

EXPLANATORY MEMORANDUM TO

THE BARNSELY, DONCASTER, ROTHERHAM AND SHEFFIELD COMBINED AUTHORITY (FUNCTIONS AND AMENDMENT) ORDER 2020

2020 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.
- 1.2 For the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority (Functions and Amendment) Order 2020, 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 local and public authorities to be exercised by the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority (the “SCRCA”), and for certain specified functions of the SCRCA to be exercisable only by the Mayor of the SCRCA. It also amends certain governance arrangements.

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 because it is concerned with local government in a specific part of 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 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 and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and 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. 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 Simon Clarke MP has made the following statement regarding Human Rights:
- “In my view the provisions of the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority (Functions and Amendment) Order 2020 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 SCRCA was established by the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority Order 2014 (S.I. 2014/863). The position of elected mayor was established by the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority (Election of Mayor) Order 2016 (S.I. 2016/800), with the dates for mayoral elections amended by the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority (Election of Mayor) (Amendment) Order 2017 (S.I. 2017/432).
- 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, this includes membership, remuneration, voting powers and executive arrangements of a combined authority.
 - Section 105(1) and (3) of the 2009 Act (Constitution and functions: local authority functions generally): the Secretary of State may by order make any provision for a combined authority that may be made in relation to an economic prosperity board under section 91 of the 2009 Act, namely for a function of a local authority to be a function of the combined authority, and 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), (2) 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.

- Section 107D(1), (7) and (8) 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), may confer ancillary powers on the mayor for the purposes of the exercise of general functions, and may confer on the mayor a general power of competence similar to that conferred on a combined authority under an order made under section 113D.
- Section 107E(1) to (4) of the 2009 Act (Joint exercise of general functions): 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 (joint committees) 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 113D of the 2009 Act: the Secretary of State may by order confer the general power of competence, found in Chapter 1 of Part 1 of the Localism Act 2011, on a combined authority.
- Section 114(1) and (3) 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), disapplying, repealing or revoking any enactment whenever passed or made.

7. Policy background

What is being done and why?

- 7.1 In its 2019 manifesto, the Government outlined its ambition for full devolution across England. This Order is a significant step in the implementation of the SCRCA devolution deal as part of that agenda. It provides for powers to be conferred on the SCRCA, some to be exercised by the Mayor, and will lead to the devolution of significant budgets, including investment funds of £900 million over 30 years.
- 7.2 In 2012 the Conservative and Liberal Democrat coalition Government launched a programme of city deals to unlock the growth potential of cities. The SCRCA was established in April 2014, replacing the South Yorkshire Integrated Transport Authority, to provide the strengthened governance and accountability to match the new powers and responsibilities on offer. It has four constituent councils (Barnsley, Doncaster, Rotherham and Sheffield) and five non-constituent councils (Bassetlaw, Bolsover, Chesterfield, Derbyshire Dales, and North East Derbyshire).
- 7.3 In 2015, the Government agreed a devolution deal with the SCRCA, which included £30 million annually in gainshare funding for 30 years, the conferral of planning, housing, transport, and skills and education functions, plus devolution of

the annual £35 million Adult Education Budget. An Order was then made to establish a mayor for the SCRCA.

