EXPLANATORY MEMORANDUM TO

THE YORK AND NORTH YORKSHIRE COMBINED AUTHORITY ORDER 2023

2023 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His Majesty.

1.2 Section 105(B)(9) of the Local Democracy, Economic Development and Construction Act 2009 (the '2009 Act') requires a report to be laid before Parliament. That report is published alongside this memorandum.

2. Purpose of the instrument

2.1 The Order provides for the establishment, including governance arrangements, of the York and North Yorkshire Combined Authority ('YNYCA'), of which the City of York and the North Yorkshire councils will be the constituent councils, and for a directly elected Mayor of York and North Yorkshire. It also provides for certain functions of local and public authorities to be conferred on the YNYCA, and for certain specified functions of the YNYCA to be exercisable only by the Mayor, who may arrange for a member or officer of the YNYCA to exercise any such function.

2.2 The Order also makes provision in relation to the transfer of Police and Crime Commissioner ('PCC') functions and Fire and Rescue Authority ('FRA') functions from the Police, Fire and Crime Commissioner ('PFCC') for North Yorkshire to the YNYCA from 7 May 2024 for exercise by the Mayor; and transfers the property, rights and liabilities of the PFCC to the YNYCA.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. European Convention on Human Rights

5.1 Jacob Young, Parliamentary Under Secretary of State for Levelling Up, has made the following statement regarding Human Rights:

"In my view the provisions of the York and North Yorkshire Combined Authority Order 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 Part 6 of the 2009 Act provides for the establishment of combined authorities for the areas of two or more local authorities in England. Combined authorities are "bodies corporate" which may be given powers to exercise specified functions of a local authority, and powers to exercise specified functions of any other public authority.

6.2 Under section 108 of the 2009 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 publish a scheme for the establishment of a combined authority under section 109 of the 2009 Act.

6.3 Under section 110 of the 2009 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.

6.4 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 council's consent; and
- any consultation required has been carried out.

6.5 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.

6.6 In addition, the Order cites the following powers:

- Section 103(1) of the 2009 Act (Combined authorities and their areas): the Secretary of State may establish a combined authority as a body corporate;
- Section 104(1) 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) and (3) of the 2009 Act (Constitution and functions: local authority functions generally): the Secretary of State may by order make any provision for a combined authority that may be made in relation to an economic prosperity board under section 91 of the 2009 Act, namely for a function of a local authority to be a function of the combined authority, and make provision for the costs of a combined authority to be met by its constituent councils, and for the basis on which the amount payable by each constituent council is determined;
- Section 105A(1), (2), (3) (4)(b) and (7) 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, and to make provision by order 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. A function may be exercisable by the combined authority instead of, concurrently or jointly with, the public authority. An order may abolish a public authority. An order under subsection (1) may include further provision about the exercise of the function, including for the exercise of the function to be subject to conditions or limitations. If an order under subsection (1) contains a reference to a document specified or described in the order, the document can be construed as reference to an amended document or a subsequent document that replaces that document;

- Section 107A of the 2009 Act (Power to provide for election of Mayor): the Secretary of State may by order provide for there to be a Mayor for the area of a combined authority;
- Section 107D(1), (3)(c)(ii), (4), (5),(7) and (8) 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 for a committee of the combined authority to exercise such a function; for members or officers of the combined authority to assist the Mayor in the exercise of non-PFCC functions and may confer ancillary powers on the Mayor for the purposes of the exercise of non-PFCC functions, and may confer on the Mayor a general power of competence similar to that conferred on a combined authority under an order made under section 113D;
- Section 107E(1) to (4) of the 2009 Act (Joint exercise of general functions): the Secretary of State may by order make provision for, or in connection with, the entering into of arrangements under section 101(5) of the Local Government Act 1972 (joint committees) in relation to non-PFCC functions of a Mayor for the area of a combined authority. Such a provision may include provision as to the membership of any joint committee and the appointment of members to a joint committee;
- Section 107F(1), (5) and (6) of the 2009 Act (Functions of Mayors: policing): the Secretary of State may by order provide for the Mayor for the area of a combined authority to exercise functions of a PFCC in relation to that area;
- Section 114(1) and (3) of the 2009 Act (Incidental etc provision): 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, and for application, disapplication, or modification of enactments;
- Section 115 of the 2009 Act (Transfer of property, rights and liabilities): the Secretary of State may by order make provision for the transfer of property, rights and liabilities for the purposes of, or in consequence of, an order under this Part or for giving full effect to such an order;
- Section 116 of the 2009 Act (Consequential amendments): The Secretary of State may by order make such provision as the Secretary of State considers appropriate in consequence of any provision made by this Part;

