EXPLANATORY MEMORANDUM TO

THE GREATER MANCHESTER COMBINED AUTHORITY (FUNCTIONS AND AMENDMENT) ORDER 2019

2019 No. 793

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

1.2 For the Greater Manchester Combined Authority (Functions and Amendment) Order 2019 a report is required by section 105B(9) of the Cities and Local Government Devolution Act 2016 ("the 2016 Act") and this is published alongside this memorandum.

2. Purpose of the instrument

2.1 This Order provides for certain functions of public authorities to be exercised by the Greater Manchester Combined Authority ("GMCA"), for certain specified functions of the GMCA to be exercisable only by the mayor of the GMCA, and for certain governance arrangements of the GMCA.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 This entire instrument applies to England only as it is concerned with local government areas in England.

3.3 The instrument does not have any minor or consequential effects outside England.

3.4 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, 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. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales as the relevant powers being exercised extend to England and Wales.

4.2 The territorial application of this instrument is set out in Section 3 under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

5. European Convention on Human Rights

5.1 Jake Berry MP, Parliamentary Under Secretary of State at the Ministry of Housing, Communities and Local Government has made the following statement regarding Human Rights:

"In my view the provisions of the Greater Manchester Combined Authority (Functions and Amendment) Order 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 Part 6 of the Local Democracy, Economic Development and Construction Act 2009 ("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 power to exercise specified functions of a local authority, and power to exercise specified functions of any other public authority.

6.2 The GMCA was established by the Greater Manchester Combined Authority Order 2011 (S.I. 2011/908); and the position of elected mayor for the GMCA was established by the Greater Manchester Combined Authority (Election of Mayor with Police and Crime Commissioner Functions) Order 2016 (S.I. 2016/448).

6.3 This Order cites the following powers:

- Section 104(1)(a) of the 2009 Act (Constitution and functions: transport): the Secretary of State may by order make provisions about the constitutional arrangements of a combined authority, including executive arrangements of a combined authority.
- Section 105(3) of the 2009 Act (Constitution and functions: local authority functions generally): 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.
- Section 105A(1) and (3) 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. 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 and for the function to be exercisable by the combined authority instead of by the public authority.
- Section 107D(1) and (7)(c) of the 2009 Act (Functions of mayors: general): the Secretary of State may by order provide for any function of a mayoral combined authority to be a function exercisable only by the mayor; such an

order may provide for members or officers of the combined authority to assist the mayor in the exercise of general functions (which are any functions exercisable by the mayor other than Police and Crime Commissioner functions), and may confer ancillary powers on the mayor for the purposes of the exercise of general functions.

- Section 107E(1) of the 2009 Act (Functions of mayors: general): 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 in relation to general 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 114 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.
- Section 117(5) of the 2009 Act (Orders): an order under Part 6 of the 2009 Act may include provision amending, applying (with or without modifications), dis-applying, repealing or revoking any enactment whenever passed or made.

7. Policy background

What is being done and why?

7.1 The Government committed in its 2015 Manifesto to devolve far-reaching powers over economic development and transport to large cities which choose to have elected mayors and to deliver the historic deal for Greater Manchester signed in November 2014.

7.2 The Government has signed five devolution deals with the GMCA and the councils within its area - Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Stockport, Tameside, Trafford and Wigan. These have led to new powers for the GMCA, as well as devolving significant budgets, including investment funds of £900 million over 30 years.

7.3 The Government has conferred functions on the GMCA covering areas including health, fire, police, planning and transport, some of which can be exercised solely by the mayor. This has been done through 10 prior statutory instruments specifically providing for the GMCA, as well as primary legislation such as the Bus Services Act 2017 and subsequent regulations made under that Act.

7.4 The Bus Services Act 2017 provided mayoral combined authorities with new powers to implement smart ticketing, bus franchising and other options such as partnership models with bus operators to improve bus services in their area.

7.5 The Greater Manchester Combined Authority (Functions and Amendment) Order 2019 amends the governance and accountability around these functions by making all the operational functions related to buses exercisable only by the mayor. Currently they are exercisable by the GMCA board consisting of the mayor and the leaders of the 10 councils and are funded primarily by a transport levy paid by the constituent councils.

