EXPLANATORY MEMORANDUM TO

THE WEST MIDLANDS COMBINED AUTHORITY (ELECTION OF MAYOR) 2016

2016 No. 933

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument makes essential provision in preparation for the introduction of a directly elected mayor for the area of the West Midland Combined Authority ("the Combined Authority"). The Order provides that the area of the Combined Authority is to have a directly elected mayor, and for the date of the first and subsequent elections to the role of mayor and the term of office.

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 instrument applies only to England as it is entirely concerned with local government areas in England. Section 103(2) of the Local Democracy, Economic Development and Construction Act 2009) (the 2009 Act) provides that a combined authority may be established in relation to local government areas in England. 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.

4. Legislative Context

4.1 The Combined Authority was established by the West Midlands Combined Authority Order 2016 (S.I. 2016/653)[1]].

4.2 Section 103 of the 2009 Act provides for the creation of combined authorities and section 107A of the 2009 Act, as inserted by section 2 of the Cities and Local Government Devolution Act 2016 (the 2016 Act), provides for the creation of the position of a mayor for the area of a combined authority and the necessary election. A combined authority is a corporate body on which can be conferred – by order - any functions of the local authorities within the area of the combined authority or of any public authority. Section 107D of the 2009 Act, as inserted by section 4 of the 2016 Act, provides that if a position of mayor is established for the area of the combined authority, the mayor can exercise individually some of the functions conferred on the combined authority, as specified in the order. Schedule 5B to the 2009 Act, inserted by Schedule 1 to the 2016 Act, provides that a mayor is elected by the local government franchise within the area of the combined authority.

4.3 Section 107B of the 2009 Act, as inserted by the 2016 Act, provides that a position of a mayor for the area of a combined authority can be established if the local authorities within the area make a proposal to the Secretary of State or if the existing combined authority and local authorities within the area consent.

4.4 Schedule 5B of the 2009 Act, as inserted by the 2016 Act, specifies the default date of the first election for the mayor for the area of the combined authority and the term of office of mayor, but these are subject to specific provision made by order.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales as the relevant powers being exercised extend to England and Wales.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 Greg Clark MP, Secretary of State at the Department for Communities and Local Government has made the following statement regarding Human Rights:

"In my view the provisions of the West Midlands Combined Authority (Election of Mayor) Order 2016 are compatible with the Convention rights."

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, transport and social care to large cities which choose to have elected mayors". To deliver this manifesto commitment the Government is reaching bespoke devolution deals with areas which are agreements in principle for a radical devolution of funding, powers and responsibilities for such matters as employment and skills, transport, planning and investment.

[1] : http://www.legislation.gov.uk/id/uksi/2016/653

7.2 On 17 November 2015 the Government and the Leaders of the West Midlands announced a devolution agreement which provided for an offer of powers and budgets from Government on the basis that the area will deliver certain reforms and measures, including adopting a model of a Combined Authority with a directly elected mayor covering the whole of the Combined Authority area.

7.3 The agreement sets out that the mayor for the Combined Authority area would individually exercise some functions in relation to transport and strategic planning. The Combined Authority would take on responsibility for the devolved funding of £36.5 million a year over 30 years; control of the devolved 19+ adult skills funding by 2018/19; joint responsibility with the Government to codesign employment support for harder-to-help-claimants; and a devolved approach to business support from 2017 to be developed in partnership with Government.

7.4 This Order now makes the provisions necessary for the next step of the implementation of the devolution agreement between the Government and the Combined Authority. First, by creating the position of elected mayor for the area and secondly, by setting the date of the first election to be 4th May 2017 and the first term of office of the mayor to be three years, with subsequent elections in 2020 and then every four years thereafter.

7.5 The date of the first election – 4 May 2017 – is the ordinary day of election for local government. The mayor will take office on the fourth day after the election, which is consistent with the arrangements for a local authority mayor, as set out in Article 8 of the Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2012.

7.6 The Order specifies a first term of office for the mayor of 3 years, with the second mayoral election taking place in May 2020. This is because the cycle of local government elections means that the local authorities within the Combined Authority area are not due to have local elections in 2021 (4 years after the first mayoral elections). Holding the second mayoral election in 2020 will ensure that second and subsequent mayoral elections in the Combined Authority area are aligned with the majority of local council elections and Police and Crime Commissioner elections, supporting improved efficiency and effectiveness of elections.

7.7 The Government will seek Parliament's approval later in 2016 to further secondary legislation necessary to devolve the powers and budgets to the Combined Authority, as agreed in devolution deals.

8. Consultation outcome

8.1 This Order gives effect to certain provisions of the devolution agreement made between the Government and the authorities in the area which were the result of negotiations between the Government and those authorities. Before making this Order the Government sought the views of the Combined Authority and its constituent authorities, all of which have given their consent to the Order.

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 This Order will provide for the election of a mayor for the area of the Combined Authority and sets out the electoral cycle and term of office for this position. There will be no impact on the wider public sector.

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

11. Regulating small business

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

12. Monitoring & review

12.1 This Order provides for new governance arrangements suitable for powers to be devolved to 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 Government, of the devolution agreement.

13. Contact

13.1 Lydia Strawson at the Department for Communities and Local Government Telephone: 0303 444 2784 or email: lydia.strawson@communities.gsi.gov.uk can answer any query regarding the instrument.