- Section 117(1A) and (5) of the 2009 Act (Orders): an order under Part 6 of the 2009 Act may make different provision for different authorities or descriptions of authority or otherwise for different purposes and may include provision amending, applying (with or without modifications), disapplying, repealing, or revoking any enactment whenever passed or made;
- Paragraph 3 of Schedule 5B to the 2009 Act, which enables the Secretary of State to make provision for the timing of mayoral elections;
- Schedule 5C to the 2009 Act, which makes further provision for where an Order is made under section 107F of the 2009 Act and provides various powers and duties in relation to the detailed arrangements concerning the transfer of PFCC functions from a PFCC to a Mayor.

6.7 The Levelling-up and Regeneration Act 2023 (the '2023 Act') contains provisions to simplify the process for establishing new, and making changes to existing, combined authorities. These 2023 Act provisions will come into force two months after Royal Assent and will replace the provisions for submitting a governance review and scheme with a "proposal" process. The 2023 Act also replaces the statutory test for establishing a new combined authority or making changes to an existing combined authority. The former test, as to whether establishing a new combined authority or making changes to an existing combined authority is likely to improve the exercise of statutory functions, is replaced with a new test that the establishment or change is likely to improve the economic, social and environmental wellbeing of some or all persons living and working in the area. The 2023 Act provides that where a review process or a scheme process to establish a new, or change an existing, combined authority has been started under the existing provisions of the 2009 Act - that is before the amendments made by the 2023 Act come into force - that process may continue and remains valid. Therefore, the provisions as amended by the 2023 Act are not relevant to this Order whenever it is considered by Parliament.

7. Policy background

What is being done and why?

7.1 In its 2019 manifesto, the Government outlined its ambition for full devolution across England[1]. The 2022 White Paper 'Levelling Up the United Kingdom'[2] contained a mission to empower local leaders and communities: 'By 2030, every part of England that wants one will have a devolution deal with powers at or approaching the highest level of devolution and a simplified, long-term funding settlement'. Meaningful devolution of power and responsibility to accountable local leaders, working for their community, can drive economic growth, and improve productivity. On 1 August 2022, a devolution deal was agreed between the Government, and City of York Council and North Yorkshire Council, providing for powers to be conferred on the YNYCA and for a Mayor to be elected. The deal will also provide YNYCA with investment funds of £18 million per year for 30 years, comprising over £540 million in total to be invested by YNYCA, alongside a range of other funding commitments.

7.2 The Order implements the York and North Yorkshire Devolution Deal. The Order establishes a combined authority for an area which comprises the local government

[1] https://assets-global.website-files.com/5da42e2cae7ebd3f8bde353c/5dda924905da587992a064ba_Conservative%202019%20Manifesto.pdf
[2] https://www.gov.uk/government/publications/levelling-up-the-united-kingdom

areas of the City of York and North Yorkshire. The Order will also establish the office of Mayor of York and North Yorkshire with the first election to take place on 2 May 2024. The Mayor will be Chair of the YNYCA, the area of which comprises the local government areas of the City of York, and North Yorkshire. Most of the provisions of the Order will come into force on the day after the day on which the Order is made. The local authorities affected by the Order – City of York and North Yorkshire councils - are aware of and support the new powers and duties coming into force on the day after the day on which the Order is made. Powers and duties to be exercised only by the Mayor come into force on 7 May 2024, the day on which the Mayor takes office. City of York and North Yorkshire councils have consented to the Order being made. In the period between the establishment of the combined authority and the Mayor taking office, the Order provides for an interim Chair. The Order transfers PFCC functions for York and Yorkshire to the YNYCA, to be exercised by the Mayor. The Order also provides that the Mayor is to be treated as PFCC for the purposes of all PFCC enactments. Both PFCC and non-PFCC Mayoral functions will come into force on 7 May 2024, the day on which the Mayor takes office. The Order makes provision for elections in May 2024 for which advance preparations are required. The Order does not impose duties on people that are significantly more onerous than before or require them to adopt different patterns of behaviours.