7.6 Making these functions exercisable only by the mayor aligns with the initial devolution deal in November 2014 which agreed that the mayor would have power

over bus franchising and smart ticketing. It also allows the GMCA to fund improvements to bus services through the setting of a mayoral precept.

7.7 Although the 2014 devolution deal required that only bus franchising and advanced ("smart") ticketing were made mayoral, this order confers all operational bus powers to the mayor. This is for clarity of governance and to ensure that the mayor can also raise funding for alternatives to bus franchising, such as advanced quality partnership schemes and enhanced partnership plans and schemes with bus operators, should the mayor wish to pursue them. Currently such costs would be funded by the GMCA's levy on the constituent councils. In announcing his mayoral precept for 2019/20 on 21 January 2019, the mayor proposed, using his current powers to give transport grants, to make grants to the constituent councils to support their increased levy costs for an investigation into the possibility of a bus reform plan and a 16-18 Opportunity Pass.

7.8 The following GMCA functions are made exercisable solely by the mayor through this order:

- Power to implement advanced quality partnership schemes
- Power to implement bus franchising schemes
- Power to introduce advanced ticketing schemes
- Power to introduce enhanced partnership plans and schemes
- Duty to make information available about bus services
- Power to obtain information about local services, including under franchising and enhanced partnership schemes
- Power to determine the public transport requirements of the combined authority region and to formulate general policies with respect to measures to be taken by Transport for Greater Manchester (TfGM), the Passenger Transport Executive for the area
- Power to enter into agreements with operators providing service subsidies.

7.9 The Order also transfers the travel concessionary authority function from TfGM to the GMCA, to be exercised solely by the mayor. The transfer of responsibility for the travel concessionary authority will ensure that, should a franchising scheme be introduced, fare income would belong to the GMCA and concessionary fare and subsidised services would be subsumed into the overall franchising budget.

7.10 The GMCA currently spends approximately £86.7 million on bus functions (reimbursing operators in respect of mandatory concessionary fares, discretionary concessionary fares and bus service subsidies). This is funded by the constituent councils through the transport levy paid to the GMCA and apportioned according to the population of each council area.

7.11 The Order makes provision for the constituent councils to commit to funding bus services, with the amounts apportioned by population, up to the current expenditure level of £86.7m but no further. This £86.7m is not index-linked. The mayor would have to fund any further increase in spending on buses through the mayoral precept. Any change to this arrangement would require the unanimous approval of the constituent councils. This will allow for the gradual shift of funding away from the transport levy to the mayoral precept. Staggering this shift prevents a very sudden redistribution in how bus services are funded in Greater Manchester from a system

where the burden is apportioned by population to one where it is apportioned by the council tax base.

7.12 Making bus powers exercisable by the mayor has led to the need for new governance around transport. Many transport functions in Greater Manchester are currently overseen by the Transport for Greater Manchester Committee (TfGMC) which is a joint committee of GMCA and the 10 constituent councils. This enables transport issues to be considered in an integrated way by bringing together the GMCA's responsibilities for local transport plans and public transport with the constituent councils' role as highways authorities.

7.13 The Order enables the mayor to enter into joint arrangements with the GMCA and the 10 constituent councils in relation to the transport functions of the mayor, the GMCA and the constituent councils, including the establishment of a joint committee to replace the current TfGMC. It also gives the mayor the power to delegate most of his transport functions to the new committee, including those conferred by both this Order and the Greater Manchester Combined Authority (Functions and Amendment) Order 2017 (S.I. 2017/612). However, any functions that involve decisions to make, vary or revoke plans or schemes may not be delegated and must remain mayoral decisions.

7.14 This joint committee will have a maximum of 23 members, compared to the limit of 33 for the existing TfGMC. It is required to reflect so far as reasonably practicable the balance of political parties among members of all the constituent councils, rather than members of the GMCA.

7.15 The mayor, GMCA and constituent councils may appoint committee members who must be elected members of constituent councils or the GMCA. The mayor will also appoint the chair. The apportionments between the three parties will be agreed by standing order and can only be changed by a unanimous vote of the GMCA.

