EXPLANATORY MEMORANDUM TO

THE TEES VALLEY COMBINED AUTHORITY (FUNCTIONS) 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 confers on the Tees Valley Combined Authority in relation to its area functions corresponding to functions that the Mayor of London has in relation to Greater London. Those functions include the power to designate any area of land in Greater London as a mayoral development area, as well as the ability to decide that a mayoral development corporation (MDC) is to be the local planning authority for some or all of the area and to make a scheme transferring to an MDC property, rights and liabilities of certain persons. The Mayor of London also has certain functions in relation to the membership of, appointment of, and removal of members from, the MDC.

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 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(1) of the 2009 Act provides that the Secretary of State may by order establish as a body corporate a combined authority for an area. Subsection (2) of section 103 provides that a combined authority may be established in relation to two or more 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 provides for the establishment of combined authorities for the areas of two or more local authorities in England.

4.2 The Tees Valley Combined Authority ("the Combined Authority") was established by the Tees Valley Combined Authority Order 2016 (S.I. 2016/449). 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.

4.3 Section 105(3) of the 2009 Act (Constitution and functions: local authority functions generally) provides that the Secretary of State may by order make provision for the costs of a combined authority to be met by its constituent councils, and the basis on which the amount payable by each constituent council is determined.

4.4 Section 105A(1)(b) of the 2009 Act (other public authority functions) provides that the Secretary of State may by order 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. Article 3 of, and the Schedule to, the Order provides that the Combined Authority is to have in relation to its area functions corresponding the functions that the Mayor of London has in relation to Greater London to designate mayoral development areas. Those functions are those set out in Chapter 2 of Part 8 (Mayoral Development Corporations) of, and Schedule 21 to, the 2009 Act, which provide for the designation of any area of as a mayoral development area as well as the establishment, areas, objects, powers and functions of MDCs.

4.5 Section 105A(2)(a) of the 2009 Act (Other public authority functions) provides that an order under subsection (1) may include further provision about the exercise of the function including provision for the function to be exercisable by the public authority or combined authority subject to conditions or limitations specified in the order. Article 3 imposes a number of conditions on which the function is to be exercised by the Combined Authority.

4.6 Section 114 of the 2009 Act (Incidental etc provision) provides that the Secretary of State may by order make incidental, consequential, transitional or supplementary 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) provides that an order under any provision of this Part, other than an order under section 116 or an order mentioned in subsection (2A)(a) or (b), may include provision amending, applying (with or without modifications), disapplying, repealing or revoking any enactment whenever passed or made. Article 4 applies Chapter 2 of Part 8 of, and Schedule 21, Schedule 22 (Mayoral Development Corporations: consequential and other amendments to the Localism Act 2011), and paragraph 9 of Schedule 24 (transfers under scheme under section 200(1) or (4) or 216(1)) to, the Localism Act 2011 (2011 Act) in relation to areas designated by the Combined Authority and corporations established as a consequence of such designation. Articles 6 and 7 apply sections 1 (disqualification and political restriction of certain officers and staff), 2 and 3A (politically restricted posts and exemptions from restriction) of the Local Government and Housing Act 1989 in relation to an MDC established as a consequence of this Order and section 5 of that Act (designation and reports of

monitoring officer) as if an MDC established as a consequence of this Order were a committee of the authority.

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) Order 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 In giving effect to the Government's manifesto commitment to "devolve powers and budgets to boost local growth in England", the Government and local leaders in the Tees Valley announced a devolution deal for the area in October 2015.[1]

7.2 The Government, working with the local area, have made progress with implementing the commitments in the Devolution Deal. The Tees Valley Combined Authority was established on 1 April 2016[2] and on 19 July 2016 the position of Mayor of the Tees Valley Combined Authority ("the Mayor") was established for the Combined Authority,[3] with the first election set for 4 May 2017.

7.3 The Devolution Deal included the commitment for the directly elected Mayor of the Tees Valley Combined Authority to hold responsibility for a consolidated transport budget and the creation of MDCs, as well as detailing a range of powers to be exercised by the Combined Authority.