7.3 The Secretary of State is satisfied that the statutory conditions for the Order provided for in the 2009 Act have been met:

- having considered the York and North Yorkshire councils' consultation and summary of responses, he considers that no further consultation is necessary, as its consultation is sufficient;
- he considers that making an Order to confer the proposed functions would be likely to improve the exercise of statutory functions in the York and North Yorkshire area, and that it would be appropriate having regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government; and
- that the combined authority consists of the whole of two or more local government areas in England and is not part of another combined authority, Economic Prosperity Board, or integrated transport area.

7.4 The Order confers a number of local authority and public authority functions on the YNYCA to be exercised in relation to the YNYCA area, as reflected in the devolution deal. Certain functions are to be exercisable by the Mayor individually, and others by the YNYCA (which is chaired by the Mayor). Specifically, the Order makes provisions to confer on the YNYCA functions, which include housing, regeneration and planning functions (7.8); a Mayoral Development Corporation (7.9-7.11); transport functions (7.12-7.18), and certain additional functions (7.19). The Order also provides for Mayoral functions (7.20-7.21), funding (7.22-7.23), PFCC functions to be conferred on the YNYCA to be exercised by the Mayor (7.24-7.46) and constitutional arrangements for the YNYCA (7.7).

Part 2 Establishment of a Combined Authority and election of the Mayor

7.5 Part 2 of the Order provides for the establishment and naming, of the combined authority, and defines generically its functions.

7.6 This part also provides for there to be a Mayor for the area of the YNYCA with the first election to take place on 2 May 2024 and subsequent elections in every fourth

year thereafter on the ordinary day of election. It also provides that the Mayor may appoint one person as a political advisor.

7.7 Schedule 1 (under Part 2) makes provision for the constitution of the Combined Authority, including for its membership, ensuring effective representation by the two constituent councils; chairing of the Combined Authority during the period between its establishment and commencement of the term of the elected Mayor, who will from that point be its Chair. The Deputy Mayor can act in place of the Mayor when appropriate. This Schedule also provides for the proceedings of the authority including quoracy and the involvement in decisions of lead members for constituent councils, and requirements for voting and consents on budgets and spending, plans, and decisions requiring the consent of the lead member for the constituent council concerned – such as for Mayoral Development Areas or acquisition of land. The Schedule also set out rules for those who may be paid an allowance in connection with their involvement with the Combined Authority and requirements for the involvement of an independent remuneration panel in setting those allowances. The Schedule sets out requirements of the Combined Authority in keeping records of its proceedings at meetings, and permits the Combined Authority to regulate those proceedings through standing orders.

Part 3 Housing, regeneration and planning

7.8 Part 3 of the Order relates to the housing, regeneration and planning functions under the Housing and Regeneration Act 2008 to be conferred on the YNYCA, exercisable concurrently with Homes England. This includes powers for land acquisition and disposal, to regenerate, develop, and manage land holdings. In addition, the Order confers powers on the YNYCA under the Town and Country Planning Act 1990 to compulsorily acquire land, to acquire land by agreement, and to dispose, manage and develop land; these powers are exercisable concurrently with relevant constituent councils. As set out in Schedule 1, the compulsory purchase of land will be a Mayoral function requiring the consent of each lead combined authority member (or substitute member acting in that member's place), appointed by a constituent council whose local government area contains any part of the land subject to the proposed compulsory purchase.

Part 4 Mayoral Development Corporation (MDC)

7.9 Part 4 of the Order gives the Mayor the power to designate Mayoral Development Areas in the area of the YNYCA to support the delivery of strategic sites in the area of York and North Yorkshire. This is the first step in establishing an MDC in the YNYCA area and a further order will be necessary to create such a body; the timeline for this order would be dependent on the local area.

7.10 Consent requirements are set out in Schedule 1 for the designation of Mayoral Development Areas, the exclusion of land from Mayoral Development Areas, planning functions in respect of any Mayoral Development Areas, and acquisition of land for housing purposes.

