EXPLANATORY MEMORANDUM TO

THE TEES VALLEY COMBINED AUTHORITY ORDER 2016

2016 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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order establishes the Tees Valley Combined Authority for the exercising of transport, economic development and regeneration functions across the local government areas of Darlington, Hartlepool, Middlesbrough, Redcar and Cleveland and Stockton-on-Tees.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Section 117 of the Local Democracy, Economic Development and Construction Act 2009 (the 2009 Act) as amended by paragraph 29(3) of Schedule 5 to the Cities and Local Government Devolution Act 2016 (the 2016 Act) provides that an order under part 6 of the 2009 Act may "include provision amending, applying (with or without modifications), disapplying, repealing or revoking any enactment whenever passed or made".

3.2 The Department is of the view that a power to amend includes a power to modify, on the principle that the greater power includes the lesser power. Although it is possible to make modifications under the amendment limb of the power at section 117 of the 2009 Act, the express power to otherwise modify legislation may be required for a specific reason. An example of such a specific reason is contained in the similar power at section 23 (minor and consequential amendments) of the 2016 Act, where the affirmative Parliamentary procedure may be applied in the case of textual modifications but the negative procedure applies in the case of non-textual modifications.

Other matters of interest to the House of Commons

3.3 This entire instrument applies only to England.

3.4 The instrument applies only to England as is it is entirely concerned with the establishment of the Tees Valley Combined Authority, the area of which comprises the local government areas of Darlington, Hartlepool, Middlesbrough, Redcar and Cleveland and Stockton-on-Tees. A combined authority may be established only in relation to local government areas in England under section 103(2) of the 2009 Act. The instrument does not give rise to minor or consequential effects outside England.

3.5 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.

3.6 The Department has reached this view because it considers that the primary purpose of the provisions in the 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. The primary purpose of the subject-matter of the instrument 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 the instrument 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 the instrument is not within Schedule 7 to the Government of Wales Act 2006 and is not otherwise outside the legislative competence of the National Assembly for Wales (see section 108 of that Act).

4. Legislative Context

4.1 Part 6 of the 2009 Act, prior to the amendments made by the 2016 Act, provides for the establishment of combined authorities which take on the functions and responsibilities for economic development and regeneration from the relevant councils and transport functions which are exercisable by an Integrated Transport Authority (ITA), where one exists. Combined authorities are corporate bodies with their own legal identity, which can provide a mechanism for exercising the economic development, regeneration and transport functions across a larger area than that of an individual local authority.

4.2 Under section 108 of the 2009 Act, prior to the amendments made by the 2016 Act, where authorities wish to establish a new combined authority they must undertake a review of the effectiveness and efficiency of transport and arrangements to promote economic development and regeneration in these areas. Depending on the conclusions drawn from the review, the authorities may publish a scheme for the establishment of a combined authority for the area.

4.3 Under section 110 of the 2009 Act, prior to the amendments made by the 2016 Act, before establishing a combined authority, the Secretary of State must consult all authorities within the proposed area of the combined authority, and other persons considered appropriate, and consider that establishing a combined authority was likely to improve:

- the exercise of statutory functions relating to transport in the area;
- the effectiveness and efficiency of transport in the area;
- the exercise of statutory functions relating to economic development and regeneration in the area; and
- the economic conditions in the area.

The Secretary of State must also have regard to the scheme prepared by the authorities seeking to establish a combined authority and to the need:

- to reflect the identities and interests of local communities, and
- to secure effective and convenient local government.

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

4.5 Using powers under the 2009 Act, the first combined authority was established on 1 April 2011 – the Greater Manchester Combined Authority. This has been followed by four further combined authorities for Liverpool City Region, Sheffield City Region, West Yorkshire and the North East, all established in April 2014.

4.6 The 2009 Act is amended by the 2016 Act. The 2016 Act removes the statutory limitations on local authority functions that can be conferred on a combined authority. The statutory tests at section 110 of the 2009 Act are amended so the Secretary of State may make an order establishing a combined authority for an area only if:

- the Secretary of State considers that to do so is likely to improve the exercise of statutory functions in the area or areas to which the order relates;
- the constituent councils consent; and
- any consultation required has been carried out.

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

6. European Convention on Human Rights

6.1 James Wharton 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 Order 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 Combined authorities may exercise specified functions across a number of local government areas. They provide stable, efficient, and accountable form of governance both to underpin the local authorities' collaboration and to facilitate that partnership with business, particularly with the Local Enterprise Partnership for the area, which is essential for the effective promotion of economic growth.

7.2 The Government committed in their manifesto to "devolve powers and budgets to boost local growth in England", and see combined authorities as the mechanism for doing this. To deliver this manifesto commitment the Government is reaching bespoke devolution deals with areas which are agreements in principle for a radical devolution of funding, powers and responsibilities for such matters as employment and skills, transport, planning and investment. The powers and funding are to be devolved to

combined authorities as originally provided for in the 2009 Act, and as now provided for in that Act as amended by the 2016 Act.

7.3 On 23 October 2015 the Government and Tees Valley leaders – the leaders of the councils of Darlington, Hartlepool, Middlesbrough, Redcar and Cleveland and Stockton-on-Tees – announced the Tees Valley Devolution Deal.[1] The Devolution Deal paves the way for further devolution over time and for the reform of public services to be led by Tees Valley. Under the Devolution Deal, and conditional on the legislative and statutory processes, there will be a directly elected Mayor for the Tees Valley Combined Authority from May 2017. The elected Mayor will become the Chair of the Combined Authority.

