EXPLANATORY MEMORANDUM TO

THE GREATER MANCHESTER COMBINED AUTHORITY (PUBLIC HEALTH FUNCTIONS) ORDER 2017

2017 No. 1180

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument uses the Secretary of State's powers in the Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act") to:

a) confer, by Order, certain local authority public health functions on the Greater Manchester Combined Authority ("the Combined Authority"), which will be exercisable concurrently by the Combined Authority and the 10 metropolitan district councils whose areas fall within the Combined Authority's area ("constituent local authorities"); and

b) make consequential provision about how the conferred public health functions are to be exercised by the Combined Authority. The Order applies to the Combined Authority certain of the legal requirements that currently apply to the constituent local authorities when exercising the same public health functions.

2.2 The conferral of these functions on the Combined Authority is necessary for it to play a full part in the Greater Manchester Health and Social Care Partnership (GMHSCP) and support integrated, strategic commissioning decisions across the Greater Manchester (GM) area with a view to improving health outcomes and reducing health inequalities.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 This instrument applies only to England.

3.3 The provisions in this instrument apply only to England as they are entirely concerned with local government areas in England, as they relate to GM (see articles 2 and 3(1) of the instrument). The instrument does not give rise to minor or consequential effects outside England.

3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P, the subject-matter of this instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter; or the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament; or the National

Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.5 The Department has reached this view because it considers that the primary purpose of the provisions in this instrument relate to local government, which is within the devolved legislative competence of the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales. Additionally, the instrument relates to public health, which is also a devolved matter.

4. Legislative Context

4.1 Part 6 of the 2009 Act provides for the establishment of combined authorities for the areas of two or more local authorities in England.

4.2 The Combined Authority was established by the Greater Manchester Combined Authority Order 2011 (SI 2011/908) in relation to the ten local government areas of Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Stockport, Tameside, Trafford and Wigan.

4.3 The Cities and Local Government Devolution Act 2016 ("the 2016 Act") amended the 2009 Act to provide a broad enabling legislative framework for devolution of functions to combined and local authorities. To support implementation of bespoke devolution deals (and subject to certain exceptions), the amendments made by the 2016 Act to the 2009 Act enable the conferral, by Order, on a combined authority of specified:

a) "public authority" functions (such as those of the Secretary of State for Health or NHS England), and/or

b) local authority functions.

4.4 This Order is concerned with the local authority functions only. The local authority public health functions conferred on the Combined Authority are to be exercisable concurrently with the constituent local authorities, rather than transferred. This means that the constituent local authorities will continue to exercise their public health functions alongside the Combined Authority.

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

6. European Convention on Human Rights

6.1 The Rt Hon Jeremy Hunt MP, Secretary of State for Health, has made the following statement regarding Human Rights:

"In my view the provisions of the Greater Manchester Combined Authority (Public Health Functions) Order 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 Under section 2B(1) of the National Health Service Act 2006 ("the NHS Act 2006"), which was inserted by the Health and Social Care Act 2012, every unitary and upper-tier local authority in England is under a duty to take appropriate steps for improving the health of people in its area ("section 2B(1) functions"). Section 2B also lists examples of steps that local authorities may take under this duty, including providing services or facilities designed to promote healthy living or for the prevention, diagnosis or treatment of illness. This Order confers section 2B(1) functions on the Combined Authority and provides for these functions to be exercised concurrently with the constituent local authorities.

7.2 The GMHSCP has published a Population Health Plan[1] with an ambition for a unified population health strategy across GM. The Combined Authority has indicated that the conferral of local authority public health functions will:

- enable a GM-wide strategic leadership approach to the delivery of agreed public health functions and commissioning responsibilities; for example public health intelligence, health needs assessment and health protection.
- support a GM-wide strategic approach to tackling variation in health inequalities, quality and service improvement to promote fair and equitable access and achieving a radical upgrade in health outcomes for the population of GM.
- support strengthened collaborative decision making for population health through the identification of GM-wide commissioning priorities and intentions underpinned by shared principles and common commissioning standards; for example commissioning for whole system sexual health and substance misuse services.
- enable population health to be embedded across GM's health, social care and wider public services through the GM Strategy and the Population Health Plan.