7.11 The relevant powers concerning MDCs are in the Localism Act 2011 (Part 8, Chapter 2; Schedule 21 and Schedule 22) (the '2011 Act') specifically for the Mayor of London to exercise in relation to the Greater London area. The Order uses the provisions in the 2009 Act, as amended by the Cities and Local Government

Devolution Act 2016[3], to confer the corresponding functions from the 2011 Act on the YNYCA, to be exercised by the Mayor of York and North Yorkshire, with the following modifications:

- references in the 2011 Act to the Greater London Authority ('GLA') and the London Assembly are to be read as references to the YNYCA;
- the YNYCA is to have in relation to its area the corresponding functions that the Mayor of London has in relation to London;
- the functions conferred on the YNYCA are exercisable by the Mayor;
- the Mayor may only exercise the functions conferred on the YNYCA if the YNYCA lead member for any constituent council whose council area contains any part of the area to be designated consents to the exercise of the functions;
- to the extent that the functions include designation or planning powers and where the exercise of these functions is in respect of any part of the areas of the North York Moors National Park Authority, or Yorkshire Dales National Park Authority that overlap with the YNYCA area, the functions can be exercised only if the National Park Authority consents;
- the persons to be consulted before an area may be designated have been modified to reflect the conditions in the YNYCA area, specifically this includes the North York Moors National Park Authority and Yorkshire Dales National Park Authority, which have been added to the list of statutory consultees as the areas of these National Parks overlap with the YNYCA.

Part 5 Transport

7.12 Part 5 of the Order gives the YNYCA a range of functions that will allow the YNYCA to improve and maintain transport services in the YNYCA area. These include the responsibility to set out and implement a local transport plan, responsibilities relating to bus services and ticketing, selected highways and traffic authority functions, and grant-paying powers to bus operators and constituent councils.

7.13 The YNYCA will be responsible for the creation and delivery of the area's local transport plan under Part 2 (local transport) of the Transport Act 2000. Local transport plans are statutory documents used by areas to assess the transport needs and challenges in their area and set out actions and spending plans to improve and maintain services. This function of the combined authority is exercisable only by the Mayor.

7.14 The YNYCA, and not the Mayor, will have responsibility for bus partnerships, tendering of some bus services, ticketing and concessionary fares schemes, and the power to introduce bus franchising, if it chooses to do so (parts 4 & 5, Transport Act 1985; part 2, Transport Act 2000).

7.15 Constituent authorities will remain the highway and traffic authorities for the area. The YNYCA will have the following highways and traffic authority functions in relation to the YNYCA area, held concurrently with constituent councils and exercisable by the Combined Authority with the consent of the constituent council where the function is to be exercised:

[3] The Cities and Local Government Devolution Act 2016 - section 7 of the 2016 Act added section 105A to the 2009 Act (Other public authority functions).

- The functions to enter into agreements with the Minister or strategic highways companies relating to the exercise of functions with respect to trunk roads etc (section 6, Highways Act 1980) and to enter into agreements with local highway authorities and strategic highways companies for the doing of certain works (section 8, Highways Act 1980);
- the functions to issue penalty charge notices in respect of moving traffic and bus lane contraventions. (Part 6 and paragraphs 9 and 10 of Schedule 8, Traffic Management Act 2004; the Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General Provisions) (England) Regulations 2022; and the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022);
- the functions for the creation of traffic regulation orders and experimental traffic orders (sections 1, 2(4) and 9, Road Traffic Regulation Act 1984). The usual procedures for making such orders, set out in the 1984 Act, and the Local Authorities Traffic Orders (Procedure) (England and Wales) Regulations 1996, will apply to YNYCA when it exercises these powers;
- the functions with respect to pedestrian crossings (section 23) and the powers and duties of traffic authorities with respect to the placing of traffic signs (section 65) (Road Traffic Regulation Act 1984);
- the functions requiring YNYCA to take necessary measures where street works impact apparatus in the street, and to meet the costs of such measures (sections 83, 84 and 85, New Roads and Street Works Act 1991, in accordance with the Street Works (Sharing of Costs of Works) (England) Regulations 2000);
- the functions to operate a permit scheme designed to control the carrying out of works in the YNYCA area (sections 33, 33A and 36, Traffic Management Act 2004). Part 3 of the 2004 Act applies in this regard with the modifications set out in Schedule 4 to the Order);
- the functions of an 'Approved Authority' to charge the undertakers of street works by reference to the duration of the works (section 74A, New Roads and Street Works Act 1991; The Street Works (Charges for Occupation of the Highway) (England) Regulations 2012). To exercise these powers, all the constituent councils should be operating permit schemes and themselves be designated as an Approved Authority by the Secretary of State.