- 7.4 In 2016, in accordance with the requirements of the 2009 Act, the SCRCA conducted a public consultation on taking on the powers in the devolution deal and amending the area of the SCRCA to include the area of two of their non-constituent district councils: Bassetlaw and Chesterfield. Derbyshire County Council launched a judicial review into the consultation in August 2016, which, in December 2016, the Court found to be insufficient without a specific question on whether to expand the area of the combined authority. To allow time for a fresh consultation process, the SCRCA leaders requested that the Government delay the mayoral election scheduled for 4 May 2017 to 3 May 2018.
- 7.5 Doncaster and Barnsley councils then withdrew their support for the 2015 deal in favour of developing a “One Yorkshire” deal across a wider geographic area. A Mayor was elected in May 2018, but without the powers envisaged in the 2015 deal.
- 7.6 In February 2019, the Government rejected any idea of “One Yorkshire” because it did not meet its criteria for devolution, namely that devolution should be to a functional economic area and that the governance arrangements should be commensurate to the powers and budgets devolved. In March 2019, the Mayor and all the SCRCA Leaders wrote to the Secretary of State to ask that the 2015 deal be implemented, covering the existing geographical area of the SCRCA.
- 7.7 In response the Secretary of State confirmed the Government’s commitment to the deal and stressed that the next steps were for the SCRCA to take. In January 2020 the SCRCA agreed a governance review and scheme for an Order implementing the devolution deal. They decided to undertake the statutorily required public consultation on the proposals in the scheme. The consultation ended on 15 March 2020 and on 15 April 2020 the SCRCA agreed to submit a summary of consultation responses to the Secretary of State.
- 7.8 The Secretary of State is satisfied that the statutory conditions for the Order provided for in the 2009 Act have been met:
- having considered the SCRCA’s consultation and summary of responses, no further consultation is necessary, as its consultation is sufficient; and
 - making an Order to confer the proposed functions would be: likely to improve the exercise of statutory functions in the SCRCA area; appropriate, having regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government; and that in relation to local authority functions they can be appropriately exercised by the SCRCA.
- 7.9 The Order confers a number of local authority and public authority functions on the SCRCA to be exercised in relation to the SCRCA area, as reflected in the devolution deal. Certain functions are to be exercisable by the Mayor individually, and others by the SCRCA (which is chaired by the Mayor). Specifically, this Order makes provisions, as described in the following paragraphs, to confer on the SCRCA functions, which cover transport (7.10), education, skills and training (7.11 to 7.13), housing and regeneration (7.14) and Mayoral development areas (7.15 to 7.16).
- 7.10 In relation to transport, and in addition to the transport functions already conferred on the SCRCA, the Order includes provisions for the SCRCA to:

- engage with Highways England and local highway authorities about construction, improvement, and maintenance of roads under sections 6 and 8 of the Highways Act 1980, a power to be held concurrently with constituent local authorities; and
 - have the functions of a Minister of the Crown in respect of the allocation of the devolved transport budget under section 31 of the Local Government Act 2003 (power to pay grant) in relation to the SCRCA area, a power to be held concurrently with the Secretary of State.
- 7.11 In relation to education, skills and training, functions are conferred on the SCRCA to be exercised concurrently with constituent local authorities including:
- in the Further and Higher Education Act 1992, the duty to provide education for named individuals;
 - in the Education Act 1996, the duty to promote high standards in primary and secondary education; functions in respect of 16-18 year olds and in respect of persons over 19; and
 - in the Education and Skills Act 2008, duties to promote the effective participation in education or training; to make arrangements to identify persons not in education or training; provision of services to encourage, enable or assist the effective participation of persons in education or training; provisions for support and learning and support agreements.
- 7.12 Functions in the Apprenticeship, Skills, Children and Learning Act 2009 are transferred from the Secretary of State to the SCRCA to secure provision of facilities for education and training for persons aged 19 or over and payment of tuition fees by the SCRCA to providers incurred under this provision; the SCRCA is required to adopt rules for eligibility of awards by institutions to which it has made payments under the 2009 Act.
- 7.13 Functions in the Apprenticeship, Skills, Children and Learning Act 2009 are conferred on the SCRCA, exercisable concurrently with the Secretary of State, which relate to the encouragement of education and training for persons aged 19 or over and the provision of financial resources.
- 7.14 In relation to housing and regeneration, land acquisition and disposal powers under the Housing and Regeneration Act 2008 are conferred on the SCRCA, exercisable concurrently with Homes England.
- 7.15 This Order provides for the conferral of the Mayor of London's function to designate mayoral development areas in the area of the SCRCA. This is the first step in establishing a Mayoral Development Corporation (MDC) in the SCRCA area and a further order will be necessary to create such a body; the timeline for this order would be dependent on the local area.
- 7.16 The relevant powers concerning MDCs are in the Localism Act (Part 8, Chapter 2; Schedule 21 and Schedule 22), specifically for the Mayor of London to exercise in relation to the Greater London area. This Order uses the provisions in the 2009 Act, as amended by the 2016 Act, to confer the corresponding functions from the 2011 Act on the SCRCA, to be exercised by the Mayor of the SCRCA. The Order provides that:
- references in the 2011 Act to the Greater London Authority (GLA) and the London Assembly are to be read as references to the SCRCA;