7.3 Conferring section 2B(1) functions on the Combined Authority is necessary for it to play a full part in planning public health services and other measures that will improve population health for the whole of the GM area. Each constituent local authority will remain subject to the section 2B(1) duty as regards their own areas, and will continue to act to improve health at a local level.

7.4 A number of consequential and related amendments are also made by the Order. Articles 4 to 7 provide for how the conferred public health functions are to be exercised by the Combined Authority, by applying to the Combined Authority certain of the legal requirements that currently apply to the constituent local authorities when exercising the same public health functions.

7.5 Article 4 provides that regulations made under section 6C(2) of the NHS Act may prescribe the steps that the Combined Authority must take in exercising the public health functions conferred by article 3 of this Order. Section 6C(2) enables the Secretary of State to make regulations to require local authorities to exercise their public health functions by taking such steps as may be prescribed.

[1] http://www.gmhsc.org.uk/assets/GM-Population-Health-Plan-Full-Plan.pdf

7.6 Regulations require local authorities to provide certain services – specifically health visiting services for children aged 0 – 5, the National Child Measurement Programme, local health protection plans, open access sexual health services, NHS Health Checks and public health advice to the NHS. It is not currently proposed to prescribe any steps the Combined Authority must take as it will not be commissioning the services currently covered by the section 6C(2) regulations, but article 4 will make it possible to prescribe steps, by regulations, in the future if it becomes appropriate to do so.

7.7 Article 5(1) provides that when exercising the public health functions conferred by article 3, the Combined Authority must have regard to documents published, and guidance issued, by the Secretary of State as to the exercise of those functions. For the purposes of transparency and accountability, Article 5(2) requires the Combined Authority to prepare and publish an annual report on the health of the people in its area, in the same way as local authorities are required to produce an annual report under Section 73B of the NHS Act 2006. Neither the form nor content of the annual reports is prescribed in legislation as it is up to each individual local authority to decide what and how to publish.

7.8 The effect of Article 6 is that the Combined Authority will be able to enter into partnership arrangements with NHS bodies under section 75 of the NHS Act 2006, in respect of the public-health functions conferred by article 3 just as its constituent local authorities may currently enter into such arrangements.

7.9 Article 6 makes clear that this does not affect the position under section 75(7A) to (7D) of the NHS Act 2006 under which a Combined Authority is treated as if it were an NHS body in certain limited circumstances[2]. Article 6(2) ensures that the Combined Authority may not enter into the same set of partnership arrangements as if it were treated as both a local authority and an NHS body[3] until otherwise provided by regulations under section 75 of the NHS Act 2006.

7.10 Agreements made under section 75 of the NHS Act 2006 allow budgets to be pooled between local authorities and NHS bodies. Resources and management structures can be integrated and exercise of functions can be reallocated between partners. Flexibility across health and social care budgets can allow resources to be used where they are most needed. There are existing section 75 arrangements between local authorities and NHS bodies in GM. It will be a matter for the Combined Authority and its constituent local authorities to decide whether and how to make further use of the section 75 provisions to improve the health of people across GM.

7.11 Article 7 provides that the Combined Authority must have regard to the NHS Constitution in the exercise of the public health functions conferred by article 3.

Further background

7.12 In July 2015, a Memorandum of Understanding (MoU)[4] was published that set out a shared commitment to the "*most ambitious approach yet in England to place Public Health at the heart of public service reform and economic growth*." The MoU was

[2] These limited circumstances arise when a combined authority exercises particular functions of an NHS body under arrangements made under certain sections of the NHS Act 2006 (sections 7A, 13Zand 14Z3A which relate to public health functions of the Secretary of State and functions of certain NHS bodies).
[3] See section 75(7A) of the NHS Act 2006.
[4] file://ims.gov.uk/data/Users/GBBULVD/BULHOME2/aross/My%20Documents/10._GM_Public_Health_Reforms_combined.pdf

signed by Public Health England, GM Local Authorities, NHS England, Association of GM Clinical Commissioning Groups, GM NHS Providers and GM Blue Light Services (GM Police, GM Fire and Rescue, NW Ambulance Services).