7.4 The implementation of the commitment to confer MDC functions onto the Combined Authority has been prioritised following Government commitments to the creation of a MDC in the South Tees area. The aim is to allow for the creation of an MDC by Summer 2017. The Government will separately seek Parliamentary approval, a little later in the first quarter of 2017, to the further secondary legislation necessary to devolve powers and budgets to the Combined Authority, as well as setting out the changes to the constitution of the Combined Authority.

7.5 On 19 February 2016,[4] local leaders and the Government announced proposals to establish an MDC for the Tees Valley, the first outside London. This announcement followed the closure of the SSI Steelworks site in Redcar and Cleveland, with the objective to drive forward growth and investment, create jobs and support local

[1] https://www.gov.uk/government/publications/tees-valley-devolution-deal
[2] http://www.legislation.gov.uk/uksi/2016/449/contents/made
[3] http://www.legislation.gov.uk/uksi/2016/783/contents/made
[4] https://www.gov.uk/government/news/new-body-to-secure-investment-for-tees-valley

communities. To start this work the creation of a Shadow MDC Board and Intermediate Body for the site were announced. These bodies have since been established and a Chief Executive has been recruited to help manage the site of SSI in liquidation and take the lead in shaping the future vision for the South Tees Area.

7.6 In addition, on 7 June 2016,[5] Lord Heseltine published his independent report 'Tees Valley: Opportunity Unlimited', which reiterated the need to establish an MDC as quickly as possible to drive regeneration, jobs and growth in the local area.

7.7 This 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 MDCs on the Combined Authority. Conferring these functions is the first step in establishing an MDC in the Tees Valley and; a further order is necessary to create such a body if the Combined Authority decides to exercise the functions being given to them. The timeline for this order would be dependent on decisions to be taken by the Combined Authority.

7.8 The functions now being conferred on the Combined Authority are in 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. This 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 Combined Authority, to be exercised by the Mayor. The Order makes the following provisions:

- references in the 2011 Act to the Greater London Authority (GLA) and the London Assembly are to be read as references to the Combined Authority;
- the Combined Authority to have in relation to its area the corresponding functions that the Mayor of London has in relation to London;
- the Mayor must exercise the functions conferred on the Combined Authority;
- the Mayor may only exercise the functions conferred on the Combined Authority 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;
- the Mayor may only exercise the planning functions conferred on the Combined Authority where the exercise of these functions is in respect of the whole or any part of the area of the North York Moors National Park Authority that overlaps with the Combined Authority area, if the National Park Authority consents;
- 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 Combined Authority does not have "principal purposes" the Order replaces this with a condition that the Mayor must consider that such designation would further "economic development and regeneration in the Combined Authority area"; and
- the persons to be consulted before an area may be designated have been changed to reflect the conditions in the Tees Valley Combined Authority, specifically this includes the North York Moors National Park Authority, which has been added to the list of statutory consultees as the area of the National Park overlaps with the Combined Authority.

[5] https://www.gov.uk/government/publications/tees-valley-opportunity-unlimited

7.9 In replacing the London Assembly with the Combined Authority it is considered appropriate that the Mayor should require the consent of the Combined Authority member for any constituent council whose council area contains part of an area to be designated as a mayoral development area. The provisions in the 2011 Act reflect the circumstances in London, which has its own Assembly with 25 members elected to represent either constituencies or the pan-London area. The Combined Authority does not have an assembly and covers a smaller geography with a membership of five constituent councils, each represented on the Combined Authority board by a member they have nominated. Given the size of the board's membership, if member(s) in an area within a proposed mayoral development area did not provide consent, this would mean the Mayor would lack substantial support from the local area to proceed with their proposals.

