlepool Council conducted door to door leaflet distribution); and the analysis undertaken (in which the Combined Authority had the assistance of the Institute for Local Governance at Durham University).

8.7 The Secretary of State has decided not to implement by Order all of the proposals that formed part of the scheme, which was consulted on by the Combined Authority. In order to devolve the powers agreed in the Devolution Deal (regarding business rates and skills), the Government will seek Parliament's approval to further legislation. The other proposals, principally those relating to business rates and the devolution of budgets for adult skills, which have not been implemented, would be taken forward in future legislation, subject to the statutory tests being met where relevant.

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 Deal.

10. Impact

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

10.2 As regards impact on the public sector, the Combined Authority should lead to operational efficiencies that could lead to reduced costs. Indeed, the statutory tests

require the Secretary of State to consider that conferring functions on the Combined Authority is likely to improve the exercise of statutory functions in the areas to which an order relates and the Secretary of State is required, to have regard to the need to secure effective and convenient local government. As explained at paragraph 7.5, 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 agreement 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 Kenneth Way at the Department for Communities and Local Government (Telephone: 0303 444 3860 or email: kenneth.way@communities.gsi.gov.uk) can answer any query regarding the instrument.