7.16 The YNYCA will have the function of paying grants to bus service operators (section 154(1), Transport Act 2000) for eligible bus services operating within the YNYCA area. This function of the Combined Authority is exercisable by the Mayor, not by the YNYCA, and is held concurrently with the Secretary of State.

7.17 The YNYCA will have the function of paying grants to the constituent councils of the Combined Authority (section 31, Local Government Act 2003). This will enable YNYCA to pay to constituent councils, funds, including highways maintenance funding, which the Combined Authority receives as part of a consolidated grant. YNYCA must have regard to the desirability of ensuring that the councils have sufficient funds to facilitate the effective discharge their highways functions. This function is exercisable concurrently by the Mayor and a Minister of the Crown, but not by YNYCA.

7.18 The Order provides that YNYCA will be a constituent authority of the Transport for the North sub-national transport body instead of the City of York and North Yorkshire councils.

Part 6 Additional functions

7.19 Part 6 of the Order provides that the YNYCA is given powers to prepare an assessment of economic conditions for the area. This function is exercisable concurrently with constituent councils. The Order also confers data sharing functions on the YNYCA, exercisable concurrently with the constituent councils, and makes further incidental provisions enabling the Combined Authority to operate effectively.

Part 7 Mayoral functions

7.20 Part 7 of the Order prescribes which of the non-PFCC functions and powers will be exercisable only by the Mayor. The non-PFCC Mayoral functions are:

- housing and land acquisition powers;
- power to draw up a local transport plan and strategies;
- ability to pay grants to bus service operators;
- power to pay grants in relation to highways functions;
- power to compulsorily acquire land;
- powers in relation to business rate supplements;
- power to designate a Mayoral Development Area and then set up a Mayoral Development Corporation.

7.21 The Order provides that the Mayor may enter into arrangements jointly with the constituent councils and other councils in accordance with S.101(5) of the Local Government Act 1972 for the discharge of the general functions of the YNYCA which are exercisable only by the Mayor.

Part 8 Funding

7.22 Part 8 of the Order provides for the funding of the YNYCA. It does this by requiring the constituent councils to meet any reasonably incurred costs of the YNYCA, 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 portions they will pay; in absence of this agreement, the proportions are to be calculated by reference to their respective shares of the total resident population, as estimated by the UK Statistics Authority. The Mayor must agree with YNYCA the total expenditure on Mayoral functions to be met by the constituent councils (i.e. mayoral expenditure not met by other means including the mayoral precept) in advance of incurring this expenditure.

7.23 The Order also provides that the Combined Authority is to have in relation to its area functions corresponding to the functions that the Greater London Authority has under the Business Rates Supplements Act 2009 to levy a supplement on business rates to raise money for expenditure on projects which will promote economic development in its area. Article 27 provides that the functions are exercisable only by the Mayor, that the Mayor may be assisted by members or officers of the authority in the exercise of the functions and that the general power of the Combined Authority under section 113A of the 2009 Act is conferred on the YNYCA to be exercised by the Mayor for the purposes of those functions. Article 31 provides for modification of the Business Rate Supplements Act 2009.

Part 9 Police and Crime Commissioner functions

7.24 The Levelling Up White Paper (LUWP) outlines the key leadership role that combined authority mayors have in public safety and improving public health. It set out the Government's aspiration to look to have all combined authority mayors take on the PCC role and FRA functions where boundaries align. Part One of the PCC Review (the Review) cemented our view that the join up of public safety functions under the leadership of combined authority mayor preserves the democratic accountability already established under the PCC model and promotes greater collaboration, offering wider levers to prevent crime.

7.25 The Order transfers PCC and FRA functions for North Yorkshire to the YNYCA, to be exercised by the Mayor. The Order also provides that the Mayor is to be treated, in relation to the exercise of their PCC and FRA functions, as PCC for the purposes of all PCC enactments. This will take effect from 7 May 2024.

7.26 The Order provides that the costs of the Mayor's PCC functions in the first year (financial year commencing 1 April 2024) are to be met from the police precept issued by the PFCC for North Yorkshire.