7.16 The Order will also make a constitutional amendment affecting votes on funding three mayoral powers conferred in the Greater Manchester Combined Authority (Functions and Amendment) Order 2017. These are:

- the ability to designate mayoral development areas and create mayoral development corporations
- the ability to pay grants to the constituent local authorities
- the ability to prepare local transport policies and a local transport plan

7.17 Any proposals on statutory contributions by constituent councils for these powers will require 7 out of 10 GMCA members from constituent councils to vote in favour of them as is the case with most other mayoral powers.

7.18 In taking the decision to confer functions and make constitutional changes, the Secretary of State has in each case applied the statutory tests; he is satisfied that no further consultation is required on the proposals; that the proposals are likely to improve the exercise of statutory functions in the GMCA area; that where proposals relate to local authority functions and constitutional changes they are appropriate, having regard to the need to reflect the identities and interests of local communities, and to secure effective and convenient local government.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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 present.

10. Consultation outcome

10.1 In this Order the decision to transfer powers from one public body, TfGM, to the GMCA requires that a scheme for the transfer of these powers is published and a public consultation is undertaken. As this transfer is an integral part of any proposals for bus franchising, it is appropriate that the consultation on this transfer covered the wider issues of bus franchising and the arrangements for concessionary fares.

10.2 In advance of the election of the first directly elected mayor in May 2017, the GMCA consulted on its governance review and Scheme in two phases both of which are relevant to the transfer of TfGM powers to the GMCA. The transfer of these powers and the changes around bus services in general were planned to be included in a previous order but were delayed while the Bus Services Bill and its subsequent regulations became law. Greater Manchester then considered the impact of this legislation before asking for this further order which the Secretary of State agrees is appropriate.

10.3 The first phase of the consultation[1] was published on 21 March 2016 and ran for six weeks ending on 18 May 2016. 243 responses to the consultation were received[2], with many respondents providing comments on each of the ten themes. This phase covered the introduction of bus franchising and making it a mayoral function.

10.4 The consultation proposed for certain GMCA functions to be mayoral functions, including transport functions relating to buses (including amendments in the Bus Services Bill, if enacted). This section of the consultation explicitly mentioned responsibility for franchised bus services and smart ticketing.

10.5 145 respondents replied to the bus franchising part of the consultation of which 52 agreed or broadly agreed with the proposals whilst 26 disagreed or broadly disagreed with them. Many people went on to comment on the need for an integrated transport network and that there was a need to centrally manage and coordinate services. Respondents also suggested that bus services should be regulated along with bus fares.

10.6 137 respondents replied to the Mayor's Duties policy theme part of the consultation. This mentioned that bus franchising and smart ticketing would be mayoral responsibilities along with a broad range of other powers 47 respondents disagreed or broadly disagreed with the proposals while 37 respondents agreed or broadly agreed with the proposals. Of those respondents that did disagree with the proposals they commented that there hadn't been a referendum for a democratically elected mayor. Other responses to the proposals were that the mayor needs to be accountable and some clarity was needed on what powers the mayor will have. Many respondents did agree that the mayor is an important position and needs to be a strong

[1] https://www.gmcameetings.co.uk/download/meetings/id/744/item_7_governance_review_and_sceheme (sic)
[2] https://www.gmcameetings.co.uk/download/meetings/id/936/8_gmca_order_consultation

ambassador/voice for the region. There were no specific concerns about bus franchising and smart ticketing in the recorded concerns.

10.7 The second phase of the consultation[3] also ran for six weeks from 4 July to 15 August 2016. It consulted on the proposed funding arrangements for transport, including around concessionary fares. It also consulted on the formation of a new Transport for Greater Manchester Committee (TfGMC), which does not require a S105B report.

10.8 In total there were 278 online responses[4]. 229 were from members of the public, 17 from public bodies, 4 from businesses and 28 others. As well as transport the consultation also focused on functions concerning fire, waste, planning, education and skills.

