

Draft Order laid before Parliament under section 117(2) of the Local Democracy, Economic Development and Construction Act 2009, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2017 No. 0000

LOCAL GOVERNMENT, ENGLAND

The Greater Manchester Combined Authority (Public Health Functions) Order 2017

Made - - - -

Coming into force in accordance with article 1

The Secretary of State makes the following Order in exercise of the powers conferred by sections 105(1), 114(1) and 117(5) of the Local Democracy, Economic Development and Construction Act 2009(a) (“the 2009 Act”).

The Secretary of State, having had regard to a scheme prepared and published under section 112 of the 2009 Act(b), considers that—

- (a) the making of this Order is likely to improve the exercise of statutory functions in the area to which the Order relates, and
- (b) any consultation required by section 113(2) of the 2009 Act(c) has been carried out.

In making 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(d).

In accordance with section 105(3A) of the 2009 Act, the Greater Manchester Combined Authority and the district councils whose areas are comprised in the area of that Combined Authority have consented to the making of this Order(e).

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament under section 117(2) of the 2009 Act.

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- (a) 2009 c.20. Section 105 was amended by sections 6, 9 and 14 of the Cities and Local Government Devolution Act 2016 (c.1) (“the 2016 Act”). Section 114 was amended by section 23 of, and paragraphs 17 and 26 of Schedule 5 to, the 2016 Act. Section 117 was amended by sections 13 and 23 of, and paragraphs 5, 17 and 29 of Schedule 5 to, the 2016 Act.
 - (b) Section 112 was amended by sections 6 and 23 of, and paragraphs 17 and 23 of Schedule 5 to, the 2016 Act.
 - (c) Section 113 was amended by sections 12, 14 and 23 of, and paragraph 24 of Schedule 5 to, the 2016 Act.
 - (d) See section 113(3) of the 2009 Act for the requirement on the Secretary of State to have regard to specified matters when making an order under section 105.
 - (e) This Order relates to the area of the Greater Manchester Combined Authority, which was established by the Greater Manchester Combined Authority Order 2011 (S.I. 2011/908) as amended by the Greater Manchester Combined Authority (Amendment) Order 2015 (S.I. 2015/960). Article 2 of S.I. 2011/908 defines the “combined area” as the area consisting of the areas of the constituent councils, who are the local government areas of Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Stockport, Tameside, Trafford and Wigan.

Citation and commencement

1. This Order may be cited as the Greater Manchester Combined Authority (Public Health Functions) Order 2017 and comes into force on the day after the day on which it is made.

Interpretation

2. In this Order—

“constituent councils” means the district councils for the local government areas of Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Stockport, Tameside, Trafford, and Wigan;

“GMCA” means the Greater Manchester Combined Authority, a body corporate established by the Greater Manchester Combined Authority Order 2011(a);

“the NHS Act 2006” means the National Health Service Act 2006(b); and

“relevant functions” means functions exercisable by virtue of article 3.

Exercise of public health functions by the GMCA

3.—(1) The functions of the constituent councils specified in section 2B(1) of the NHS Act 2006(c) (functions of local authorities and Secretary of State as to improvement of public health) are exercisable by the GMCA in relation to its area.

(2) The functions referred to in paragraph (1) are exercisable concurrently with the constituent councils.

Application of section 6C of the NHS Act 2006

4. Section 6C(2) of the NHS Act 2006(d) (regulations as to the exercise by local authorities of certain public health functions) applies to the GMCA as it applies to the constituent councils, but as if for the reference to “its public health functions” there were substituted “the functions exercisable by virtue of article 3 of the Greater Manchester Combined Authority (Public Health Functions) Order 2017”.

Application of section 73B of the NHS Act 2006

5.—(1) Subsection (1) of section 73B of the NHS Act 2006(e) (exercise of public health functions of local authorities: further provision), which relates to documents and guidance issued by the Secretary of State relating to public health functions, applies to the GMCA in the exercise of its relevant functions as it applies to the constituent councils in the exercise of the functions mentioned in subsection (2) of that section.

(2) Subsections (5) and (6) of section 73B of the NHS Act 2006, which relate to the preparation and publication of an annual report on the health of the people in the area, apply to the GMCA in the exercise of its relevant functions as they apply to the constituent councils, but as if for the reference to “The director of public health for a local authority” in subsection (5) there were substituted “The Greater Manchester Combined Authority”.

Application of section 75 of the NHS Act 2006

6.—(1) Save as provided by section 75(7A) to (7D)(f), section 75 of the NHS Act 2006 (arrangements between NHS bodies and local authorities) and regulations made under that section

(a) S.I. 2011/908, as amended by S.I.2015/960 and S.I. 2016/1267.