7.27 The Order provides that the costs of the Mayor's FRA functions in the first year (financial year commencing 1 April 2024) are to be met from the fire precept issued by the PFCC for North Yorkshire.

7.28 The Order transfers the functions of a PCC, which are primarily set out in the PRSR Act. The Order applies some legislation with modifications to the Mayor in the exercise of their PCC functions and provides that other legislation does not apply.

7.29 The Order provides in relation to the PCC functions: (a) that following the election of the Mayor on 2 May 2024, the Mayor is to exercise PCC functions for North Yorkshire Police Force area from 7 May 2024; (b) for the abolition of the PFCC for North Yorkshire from 7 May 2024; (c) that there should be no PCC ordinary elections, or by-elections in North Yorkshire from the date the Order comes into force thereby cancelling the PCC election previously scheduled for 2 May 2024.

7.30 The Order provides that the Mayor is to be treated as a PCC for the purposes of all PCC-related legislation, with the effect that all legislation applying to PCCs is to apply to the Mayor in relation to the Mayor's PCC functions. This is subject to the modifications to certain legislative provisions in their application to the Mayor set out in Schedule 5 to the Order and to the list of legislative provisions in Schedule 6 which do not apply to the Combined Authority Mayor.

7.31 The Order makes provisions in relation to the transfer of PCC functions – in particular, transfer of property, rights and liabilities. The property, rights and liabilities in respect of the PFCC's PCC functions for North Yorkshire are to transfer to the YNYCA. In relation to such property, rights and liabilities (and any acquired in relation to the Mayor's PCC functions after the transfer) the Mayor is to exercise all functions relating to them and make all decisions (although the Mayor may delegate in line with the position on delegation set out in PCC-related legislation as modified by the Order). Any receipts arising from such property, rights and liabilities are to be paid into the police fund. This ensures that police funding is protected.

7.32 Schedule 5 to the Order makes a series of modifications to PCC-related legislation to make it suitable in its application to the Mayor, who will be exercising PCC functions in the context of a wider Combined Authority governance model.

7.33 In respect of complaints, the Mayor and any Deputy Mayor for Policing and Crime will be treated in line with the position in existing mayoral combined authorities in which the mayor exercises the functions of a PCC.

7.34 In respect of disqualification criteria, the criteria for PCCs will apply to the Mayor in addition to the standard Mayoral criteria, given that the Mayor will exercise PCC functions. The criteria, from sections 64-68 of the PRSR Act, have been modified to enable their suitable application to the Mayoral post.

7.35 The Order provides that where the Police, Fire and Crime Panel suspends the Mayor from the exercise of PCC functions due to that person being charged with a serious criminal offence, the Police, Fire and Crime Panel must appoint a person to exercise the Mayor's PCC and FRA functions.

7.36 The Order also provides that where the Deputy Mayor of York and North Yorkshire is acting in place of the Mayor because the Mayor is unable to act (which does not include where the Mayor is suspended by the Police, Fire and Crime Panel from the exercise of PCC functions as described in paragraph 7.35 above) and, after a period of six months, the Mayor remains unable to act, the Mayoral post becomes vacant and a by-election is therefore triggered. This is consistent with the position for PCCs. It ensures that, where a Mayor with PCC functions is incapacitated, a person who has not been directly elected to exercise PCC functions cannot exercise them for an extended period of time.

7.37 Article 39 provides that the current financial year of the PCC and Chief Constable for North Yorkshire is to be extended from 31 March until 6 May 2024. This is in order to rationalise accounting processes and avoid preparing additional accounts for the interim period.

Part 10 Fire and Rescue Authority functions

7.38 Fire and Rescue Authority functions in North Yorkshire are currently exercised by the North Yorkshire PFCC. That authority was created using powers in section 4A of the Fire and Rescue Services Act 2004 and is abolished by the Order when the powers transfer to the YNYCA.

7.39 The Order provides in relation to the FRA functions: (a) that the Combined Authority is the FRA for York and North Yorkshire from 7 May 2024; (b) the YNYCA's fire and rescue functions are exercisable only by the Mayor and any Deputy Mayor for Policing and Crime they may delegate applicable functions to. Members and officers of the YNYCA may assist the Mayor in the exercise of the fire and rescue functions.

7.40 The Order makes detailed provision in relation to the transfer of FRA functions to the YNYCA from 7 May 2024. The exercise of FRA functions by the Mayor is consistent with the Government's commitment to expanding the benefits of devolution across England.