7.13 In February 2016, a further Health and Social Care Devolution MoU5 was published.

7.14 The parties to the 2016 agreement are: (a) all local authority members of the Association of Greater Manchester Authorities, (b) all GM Clinical Commissioning Groups, and (c) NHS England.

7.15 The Combined Authority was not a party to either of the MoUs as it previously held no health functions. Similarly it is not currently a member of the GMHSCP. Conferring local authority public health functions on the Combined Authority will enable it to become a member of the Partnership and provide a strategic, GM-wide perspective, with a view to further improving health and well-being outcomes.

7.16 In March 2016, the Combined Authority published a report setting out the conclusions from its governance review6, and a proposed scheme7 on which it consulted over subsequent weeks, regarding the conferral on the Combined Authority of a variety of functions including public health functions. The report concluded that the conferral on the Combined Authority of local authority public health functions pursuant to s.2B of the NHS Act 2006 would be likely to improve the exercise of statutory functions in Combined Authority's area. It explained its rationale for likely improvement as:

7.17 "To enable the effective integration of health and social care provision across Greater Manchester, to deliver improved health and wellbeing outcomes to support and enhance GM's priority of reducing worklessness and supporting people back into employment and to ensure the financial sustainability of the health and social care system".

7.18 This Order is a significant step in the implementation of the devolution deals which the Government had agreed with the Combined Authority, first in November 2014 and subsequently in February 2015, July 2015, and November 2015. These agreements provide for powers to be conferred on the Combined Authority, with certain powers to be exercised by the Mayor, including taking on the role of Police and Crime Commissioner, as well as devolving significant budgets, including investment funds of £900 million over 30 years. The Combined Authority will be able to bring to bear its powers that have an impact on the wider determinants of health such as planning and transport to support GM's ambition to have a unified approach to population health.

7.19 Only local authority public health functions are being conferred; the Combined Authority is not acquiring public health powers conferred by statute on the Secretary of State (Section 4.3 and 4.4 above). It will be for the Combined Authority and its constituent local authorities to agree how available funding is used to support improved health for people in GM.

7.20 In taking the decision to confer local authority public health functions on the Combined Authority, the Secretary of State has in each case applied the statutory tests set out in the 2009 Act: that the local consultation was adequate meaning no further

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[5] https://www.greatermanchester-ca.gov.uk/downloads/file/135/greater_manchester_health_and_social_care_devolution_memorandum_of_understanding

[6] Under s.111 of the 2009 Act.

[7] Prepared and published under s.112 of the 2009 Act.

consultation is required on the proposals; that the proposals are likely to lead to improved exercise of statutory functions in the Combined Authority's area; that written consent has been given by the ten constituent authorities and the Combined Authority; and that where proposals relate to local authority functions 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.

7.21 In addition to the report mentioned in para 7.14 above, the Combined Authority has provided to the Department, also published on the Combined Authority's website8, documents which conclude that conferring public health functions on it is likely to improve health and other outcomes in its area, and improve decision-making. The Department has considered the evidence provided and considers that this is a reasonable conclusion. The Combined Authority has, separately to this Order, devolved powers on wider determinants of health such as transport and economic development which cross the boundaries of individual local authorities. Drawing on these powers the Combined Authority can take a more strategic approach that could benefit the population at a GM level.The Department has concluded that conferring public health functions on the Combined Authority does provide the opportunity for, and is likely to lead to, the improved exercise of functions and improved health outcomes through shared and holistic decision-making, coordination and innovation.

8. Consultation outcome

8.1 The Combined Authority consulted on its overall devolution scheme[9] which included housing, regeneration and land regeneration, transport, education and skills, culture, and a spatial plan as well as proposals for health. The health proposals were informed by an earlier survey[10] on health issues across the GM area, which identified priorities for action in order to deliver a radical upgrade in health outcomes.