7.4 The Government considers such an elected mayor ensures strong democratic accountability and is pivotal to offering residents of an area that single point of accountability which is essential where wide ranging powers are devolved.

7.5 The Order establishes a combined authority for the Tees Valley which comprises the local government areas of Darlington, Hartlepool, Middlesbrough, Redcar and Cleveland and Stockton-on-Tees. The proposal for a combined authority was made by the constituent councils of Darlington, Hartlepool, Middlesbrough, Redcar and Cleveland and Stockton-on-Tees pursuant to the provisions of the 2009 Act prior to the amendments of the 2016 Act. The Order laid in draft will be made pursuant to the provisions of the 2009 Act as amended by the 2016 Act. The Secretary of State intends, subject to the relevant statutory requirements and Parliamentary approval, to make further orders to fully implement the Tees Valley Devolution Deal.

7.6 Whilst the Secretary of State will consider the circumstances of each particular case his policy is that where councils come forward with proposals that meet the statutory conditions, he will invite Parliament to approve the Order establishing the proposed combined authority thus enabling the local authorities to give full effect to their ambitions for joint working. In the case of the Order laid in draft, the Secretary of State is satisfied that the statutory conditions provided for in the 2009 Act, both before and after the amendments by the 2016 Act, have been met, including the obtaining of consent from the constituent councils. Accordingly, he is seeking Parliamentary approval to the Order establishing the proposed combined authority.

7.7 The details of the combined authority will reflect the local circumstances, and the joint working and collaboration arrangements envisaged by the local authorities concerned. The combined authority will work seamlessly with the Local Enterprise Partnership for the area, Tees Valley Unlimited. Tees Valley Unlimited will appoint a member to the combined authority. This member will be a non-voting member but may be given voting rights on certain issues should the members from the constituent councils of the combined authority resolve to grant these as set out in section 85(5) of the Local Transport Act 2008. The combined authority will be funded by contributions from the constituent councils and will be given the power under regulations made under section 74 of the Local Government Finance Act 1988 to raise a levy for transport functions should it decide to do so.

8. Consultation outcome

8.1 Local residents have been consulted throughout the development of proposals for a combined authority for Tees Valley. The constituent councils held a consultation from

[1] https://www.gov.uk/government/publications/tees-valley-devolution-deal

December 2014 – January 2015. This received 1,911 responses (including 1,638 from residents) and 65 per cent of these responses expressed support for the proposal for a combined authority.[2] The local consultation indicated strong and widespread support in the Tees Valley.

8.2 The Government also undertook a six week public consultation ending on 9 December 2015.[3] This invited views from the statutory consultees (the councils of Darlington, Hartlepool, Middlesbrough, Redcar and Cleveland and Stockton-on-Tees) and others whom the Secretary of State considered it appropriate to consult (Tees Valley Unlimited, and the six neighbouring councils – Durham, Hambleton, North Yorkshire, Richmondshire, Scarborough and the North East Combined Authority). The local authorities consulted were invited to draw the consultation to the attention of members of the public, local businesses and their representative bodies and the voluntary sector.

8.3 The Government has published a summary of responses to the consultation. In short, responses from the five statutory consultees, Tees Valley Unlimited and the three neighbouring authorities that responded expressed unanimous support for the establishment of the combined authority, stating that the combined authority would promote economic growth and enhance local collaboration. Tees Valley Unlimited expressed "unconditional support" for the proposals.

8.4 Other responses among the 28 received included 11 from local residents, three from local charities, three from local education providers and one each from a local business and councillor. Responses from local education providers, the business and a local councillor all expressed support for the proposals, citing the benefits to economic prosperity in the region. The three responses from local charities did not express a view on the proposals but were concerned at the perceived lack of focus on the natural environment and economy. A very small number of residents responded to the proposal with concerns regarding the establishment of the Combined Authority. This included three residents from Hartlepool who stated they did not associate themselves with the Tees Valley. Of the 24 representations that expressed a view on the proposals, 67 per cent were supportive.

9. Guidance

9.1 No guidance is planned to be issued given the Government's policy of devolution, encouragement of local collaboration and combined authorities, which are a means, where local authorities wish to adopt this, for them to work together for the promotion of local economic growth.

10. Impact

10.1 This Order will not place limitations on the activities of businesses, charities or voluntary bodies.

10.2 The Combined Authority should lead to operational efficiencies that could lead to reduced costs. Indeed, the statutory test for the establishment of a combined authority require the Secretary of State to consider that doing so is likely to improve the exercise of statutory functions in the area or areas to which the order relates and the Secretary of State is required to have regard to the need to secure effective and convenient local government.

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[2] https://www.teesvalleyunlimited.gov.uk/media/308031/governance_review.pdf
[3] https://www.gov.uk/government/consultations/proposal-to-establish-a-combined-authority-for-tees-valley

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 The success criteria for this instrument will be the judgement made locally by the local authorities concerned on how through the combined authority the economic performance of their area is improving.

13. Contact

13.1 Kenneth Way at the Department for Communities and Local Government can answer questions on this instrument. His contact details are:

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