- the SCRCA is to have in relation to its area the corresponding functions that the Mayor of London has in relation to London;
- the Mayor of the SCRCA must exercise the functions conferred on the SCRCA;
- the Mayor may only exercise the functions conferred on the SCRCA if the SCRCA member for any constituent council whose council area contains any part of the area to be designated consents to the exercise of the functions;
- the Mayor may only exercise the planning functions conferred on the SCRCA where the exercise of these functions is in respect of the whole or any part of the area of the Peak District National Park Authority that overlaps with the SCRCA area, if the National Park Authority consents;
- the 2011 Act provides that the London Mayor can designate an area if the London Mayor considers that designation of the area is expedient for furthering any one or more of the Greater London Authority's principal purposes. As the SCRCA does not have “principal purposes” the Order replaces this with a condition that the SCRCA Mayor must consider that such designation would further “economic development and regeneration in the SCRCA area”; and
- the persons to be consulted before an area may be designated have been changed to reflect the conditions in the SCRCA area, specifically this includes the Peak District National Park Authority, which has been added to the list of statutory consultees as the area of the National Park overlaps with the SCRCA.

7.17 The Order provides for the funding of the SCRCA. It does this by requiring the constituent councils to meet any reasonably incurred costs of the SCRCA, to the extent that these costs are not to be met by other resources. The Order then provides that the constituent councils may agree the respective proportions they will pay; in absence of this agreement, the proportions are to be calculated by reference to their respective shares of the total resident population, as estimated by the Statistics Board.

7.18 The Order provides for the General Power of Competence under Part 1 of the Localism Act 2011 to have effect in relation to the SCRCA as it does for a local authority. The Order further provides for a General Power of Competence to be exercisable by the Mayor. This provision has the effect of confirming the Mayor’s power to do things appropriate or incidental to those functions indicated as exercisable by the Mayor.

7.19 Finally, the Order makes constitutional amendments to the SCRCA Establishment Order. These include:

- providing that the Mayor is to be in the majority for votes required for a decision relating to functions conferred by the Order;
- providing that the exercise of the function to create and adopt a Spatial Development Framework will require unanimity of the Mayor and Constituent Members;
- providing that the Mayor may appoint a political advisor; and
- providing that the Combined Authority may establish an independent remuneration panel to recommend allowances payable to the Mayor of the SCRCA and their deputy, and that the SCRCA can fund such remuneration.

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 this point.

10. Consultation outcome

10.1 As required by statute, the SCRCA undertook a consultation¹ on the proposals for the Order contained in its scheme². The consultation ran for six weeks from 3 February to 15 March 2020 and was promoted and publicised in a number of ways by the SCRCA, its four constituent councils, plus partner organisations such as local chambers of commerce and Sheffield Hallam University, as well as by local MPs. The measures included:

- pro-active media releases and pro-active engagement of regional and local media throughout the consultation, including advertisements in the South Yorkshire printed press;
- a dedicated consultation webpage on the SCRCA website, providing information about the consultation and acting as the portal for members of the public to fill in the online questionnaire;
- information displayed prominently on the websites of all four local authorities in South Yorkshire; paid adverts on Facebook, Twitter, Instagram and LinkedIn reached over 420,000 people, and social media posts published by the SCRCA and the four South Yorkshire local authorities had the potential to reach over 257,000 followers;
- posters advertising the consultation displayed in public buildings including transport interchanges, council offices and libraries; and
- the SCRCA directly contacted more than 40 stakeholders across the region and in neighbouring areas, including MPs, business representative organisations, colleges and universities, and business leaders to make them aware of the consultation.

10.2 Proposals for conferral of transport powers were strongly supported by the public in the consultation, receiving 558 responses in support out of 648 responses to the relevant question (60 opposed). Supportive comments referred to the opportunity to improve transport services and that devolved control should happen as soon as possible. 18 comments were received regarding the need for an adequate budget to support the powers being devolved. A small number of negative comments were received relating to opposition to HS2. Stakeholders also responded positively, with 18 positive and 1 neutral response out of 19. Comments included the need for better links between areas and continued development of infrastructure as important parts of a devolved transport strategy. A number of stakeholders emphasised the need for a

¹ Consultation documents are available under Agenda Item 11 at <https://moderngov.sheffieldcityregion.org.uk/ieListDocuments.aspx?CIId=137&MIId=363&Ver=4>

² <https://sheffieldcityregion.org.uk/wp-content/uploads/2020/02/Devolution-Governance-Review-web-version.pdf>

prioritisation of cleaner transport infrastructure across modes and investment in local roads, buses and trams.

