EXPLANATORY MEMORANDUM TO

THE WEST MIDLANDS 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 The Order establishes the West Midlands Combined Authority for the exercising of specified local authority functions across the local government areas of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Article 13 of the Order modifies section 13 of the Local Government and Housing Act 1989 to make particular provision in respect of voting rights of non-voting members of the West Midlands Combined Authority. 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 it is entirely concerned with the establishment of the West Midlands Combined Authority, the area of which comprises the local government areas of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton. 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, or the relevant council in the absence of an ITA. The 2016 Act removes the statutory limitations on local authority functions that can be conferred on a combined authority and the statutory tests at section 110 of the 2009 Act (see 4.3 below) are amended in accordance with this. Combined authorities are corporate bodies with their own legal identity, which can provide a mechanism for exercising functions across a larger area than that of an individual local authority.

4.2 Under section 108 of the 2009 Act, as amended by the 2016 Act, where authorities wish to establish a new combined authority they may undertake a review of the exercise of statutory functions in relation to an area ("the review area") with a view to deciding whether to prepare and publish a scheme for the establishment of a combined authority under section 109 of the 2009 Act.

4.3 Under section 110 of the 2009 Act, as amended by the 2016 Act, before establishing a combined authority the Secretary of State must carry out a public consultation unless:

- a scheme has been prepared and published under section 109 of the 2009 Act;
- the constituent councils carried out a public consultation in connection with the proposals contained in the scheme and provided the Secretary of State with a summary of the consultation responses; and
- the Secretary of State considers that no further consultation is necessary.

The Secretary of State may make an order establishing a combined authority only if:

- the Secretary of State considers that doing 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.

The Secretary of State is also required to 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[1]. This has been followed by five further combined authorities for Liverpool City Region[2], Sheffield City Region[3], West Yorkshire[4] and the North East[5], all established in April 2014, and the Tees Valley Combined Authority[6] which was established in April 2016.

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 Greg Clark MP, 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 West Midlands 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 a 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 Partnerships for the area, which is essential for the effective promotion of economic growth.

7.2 The Government committed in its 2015 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

[1] S.I. 2011/906
[2] S.I. 2014/865
[3] S.I. 2014/863
[4] S.I. 2014/864
[5] S.I. 2014/1012
[6] S.I. 2016/449

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 26 October 2015 the constituent councils, the councils for the local government areas of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton, published a governance review[7] and a scheme[8] setting out their proposals for a combined authority. The governance review concluded that a combined authority will improve the efficiency and effectiveness of governance of economic development, regeneration and transport in the West Midlands. It also concluded that the West Midlands ITA should be dissolved and its functions transferred to the combined authority. The scheme forms the basis of this Order.

7.4 On 17 November 2015 the Government and West Midlands Combined Authority Shadow Board leaders – the leaders of the councils of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton – announced the West Midlands Combined Authority Devolution Deal[9]. The Devolution Deal paves the way for further devolution over time and for the reform of public services to be led by the West Midlands Combined Authority. Under the Devolution Deal, and conditional on the legislative and statutory processes, there will be a directly elected Mayor for the West Midlands Combined Authority from May 2017. The elected Mayor will become the Chair of the Combined Authority.

7.5 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.

7.6 The Order establishes a combined authority for the West Midlands, which comprises the local government areas of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton. The proposal for a combined authority was made by the constituent councils of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton pursuant to the provisions of the 2009 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 West Midlands Devolution Deal.

7.7 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, as amended by the 2016 Act, have been met. This includes the statutory test that establishing a combined authority is likely to improve the exercise of statutory functions in the area while having regard to the need to reflect the identities and

[7] https://westmidlandscombinedauthority.org.uk/media/1107/west-midlands-governance-review-without-appendices.pdf
[8] https://westmidlandscombinedauthority.org.uk/media/1047/26-october-2015-appendix-1-west-midlands-combined-authority-scheme.pdf
[9] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/477421/West_Midlands_devolution_deal_unsigned_final_web.pdf

interests of local communities and to secure effective and convenient local government, and sufficient public consultation has been carried out and the consent of each constituent council has been obtained. Accordingly, he is seeking Parliamentary approval to the Order establishing the proposed combined authority.

7.8 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 involve local authorities - "non-constituent councils" – outside the area of the Combined Authority, recognising that the areas of these local authorities have an economic interdependence with the area of the Combined Authority, even though they are also part of another functional economic area. These non-constituent councils are for the local government areas of Cannock Chase, Nuneaton and Bedworth, Redditch, Tamworth and Telford and Wrekin, and each non-constituent council will appoint one of its elected members to be a member of the Combined Authority.

7.9 The Combined Authority will also work seamlessly with the three Local Enterprise Partnerships (LEPs) for the area – Black County LEP, Coventry and Warwickshire LEP and the Greater Birmingham and Solihull LEP – and each LEP will appoint one of its board members to be a member of the Combined Authority. These non-constituent council and LEP members will be non-voting members but may be given voting rights on certain issues should the members from the constituent councils of the Combined Authority resolve to grant these in accordance with the provisions in section 85(5) of the Local Transport Act 2008.

8. Consultation outcome

8.1 Local residents have been consulted throughout the development of proposals for a combined authority for the West Midlands. Between July and September 2015 local engagement was carried out across the seven constituent authorities on the proposal to form a combined authority and a summary[10] of this engagement analysis was produced when the governance review and scheme were published on 26 October 2015. The constituent councils held a consultation[11] from 18 January to 8 February 2016 on the proposals in their published scheme.

8.2 The West Midlands Shadow Combined Authority produced a summary of responses to the consultation.[12] The consultation consisted of an online survey which was completed by 1907 respondents, with 833 respondents providing comments in the free text option. Of those respondents 55 per cent were from local residents, 33 per cent employees of local authorities in the West Midlands and 8 per cent from businesses. Letters of support were received from local stakeholders, LEPs, business and service provides. 65 per cent of respondents strongly agree that a West Midlands Combined Authority would be better placed to deliver improved outcomes in relation to economic development, regeneration and transport and 61 per cent strongly agree that improving partnership working through a West Midlands Combined Authority will leave councils better placed to secure more effective and convenient local government and better service in general. The strongest response (84 per cent strongly agree) was

[10] http://www.westmidlandscombinedauthority.org.uk/media/1048/26-october-2015-appendix-2-combined-authority-engagement-analysis.pdf
[11] http://www.westmidlandscombinedauthority.org.uk/context
[12] https://westmidlandscombinedauthority.org.uk/media/1110/combined-authority-consultation-analysis-summary-150216.pdf

to the question that the West Midlands Combined Authority should not be a 'super council' and the democratic sovereignty of individual councils must be retained and that the West Midlands Combined Authority would not have an adverse effect upon the identity and interests of local communities. The local consultation indicated strong and widespread support in the West Midlands.

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 requires 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.

10.3 An Impact Assessment has not been prepared for these instruments.

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 and the exercise of functions within it is improving.

13. Contact

13.1 Lydia Strawson at the Department for Communities and Local Government can answer questions on this instrument. Her contact details are:

13.2 Lydia Strawson Tel: 0303 444 2784 lydia.strawson@communities.gsi.gov.uk.