7.10 Section 197 of the 2011 Act requires the Mayor of London to lay before the London Assembly, in accordance with standing orders of the GLA, a document stating that the Mayor is proposing to designate a mayoral development area. If at least two-thirds of London Assembly members vote to reject the proposal on a motion within 21 days of the document being laid the proposal is vetoed. This Order, where possible, mirrors the provisions from the 2011 Act. So if at least three of the five Combined Authority members object to a proposal then they will be able to veto it.

7.11 In reflecting the circumstances in the Combined Authority, it is considered appropriate that the Mayor should require the consent of the North York Moors National Park Authority if the Mayor proposes that an MDC should become the local planning authority for the whole or any part of the area of the National Park that overlaps with the Combined Authority area. The Combined Authority geography overlaps with a National Park, which is a local planning authority. National Parks are protected areas of national interest and this additional provision to the provisions in the 2011 Act ensures the National Park would have to consent to any changes in this status or affecting its powers. Moreover, even where an MDC becomes, with the consent of the National Park Authority, the planning authority for part of the park area the MDC would be required to apply the same protections as the National Park Authority.

7.12 The reason for economic development and regeneration replacing the principal purposes of the GLA is that combined authorities do not have such purposes although to establish a combined authority it is necessary for the proposals to meet statutory tests, defined in the 2009 Act. These tests require that the Secretary of State considers that making an order giving a combined authority a particular function is likely to improve the exercise of that function. The Tees Valley Combined Authority currently holds functions related to economic development and regeneration, as well as transport, and therefore these are currently the purposes on which the Combined Authority operates.

7.13 The Order also includes a number of transitional provisions in advance of the Mayor assuming their responsibilities on 8 May 2017. These transitional provisions include:

- the Chairman of the Combined Authority must exercise the functions conferred on the Combined Authority, which from 8 May 2017 will be exercised by the Mayor; and
- the Chairman must refer any proposal to establish an MDC to, and have regard to any reports or recommendations from, one of the Combined Authority's overview and scrutiny committees before laying a proposal before the Combined Authority.

7.14 These transitional provisions will enable the area to begin regeneration work as soon as possible. The Order imposes the requirement as to scrutiny on the Chairman while he or she holds these functions because the Chairman does not have the direct accountability of a directly elected mayor. The directly elected Mayor will not be subject to this requirement, although this does not preclude an overview and scrutiny committee from publishing a report or recommendations in relation to a proposal of the Mayor once the Mayor takes office.

8. Consultation outcome

8.1 This Order gives effect to certain provisions of the devolution agreement made between the Government and the authorities in the area which were the result of negotiations between the Government and those authorities. Before laying this Order the Government sought the views of the Combined Authority and its constituent authorities, all of which have given their consent to the Order. Further consultation at this time is not considered necessary as the Combined Authority would be required to conduct a statutory consultation, in accordance with section 197(3)(a) of the 2011 Act before it could designate a mayoral development area and before an MDC is established.

8.2 This Order also contains provisions for the funding of the functions conferred by it. On 8 July 2016 the Combined Authority published a governance review[6] and scheme[7] setting out proposals for: the conferral of additional functions on the Combined Authority, changes to the Combined Authority's constitution and funding the Combined Authority. The majority of those proposals are being taken forward in further secondary legislation which is to follow this Order. The Combined Authority has undertaken a statutory consultation on proposals in the scheme and provided a summary of consultation responses to the Secretary of State. There were no comments on the funding or the exercise of these MDC functions.

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 This Order will provide for the conferral of the public authority function related to the designation of mayoral development areas and the creation of MDCs on the Combined Authority. There will be no impact on the wider public sector.

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.

[6] https://teesvalley-ca.gov.uk/wp-content/uploads/2016/07/Doc-A-Governance-Review-Final-160716-2.pdf
[7] https://teesvalley-ca.gov.uk/wp-content/uploads/2016/07/Doc-B-Scheme-final-160716-1.pdf

12. Monitoring & review

12.1 This Order provides for the implementation of one of the commitments in the Tees Valley Devolution Deal. The Combined Authority will be required under the devolution agreements reached with Government to put in place an extensive programme of evaluation, agreed with Government, of the devolution agreement.

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.