(b) 2006 c.41.

(c) Section 2B was inserted by section 12 of the Health and Social Care Act 2012 (c.7) (“the 2012 Act”).

(d) Section 6C was inserted by section 18(1) of the 2012 Act.

(e) Section 73B was inserted by section 31 of the 2012 Act.

(f) Section 75(7A) to (7D) were inserted by section 19 of, and paragraphs 1 and 6 of Schedule 4 to, the Cities and Local Government Devolution Act 2016.

before the coming into force of this Order apply to the GMCA in the exercise of its relevant functions as those provisions apply to the constituent councils.

(2) But where the GMCA enters into prescribed arrangements by virtue of section 75(7C) and (7D) of the NHS Act 2006, and is thus treated as an NHS body in relation to those prescribed arrangements, it may not enter into those same prescribed arrangements in relation to the exercise of its relevant functions, unless, and to the extent that, it is permitted to do so by regulations made under subsection (1) of that section.

(3) In paragraph (2),

- (a) “NHS body” is to be construed in accordance with sections 75(8) and 275 of the NHS Act 2006(a);
- (b) “prescribed arrangements” is to be construed in accordance with section 75 of the NHS Act 2006.

Duty to have regard to NHS Constitution

7.—(1) Section 2(1) of the Health Act 2009(b) (duty to have regard to NHS Constitution) applies to the GMCA in the exercise of its relevant functions as it applies to the constituent councils in the performance of their health service functions.

(2) In paragraph (1), “health service function” has the meaning given by section 2(3) of the Health Act 2009(c).

Signed by authority of the Secretary of State for Health

	<i>Name</i>
Address	Parliamentary Under Secretary of State
Date	Department of Health

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the conferral of certain public health functions of local authorities on the Greater Manchester Combined Authority (“the GMCA”). This Order has been made following the publication on 18 March 2016 of a scheme for the conferral of functions on the GMCA. The scheme is available at: https://www.greatermanchester-ca.gov.uk/new_devo_powers.

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 under section 105 of the 2009 Act.

Article 3 of the Order confers on GMCA certain public health functions of local authorities, which are to be exercised concurrently with the ten district councils whose areas are comprised in the GMCA’s area (“the constituent councils”). The functions conferred are those in section 2B(1) of the National Health Service Act 2006 (“the NHS Act 2006”), namely the duty to take such steps as the local authority considers appropriate for improving the health of people in its area.

In consequence of the conferral of public health functions on the GMCA by article 3, articles 4 to 7 apply certain provisions of the NHS Act 2006 and the Health Act 2009 to the GMCA as those provisions apply to the constituent councils in exercising those public health functions.

(a) The definition of “NHS body” in section 275 of the National Health Service Act 2006 was inserted by section 55(1) of, and paragraph 138 to, the 2012 Act.
(b) 2009 c.21. Section 2(1) was amended by section 55(2) of, and paragraphs 173 and 175 of Schedule 5 to, the 2012 Act.
(c) Section 2(3) was amended by paragraphs 173 to 175 of Schedule 5 to the 2012 Act.

Article 4 provides that regulations made under section 6C(2) of the NHS Act 2006 may prescribe the steps that the GMCA must take in exercising the public health functions conferred by article 3.

Article 5(1) provides that, when exercising the public functions conferred by article 3, the GMCA must have regard to documents published, and guidance given, by the Secretary of State as to the exercise of those functions. Article 5(2) requires the GMCA to prepare and publish an annual report on the health of the people in its area.

Article 6 provides that, in relation to public health functions conferred by article 3, the GMCA is treated as a local authority for the purposes of: a) powers to make regulations about partnership arrangements between NHS bodies and local authorities under section 75 of the NHS Act 2006; and b) existing regulations made under those powers. Article 6 ensures that this does not affect the position under section 75(7A) to (7D) under which the GMCA is treated as if it were an NHS body in certain circumstances. Article 6(2) ensures that the GMCA may not enter into the same set of partnership arrangements in its capacities as both a local authority and an NHS body until otherwise provided by regulations under section 75 of the NHS Act 2006.

Article 7 provides that the GMCA must have regard to the NHS Constitution in the exercise of “its health service functions”, consistent with the duty on its constituent councils by virtue of section 2 of the Health Act 2009. In GMCA’s case, “health service functions” are limited to the public health functions in section 2B(1) of the NHS Act 2006 that it may exercise by virtue of article 3.

A full regulatory impact assessment has not been prepared as this instrument will have no impact on the costs of business and the voluntary sector.

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