7.41 The Order supports the government's ambition to strengthen and improve the accountability and transparency of FRAs through a single, elected individual who is accountable for the service. Public awareness of FRAs and their members is not high. As a directly elected individual, the Mayor will be accountable to the public for the implementation of the new governance model. The relevant Police, Fire and Crime Panel will scrutinise any fire and rescue functions exercisable by the Mayor, or by any Deputy Mayor for Policing and Crime.

7.42 The Order provides that the Combined Authority is to be treated as an FRA for the purposes of all FRA-related legislation, with the effect that all legislation applying to FRAs is to apply to the Combined Authority and may only be carried out by the Mayor. This is subject to the modifications to certain legislative provisions in their application to the Mayor set out in Schedule 5 to the Order and to the list of legislative provisions in Schedule 6 which do not apply to the Combined Authority Mayor.

7.43 The Order makes provisions in relation to the transfer of FRA functions - in particular, transfer of property, rights and liabilities. The property, rights and liabilities in respect of the PFCC FRA functions for North Yorkshire are to transfer to the YNYCA. In relation to such property, rights and liabilities (and any acquired in relation to the Mayor's PCC and FRA functions after the transfer) the Mayor is to exercise all functions relating to them and make all decisions (although the Mayor may delegate in line with the position on delegation set out in FRA related legislation as modified by the Order). Any receipts arising from such property, rights and liabilities are to be paid into the Mayor's general fund, in adherence to The Combined Authorities (Finance) Order 2017.

7.44 While there is no legal provision for a separate fire fund, the Order provides for transparency measures which seek to protect the fire and rescue budget in practice. The Mayor needs to notify the Police, Fire and Crime Panel of the Mayor's proposed allocation of the draft budget for fire and rescue functions, including the proposed allocation of the element of the general precept attributable to fire and rescue functions, in relation to the following financial year. The Mayor must also publish the approved fire and rescue budget, and any material changes to the budget following approval, on the website of the Combined Authority.

7.45 In respect of complaints, the Mayor and any Deputy Mayor for Police and Crime with delegated fire functions will be treated in line with the position in existing mayoral combined authorities in which the mayor exercises the functions of an FRA.

7.46 Article 54 provides that the current financial year for the FRA is to be extended from 31 March until 6 May 2024. This is in order to rationalise accounting processes and avoid preparing additional accounts for the interim period.

Schedules

7.47 Schedules 2 to 7 make necessary modifications to, apply, or disapply, legislation to the Combined Authority in consequence of the provisions above.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans for a consolidation exercise at this point.

10. Consultation outcome

10.1 Section 110(2) of the 2009 Act requires that the Secretary of State must carry out a public consultation unless the constituent councils have done so, on a scheme containing proposals for the combined authority and its functions. In accordance with those requirements the Secretary of State has reviewed the consultation and summary of responses provided by York and North Yorkshire councils and is of the view that

no further consultation is necessary. The Secretary of State is satisfied that the York and North Yorkshire consultation was sufficient in terms of its length (eight weeks) and the mechanisms used (online, paper responses and letters, direct communication with stakeholders). The summary of responses to the consultation was prepared by The Consultation Institute for York and North Yorkshire councils, to which the Secretary of State has had regard.

10.2 In accordance with the statute, the City of York and North Yorkshire councils undertook a consultation on proposals in their scheme and associated governance review for eight weeks between 21 October and 16 December 2022. The consultation was led by councils in relation to their local authority area, supported by the York and North Yorkshire Local Enterprise Partnership (LEP).

10.3 The communications plan to promote the consultation, developed in partnership between the councils and LEP included: a dedicated website including access to key documents and FAQs; 35 face to face engagement events across the region, engagement in public places and at business events; print, radio and digital advertising, and use of social media channels; direct communication with key stakeholders encouraging response to the consultation.

10.4 Individuals and stakeholders were able to respond to a shared online platform; via paper response forms available in libraries; in person at engagement events and through focus groups; by written letter or email. In total, around 2,500 people responded or commented on the consultation: this included 1,971 through the online platform and 564 through other channels.