10.9 The transport section of the consultation proposed that the mayor's transport functions relating to buses should be funded by a statutory contribution from the constituent councils up to a maximum the current level of support for bus functions. This support was for re-imbursing operators in respect of mandatory concessionary fares, discretionary concessionary fares and bus service subsidies. At the time this was £82 million per annum. This figure has since risen to £86.7 million hence the number proposed in the order. Expenditure on buses above this figure and any other mayoral transport expenditure were to be funded through a mayoral precept; expenditure on non-mayoral transport functions would continue to be funded through the transport levy.

10.10 The consultation also proposed that there should be provision for the mayor to enter into joint arrangements in respect of transport functions with the GMCA and the constituent councils. This should be done by re-establishing the TfGMC as a joint committee between the mayor, the GMCA and the constituent councils. The size, composition and functions of the re-constituted TfGMC were advised in the consultation to be a political matter for the Mayor, GMCA and constituent councils. But it stated that at the very least there would need to be space on TfGMC for the mayor (or the mayor's nominee) and at least one GMCA member appointed directly by GMCA.

10.11 All 278 respondents replied to the section of the consultation relating to transport. Of these responses 183 were supportive of proposals whilst 48 were not supportive. 30 respondents neither agreed nor disagreed and 17 did not comment. Of the 278 responses to the section of the consultation relating to transport, 29 were from key stakeholders (i.e. established organisations and partnerships that were directly invited to engage in the consultation). Of the key stakeholders that commented on the proposals in the scheme, only 2 were unsupportive, citing concerns that nothing will change. 101 respondents, both stakeholders and others, commented on whether the changes to transport would have a perceived impact on themselves. 68 felt proposals in the Scheme would have some positive personal impact, 21 felt the proposals would have a negative impact and 12 said proposals would have low or no impact. Negative comments included concerns about the fact that cycling was not included in this set of proposals the radial nature of transport links within Greater Manchester.

10.12 Responses from key stakeholders in relation to this policy theme included TfGM, the Office of the Police & Crime Commissioner, Bruntwood (a Manchester based property company), Unison and Oldham and Trafford Metropolitan Borough

[3] https://www.gmcameetings.co.uk/download/meetings/id/1038/15_gmca_governance_review_and_sheme_phase_2_ (sic)
[4] https://www.gmcameetings.co.uk/download/meetings/id/1222/8_gmca_phase_2_consultation_outcome

Councils, all of whom supported the proposals. Oldham Council highlighted the current situation, in which local authorities have limited control over bus services stating that 'the proposals can only offer an improvement on the current situation.'

10.13 As statute requires, the Secretary of State was sent a summary of the consultation responses prepared by the Greater Manchester Combined Authority, to which he has had regard. In accordance with the requirements at section 113(2) of the 2009 Act, the Secretary of State has reviewed these responses, and is of the view that no further consultation is necessary. The Secretary of State is satisfied that the GMCA's consultations in connection with the proposals in each scheme were sufficient in terms of length; the mechanisms used (online and paper versions and responses); the promotional activity (posters, media releases, intranet articles, social media, direct emails to key stakeholders and reminders); and the analysis undertaken.

10.14 Before laying this Order, the Government sought and obtained the consent of the mayor, the GMCA and its constituent councils in relation to the making of the Order and considers that the Order is likely to improve the exercise of statutory functions in the area of the GMCA.

11. Guidance

11.1 No guidance is necessary to accompany this 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 The impact on the public sector is to provide for clearer governance of bus services in Greater Manchester.

12.3 An Impact Assessment has not been prepared for this instrument because it has a low level of impact on 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 the combined authorities are required under the devolution agreements reached with Government to put in place an extensive programme of evaluation, agreed with HM Treasury, of the devolution agreements.

14.2 The regulation does not include a statutory review clause.

15. Contact

15.1 Nick Humfrey at the Ministry of Housing, Communities and Local Government Telephone: 030 3444 4826 or email: nick.humfrey@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Paul Rowsell, Deputy Director and Head of the Governance Reform and Democracy Unit at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jake Berry MP, Minister for the Northern Powerhouse and Local Growth, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.