

EXPLANATORY MEMORANDUM TO
THE GREATER MANCHESTER COMBINED AUTHORITY (AMENDMENT)
ORDER 2018

2018 No. [XXXX]

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.

2. Purpose of the instrument

- 2.1 This Order amends the constitutional arrangements of the Greater Manchester Combined Authority (“the Combined Authority”) in relation to taking decisions on the Housing Investment Fund and to enable the Combined Authority to seek a view from the Independent Remuneration Panel in relation to allowances for committee and sub-committee members. It also makes some amendments to the process for setting the Police and Crime Commissioner component of the mayoral precept for the Greater Manchester Mayor.

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 entire 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 entire 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 purposes 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 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 (S.I. 2011/908); and the position of elected Mayor for the Combined Authority was established by the Greater Manchester Combined Authority (Election of Mayor with Police and Crime Commissioner Functions) Order 2016 (S.I. 2016/448).
- 4.3 Further functions were conferred on the Combined Authority, some of which are exercisable individually by the Mayor, and constitutional changes were made by the Greater Manchester Combined Authority (Functions and Amendment) Order 2016 (S.I. 2016/1267); the Greater Manchester Combined Authority (Functions and Amendment) Order 2017 (S.I. 2017/612); the Greater Manchester Combined Authority (Fire and Rescue Functions) Order 2017 (S.I. 2017/469); the Greater Manchester Combined Authority (Transfer of Police and Crime Commissioner Functions to the Mayor) Order 2017 (S.I. 2017/470); and the Greater Manchester Combined Authority (Public Health Functions) Order 2017 (S.I. 2017/1180).
- 4.4 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.
- 4.5 The Combined Authorities (Finance) Order 2017 (S.I. 2017/611) provides for the costs of a mayor of a combined authority to be met from council tax precepts issued by the mayor under section 40 of the Local Government Finance Act (“the 1992 Act”) and modifies provisions of that Act to ensure that the council tax requirement relating to PCC functions is separated from the council tax requirement relating to other mayoral functions.
- 4.6 The Order cites the following powers:
- Section 104(1)(a) of the 2009 Act (constitution and functions: transport), as modified by article 17(2) of S.I. 2017/612: enables the provisions relating to constitutional arrangements to be made in relation to a combined authority that may be made in relation to an integrated transport authority under section 84 of the Local Transport Act 2008 (constitutional arrangements);
 - Section 107G of the 2009 Act (Mayors for combined authority areas: financial matters): enables provision to be made by order for the costs of a mayor for the area of a combined authority that are incurred in, or in connection with, the exercise of mayoral functions to be met from precepts issued by the authority under section 40 of the 1992 Act and that the function of calculating the PCC component of the council tax requirement calculated under section 42A of the 1992 Act in respect of the mayor’s PCC functions is a PCC function of the mayor. Such provision has been made by S.I. 2017/611;
 - Paragraph 6 of Schedule 5C to the 2009 Act (Mayors for combined authority areas: PCC functions): requires provision to be made by order relating to the keeping of a fund and the preparation of an annual budget in relation to the exercise of PCC functions. Such provision has been made by S.I. 2017/611;
 - Section 114 of the 2009 Act (Incidental etc provision): enables 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 the order; and

- Section 117(5) of the 2009 Act (Orders): enables provisions amending, applying (with or without modifications), dis-applying, repealing or revoking any enactment whenever passed or made.

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 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 (Amendment) Order 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 This Order makes changes to the constitution of the Combined Authority in relation to functions that they already exercise. The Housing Investment Fund is a loan from the Government that the Combined Authority is able to lend to local developers to help fund quicker housing delivery in the Greater Manchester area. Any decision by the Combined Authority relating to the Housing Investment Fund would, as a decision of the Combined Authority, be subject to a simple majority of Combined Authority members. The regulations amend the constitution so that in addition to a simple majority of Combined Authority members, the Mayor must be on the winning side of the vote for the decision to be carried. This change to the constitution implements a commitment made in a devolution agreement.¹
- 7.2 The Combined Authority has remuneration powers within its constitution from S.I. 2011/908 and S.I 2017/612. In summary, the Combined Authority is not able to remunerate its members, other than the Mayor, other than by paying allowances for travel and subsistence that must be in accordance with a Combined Authority scheme. The Combined Authority has established an independent remuneration panel to make recommendations on all allowances, including travel and subsistence. The panel is also able to make recommendations to the constituent councils that may pay an allowance to their elected members who are members of the Combined Authority. Other than in relation to the Combined Authority scheme for travel and subsistence for its members (including the mayor), if the independent remuneration panel makes a recommendation, then the allowance paid must not exceed that recommendation.
- 7.3 This Order amends those arrangements to enable the Combined Authority to also pay travel and subsistence allowances to members of committees or sub-committees in

¹ <https://www.gov.uk/government/publications/devolution-to-the-greater-manchester-combined-authority-and-transition-to-a-directly-elected-mayor>

accordance with the Combined Authority scheme, to pay allowances other than travel and subsistence allowances to members of a committee or sub-committee who are not elected members of a constituent council, and to enable the independent remuneration panel to make recommendations to the Combined Authority and the constituent councils on the remuneration of all members of committees and sub-committees. These amendments have the effect of enabling the Combined Authority to pay the travel and subsistence of all members of the Combined Authority and members of Combined Authority committees, and other allowances for those who are not elected members of a constituent council, subject to the conditions described above. These constitutional amendments could not be made before earlier secondary legislation had itself been made.