- 10.3 Proposals for conferral of education, skills and training powers were strongly supported by the public in the consultation, receiving 543 responses in support out of 651 responses to the relevant question (58 opposed). The most common reason given (57) for support was that the proposals would provide the education and skills needed locally. The most common reason given (13) for opposition was that education and skills powers should be controlled nationally and follow national standards. Stakeholder responses were overwhelmingly positive, with 17 positive and only 1 negative response out of 20. The Home Builders Federation felt that activities relating to supporting the development and acquisition of constructions skills for housebuilding should be informed by greater partnership working, so as to ensure that skills can be targeted towards those desired by local employers and that policies are informed by local understanding. The Workers' Education Association argued that skills courses should be offered alongside wider programmes such as confidence-building or health and wellbeing.
- 10.4 On housing functions, the proposals were strongly supported by the public in the consultation, receiving 550 responses in support out of 650 responses to the relevant question (58 opposed). Various reasons were given in support of the proposals, including local decision-making and improvements to the quality and supply of housing. Some respondents in favour of the proposals wanted affordable housing (30 responses) and social housing (22 responses) to be prioritised. Suggestions were also made that housing needed to be supported by appropriate infrastructure, such as schools and hospitals. The most common reason given (9) for opposition was concerns over housing being built on greenfield or green belt land. Stakeholders also responded positively, with 18 positive and 1 negative response out of 19. There was general agreement that safe, decent and affordable housing in adequate quantity would deliver for local people, boost local employment and allow for reinvestment in the region. The only negative comment was from the Sheffield Green Party, which wanted to prioritise net zero carbon housing.
- 10.5 Regarding mayoral development areas and regeneration, proposals were strongly supported by the public in the consultation, receiving 513 responses in support out of 647 responses to the relevant question (79 opposed). Supportive comments referred to employment opportunities and regeneration, as well as greater cohesion and joined-up thinking. A small number of comments were received regarding greenfield sites and concerns around vested interests. Stakeholders also responded positively, with 18 positive and 1 negative response out of 19. The Home Builders Federation supported the ability to establish Mayoral Development Corporations but commented that a non-statutory spatial plan would be less powerful than a statutory plan.
- 10.6 Proposed arrangements for those functions to be the responsibility of the Mayor and for funding of the SCRCA were also supported by the public in the consultation, receiving 420 responses in support out of 649 responses to the relevant question. 135 were opposed, making this the least popular part of the consultation. Comments were made about the Mayor's ability to cast a deciding vote on issues, general concerns about the powers being granted to the Mayor and the current situation of the Mayor also being an MP. Among stakeholders, 14 of the 19 responded positively, with one negative. Supportive comments related to a workable decision-making process that would enable local authorities and the Mayor to collaborate to make the best possible

choices for local people across the region. The Sheffield Green Party expressed a concern that local citizens would lack influence in the SCRCA's decisions.

- 10.7 In accordance with the requirements at section 110(2) of the 2009 Act, the Secretary of State has reviewed the consultation and is of the view that no further consultation is necessary. The Secretary of State is satisfied that the SCRCA's consultation was sufficient in terms of its length (six weeks); the mechanisms used (online and paper versions and responses); the promotional activity (including social media, media releases, advertising and direct mailing to key stakeholders); and the analysis undertaken by the SCRCA with support from Ipsos MORI. The Secretary of State has also been sent the SCRCA's summary of responses to the consultation, to which he has had regard.
- 10.8 The consultation also sought views on a proposal that the SCRCA be provided with additional borrowing powers. It is anticipated that the SCRCA will be able to agree a debt cap with HM Treasury, and after this agreement regulations conferring these additional borrowing powers would then be made. While there was general support for this proposal, it is a matter to be taken forward outside this Order.

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 As regards impact on the public sector, conferring functions on the SCRCA should lead to operational efficiencies that could lead to reduced costs. Indeed, the statutory tests require the Secretary of State to consider that conferring the functions on the Combined Authority is likely to improve the exercise of statutory functions in the area concerned, and the Secretary of State is required to have regard to the need to secure effective and convenient local government. As explained at paragraph 7.8, the Secretary of State is satisfied that these tests are met in relation to the provisions of the Order.
- 12.3 A Regulatory Impact Assessment has not been prepared for this instrument because it does not directly affect 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.

15. Contact

- 15.1 Steve Wright at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 9033 or email: steve.wright@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 Simon Clarke MP, Minister of State at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.