10.5 A report on the consultation outcomes prepared by the councils in York and North Yorkshire has been made publicly available[4]. Key findings on each of the proposal areas were as follows:

- Proposals for governance of the deal's implementation, through the creation of a combined authority led by a directly elected mayor, were supported by a majority of the public in consultation responses: of the 1,971 responding, 1,073 (54%) supported the proposed governance arrangements. In support: anticipated increase in democratic accountability; stronger national voice for York and North Yorkshire; increased local control, joined up decision making. 621 (32%) were opposed, with key themes cited including additional bureaucracy and concern that the mayoral role is unsuited to North Yorkshire's rural communities.
- Proposals for conferral of housing and regeneration functions on a combined authority and mayor were supported by a majority of the public: of the 1,524 responding on the subject 850 (56%) were supportive and 406 (27%) were opposed. In support, key themes were: new mayoral powers can maximise local experience, support brownfield development, delivering energy efficient homes and improved social housing, particularly in rural areas, and regulate second and holiday homes. In opposition, key themes were: that conferral of these functions centralises power in the mayor and erodes democratic accountability; concern over local involvement in planning approval and development threatening green spaces. Homes England were keen to work

[4] https://democracy.york.gov.uk/documents/s165431/Annex%201%20-%202240%20YNY%20Potential%20Devolution%20Deal%20Consultation%20Outputs_Collated%20Report_V2.pdf

with a combined authority and mayor to increase local housing supply; the LEP anticipated greater integration and collaborative, place based approaches to housing delivery; the North York Moors National Park Authority supported the proposals with their own statutory powers protected; Whitby Community Network saw an opportunity to address housing affordability.

- Proposals for conferral of transport functions were supported by 942 (61%) of 1,538 responses on this subject: with key themes of a fresh approach more effective at meeting local need in road improvements and bus and train integration, with transport as an economic enabler. 364 (24%) of responses were opposed, with concerns that the diversity of needs in North Yorkshire would not be addressed, and information to enable decision making lacking. Stakeholders were broadly supportive: the York Bus Forum supported a mayoral role in the local transport plan; First York supported a Key Route Network while preferring Enhanced Partnership working to bus franchising; Whitby Community Network and Yorkshire Food, Farming and Rural Network supported improved public transport connectivity. York and District Trades Union Council opposed splitting planning and transport functions but supported a devolved transport budget and mayoral strategic co-ordination.
- Proposals that a mayor take on police and fire functions in North Yorkshire had majority public support: of the 1,534 responding to this question, 826 (54%) were supportive; 447 (29%) were opposed. In support, key themes were: that bringing fire, rescue and police services under the mayor enables a holistic overview, joining up tasks, and focusing accountability. Alignment with community safety and housing priorities enables a cohesive approach; a single role presents value for money. In opposition, key themes were: a potential for politicisation of the PFCC role, and overall, too much for one person to deliver. Stakeholder responses included support from the incumbent North Yorkshire PFCC, who emphasised the importance of the transition of powers, people, and assets together to the mayor and combined authority to be effectively communicated to public and partners. The LEP, North York Moors National Park Authority, and Whitby Community Network also supported the transfer of police and fire functions.

11. Guidance

11.1 No guidance is necessary to accompany the Order. The Government continues to work with the mayoral combined authorities to support their implementation of the devolution deals.

12. Impact

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

12.2 As regards impact on the public sector, conferring functions on the YNYCA should lead to operational efficiencies that could lead to reduced costs. Indeed, the statutory tests require the Secretary of State to consider that conferring the functions on the Combined Authority is likely to improve the exercise of statutory functions in the area concerned, and the Secretary of State is required to have regard to the need to secure effective and convenient local government. The Secretary of State is satisfied that these tests are met in relation to the provisions of the Order.

12.3 A Regulatory Impact Assessment has not been prepared for this instrument because it does not directly affect the business and voluntary sectors.

13. Regulating small business

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

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that combined authorities are required under the devolution agreements reached with the Government to put in place an extensive programme of evaluation, agreed with HM Treasury, of the devolution agreements.

15. Contact

15.1 Alice Barker at the Department for Levelling Up, Housing and Communities can be contacted with any queries regarding the instrument.

Email: alice.barker@levellingup.gov.uk

15.2 Paul Rowsell, Head of the Governance, Reform and Democracy Unit and Deputy Director at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jacob Young, Parliamentary-Under Secretary of State at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.