- 7.4 In taking the decision to make the constitutional changes in this Order, the Secretary of State has had regard to the need to reflect the identities and interests of local communities, and the need to secure effective and convenient local government, and has applied the statutory tests: that no further consultation is required on the proposals; and that the proposals are likely to improve the exercise of statutory functions in the area of the Combined Authority.
- 7.5 The Order also amends the process for setting the PCC component of the Greater Manchester Mayoral precept. The setting of the Mayoral budget, including the precept that in Greater Manchester is formed of two components, is determined in secondary legislation which was made after the functions of the PCC had been conferred on the Combined Authority, to be exercised by the Mayor. The amendment brings forward the date by which the scrutiny process in respect of the PCC component of the Greater Manchester Mayoral precept must end, so that this is before the date on which the Combined Authority must issue the precept. The Combined Authority planned, if necessary, to follow for the 2018-19 precept, on a voluntary basis, the process as would be required by this Order.

8. Consultation outcome

- 8.1 The Combined Authority has undertaken two relevant consultations. These consultations were in relation to proposals contained in schemes that the Combined Authority prepared and published using provisions from the 2009 Act. The Combined Authority prepared these schemes following negotiation of devolution agreements with the Government. These consultations have already been the subject of other Explanatory Memorandums, as most of the proposals consulted on have already been provided for in legislation. As regards the amendment to the process for setting the PCC component, this has been requested by the Combined Authority to ensure the statutory timetables for both components of the precept are properly integrated.
- 8.2 In accordance with the requirements at section 113(2) of the 2009 Act, the Secretary of State has reviewed these consultations, and is of the view that no further consultation is necessary. The Secretary of State is satisfied that the Combined Authority'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. The Secretary of State has also been sent the Combined Authority's summaries of responses to the consultations, to which he has had regard.

- 8.3 The first consultation ran for 8 weeks from 21 March to 18 May 2016. The Combined Authority was consulting on proposals in a scheme² which included the proposal that the Mayor should control the Greater Manchester Housing Investment Fund, in addition to the Combined Authority taking on a range of housing powers.
- 8.4 For this consultation, the Combined Authority provided each local authority and partner organisation with a toolkit to aid local engagement, in line with their individual communication strategies. The consultation received 237 responses, with 169 from members of the public, 19 from public bodies, 7 from businesses, 14 from representative bodies, 4 who were classified as other and 24 who provided no details. The Combined Authority's summary of responses to the consultation³ includes a demographic analysis of respondents and analysis of responses together with the Combined Authority's response to the consultation.
- 8.5 In relation to the Housing Investment Fund, 139 respondents provided comments on planning, housing and regeneration, and 37 were supportive, 13 were not supportive and 89 raised points that were not in connection to the specific issues raised. Of the 139 responses, 17 were from key stakeholders. Of these key stakeholders, 12 were supportive of proposals, 1 was unsupportive, and 4 raised points that were not in connection to the specific issues raised through the governance review and scheme that were the subject of the consultation.
- 8.6 The summary of responses to the consultation records that there was an array of comments surrounding this policy area with many respondents suggesting the need for more affordable and social housing, and many people were concerned about protecting the greenbelt and heritage sites, as well the need for more investment. The summary does not record any points being raised in relation to the Mayor's involvement with the Housing Investment Fund.
- 8.7 The second consultation ran for 6 weeks from 4 July to 15 August 2016 and again the Combined Authority was consulting on proposals in a scheme.⁴ This scheme made a number of proposals relating to committees that have now been legislated for, which is relevant to this Order, as it is for members of these committees and sub-committees that the Combined Authority would be able to refer to an Independent Remuneration Panel for a recommendation on allowances. The scheme also proposed that some modifications should be made to enable the councils to establish a joint independent remuneration panel to make recommendations on allowances to committee members. Legislation has since been made to enable the Combined Authority to seek views from an independent remuneration panel on allowances for the Mayor.
- 8.8 Again, the consultation was publicised by the Combined Authority and each of the local authority and partner organisations. The consultation received 291 responses and 278 responded to the consultation questions using the online survey. Of these, 229 were from members of the public, 17 from public bodies, 4 from businesses, 26 from other organisations, and 2 did not comment. The Combined Authority's summary of responses to the consultation⁵ includes a demographic analysis of respondents and analysis of responses.

² https://www.greatermanchester-ca.gov.uk/meetings/meeting/249/greater_manchester_combined_authority

³ https://www.greatermanchester-ca.gov.uk/download/meetings/id/999/16_gmca_consultation_-_governance_review_and_scheme_phase_1

⁴ https://www.greatermanchester-ca.gov.uk/meetings/meeting/252/greater_manchester_combined_authority

⁵ https://www.greatermanchester-ca.gov.uk/meetings/meeting/288/greater_manchester_combined_authority

8.9 In relation to remuneration, 278 respondents replied to the section on equalities, the section of the scheme that included the relevant proposals. Of these responses, 183 were supportive of proposals, 34 were not supportive, 34 neither agreed nor disagreed, and 27 did not comment. Of those who were not supportive, concerns included views such as “these are fine words but I remain unconvinced that these arrangements will address inequalities” and that the proposals were an example of “political correctness”. The summary does not record any points being raised in relation to remuneration.

9. Guidance

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

10. Impact

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

10.2 As regards impact on the public sector, in relation to the constitutional changes the Secretary of State is required to have regard to the need to secure effective and convenient local government.

10.3 An Impact Assessment has not been prepared for 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 The Combined Authority is 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.

13. Contact

13.1 Ruth Miller at the Ministry of Housing, Communities and Local Government, Telephone: 030 3444 2547 or email: ruth.miller@communities.gsi.gov.uk, can answer any queries regarding the instrument.