8.2 The consultation ran from 21 March to 18 May 2016, in conjunction with the ten constituent local authorities as well as other partners, such as Greater Manchester Fire and Rescue. The consultation was aligned with a promotional campaign to raise awareness of the Combined Authority. The Combined Authority provided each local authority and partner organisation with a toolkit to aid local engagement, in line with their individual communication strategies.

8.3 The consultation was undertaken both digitally and on paper. The primary mechanism was through digital channels, although hard copies were also available at various locations such as regeneration offices, leisure centres and libraries.

8.4 A total of 238 responses to the consultation were received including 169 from members of the public, 19 from public bodies, 7 from business and 15 from representative bodies. The Combined Authority's summary of responses to the consultation[11] includes a demographic analysis of respondents and analysis of responses to each of ten questions.

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[8] https://www.greatermanchester-ca.gov.uk/downloads/download/35/taking_charge_of_our_health_and_social_care_in_greater_manchester

[9] https://www.greatermanchester-ca.gov.uk/news/article/57/consultation_on_greater_manchester_s_devolved_powers_launched

[10] http://www.gmhsc.org.uk/the-plan/

[11] https://www.greatermanchester-ca.gov.uk/devopowersconsultation

8.5 The Government's assessment of the overall consultation is that it was sufficient in terms of its length (8 weeks); the mechanisms used (online and paper versions and responses); the promotional activity (posters, media releases, intranet articles, social media, direct e-mails); and the analysis of responses undertaken.

8.6 In terms of the health proposal, the following is an extract from the Combined Authority's on-line consultation:

> We propose the Combined Authority should have the same duty to take any actions it thinks will improve the health of Greater Manchester residents that the Secretary of State and the ten GM local councils already have. Giving us a shared duty with the local councils and the Secretary of State to improve the health and wellbeing of Greater Manchester's 2.8 million people will help us and the NHS to respond together to health needs and focus on preventing ill health and promoting healthy lifestyles.
>
> We will be able to use our new health improvement function to:
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> - Work with NHS organisations and the ten GM local authorities to take health and social care decisions which reflect the health needs of Greater Manchester and which make the best use of Greater Manchester's £6 billion budget
> - Produce a comprehensive plan for Greater Manchester's health and social care

8.7 The Secretary of State for Health will retain core duties in relation to the health service and will continue to discharge his existing statutory duties in relation to public health. The Order confers on the Combined Authority a duty to improve the health of its population. It is not necessary to also confer the Secretary of State's power to act to improve the population's health. All national standards and accountabilities relating to health will remain unchanged including statutory guidance on the appointment of Directors of Public Health and the Public Health Outcomes Framework[12].

8.8 The majority of those that responded to the substantive proposal (138 responses) were in favour of the proposal to enable the Combined Authority to play an active role in commissioning across the GM area, enabling joint decision-making and responding together to health needs and focus on preventing ill health and promoting healthy lifestyles. 12% of respondents were from key stakeholders, all of which were supportive, while 22% of all respondents were not supportive. The comments from this latter group of respondents did not specifically object to the proposal to confer public health functions on the Combined Authority, but tended to raise unrelated points about the NHS and other matters.

9. Guidance

9.1 No guidance is necessary to accompany this Order. The Government continues to work with colleagues in the Combined Authority area to support their implementation of the devolution deals.

10. Impact

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

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

[12] http://www.phoutcomes.info/

11. Regulating small business

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

12. Monitoring & review

12.1 This Order provides for functions to be conferred on the Combined Authority. The Combined Authority will be required, under the devolution agreements reached with Government, to put in place an extensive programme of evaluation, agreed with HM Treasury, of the GM devolution agreement[13].

13. Contact

13.1 Alison Ross E: alison.ross@dh.gsi.gov.uk T: 020 7210 6308 can answer any query regarding the instrument.

[13] https://www.greatermanchester-ca.gov.uk/homepage/59/devolution