

EXPLANATORY MEMORANDUM TO
THE NORTH EAST MAYORAL COMBINED AUTHORITY (ESTABLISHMENT
AND FUNCTIONS) ORDER 2024

2024 No. 402

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Jacob Young, Parliamentary Under-Secretary of State for Levelling Up at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

2.2 Paul Rowsell, Head of the Governance Reform and Democracy Unit and Deputy Director in the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Andrew Newton at the Department for Levelling Up, Housing and Communities, Andrew.Newton@levellingup.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Order provides for the establishment, including governance arrangements, of the North East Mayoral Combined Authority ('NEMCA') comprising of seven local authorities across the North East – Durham County Council, Gateshead Metropolitan Borough Council, Newcastle upon Tyne City Council, North Tyneside Metropolitan Borough Council, Northumberland County Council, South Tyneside Metropolitan Borough Council and Sunderland City Council. The Order provides for a directly elected mayor for the North East, and the Order will also provide for certain functions of local and public authorities to be conferred on NEMCA, and for certain specified functions of NEMCA to be exercisable by the mayor individually.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. Policy Context

What is being done and why?

- 5.1 In its 2019 manifesto, the government outlined its ambition for full devolution across England¹. The 2022 White Paper ‘Levelling Up the United Kingdom’² contained a mission to empower local leaders and communities: ‘By 2030, every part of England that wants one will have a devolution deal with powers at or approaching the highest level of devolution and a simplified, long-term funding settlement’.
- 5.2 On 28 December 2022, a devolution deal was agreed between the Government, and seven councils across the North East which sought to build on existing collaboration, delivery and success that have overseen programmes of investment securing thousands more jobs, supporting hundreds of residents into employment and major investment in infrastructure through the two existing combined authorities (North East Combined Authority (NECA) and the North of Tyne Mayoral Combined Authority (NoTCA), as well as the North East Local Enterprise Partnership and Transport North East.
- 5.3 The deal creates a new combined authority - NEMCA - with functions to grow the whole North East economy. In doing this, NEMCA will have responsibility for promoting the development of the people, communities and businesses it serves across the whole region, delivering increased opportunity and prosperity, and enabling the needs of the regional economy to be better met. The deal will specifically provide NEMCA with investment funds of £48 million per year for 30 years, comprising £1.4 billion in total alongside a range of other funding commitments.

What was the previous policy, how is this different?

- 5.4 The Order implements the North East Devolution Deal. It provides for the abolition of NECA and NoTCA, and simultaneously establishes NEMCA, comprising seven local government areas across the North East – the county of Durham, the metropolitan borough of Gateshead, the city of Newcastle upon Tyne, the metropolitan borough of North Tyneside, the county of Northumberland, the metropolitan borough of South Tyneside and the city of Sunderland. The Order will also confer functions and powers onto NEMCA and establish the office of Mayor of the North East with the first election to take place on 2 May 2024. The Mayor will become the chair of NEMCA.
- 5.5 There are two commencement dates covering different parts of the Order. Part 4 enabling the arrangement and running of the first mayoral election over the NEMCA area, comes into force the day after the day on which the Order is made as do those sections of Part 3 allowing for the appointment of statutory officers to be in post on the establishment of NEMCA and for the extension of the 2023-24 financial year for NECA and NoTCA to prevent them having to complete a set of accounts only covering six weeks. All the other provisions in the Order come into force on 7 May 2024. The seven local authorities affected by the Order have consented to the making of the Order alongside the North of Tyne Mayor.
- 5.6 This Order makes provision for elections on 2 May 2024 for which advance preparations are required but the Order does not impose duties on election administrators that are significantly more onerous than before or require them to adopt different patterns of behaviours.

¹ https://assets-global.website-files.com/5da42e2cae7ebd3f8bde353c/5dda924905da587992a064ba_Conservative%202019%20Manifesto.pdf

² <https://www.gov.uk/government/publications/levelling-up-the-united-kingdom>

- 5.7 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 consultation and summary of responses, he considers that no further consultation is necessary, as the consultation undertaken by the North East councils is sufficient;
 - he considers that making the Order would be likely to improve the exercise of statutory functions in the North East;
 - he considers it appropriate to make the Order having had regard to the need to reflect the identities and interests of local communities and secure effective and convenient local government; and
 - that NEMCA will consist of the whole of two or more local government areas in England and is not part of another combined authority, Economic Prosperity Board, or integrated transport area.
- 5.8 The Order confers a number of local authority and public authority functions on NEMCA to be exercised in relation to the NEMCA area, as reflected in the devolution deal. Certain functions are to be exercisable by the Mayor individually and others by NEMCA (which is chaired by the Mayor).
- 5.9 Specifically, the Order makes provisions to confer on NEMCA functions related to transport (see paragraphs 5.13 to 5.20); adult education and skills (see paragraphs 5.21 to 5.27); housing, regeneration and planning (see paragraph 5.28) and the establishment of Mayoral Development Corporations (see paragraphs 5.29 and 5.30). The Order also provides for certain functions to be functions exercisable by the Mayor individually (see paragraphs 5.31 to 5.33 and 5.35), makes provision on funding (see paragraph 5.34) and details a number of additional NEMCA functions (see paragraph 5.36). Constitutional arrangements for NEMCA are covered at paragraph 5.37.

Part 2 of the Order - Establishment

- 5.10 This part provides for the abolition of NECA and NoTCA and the dissolution of their areas, and the abolition of the Joint Transport Committee. It also simultaneously provides for the establishment and naming of NEMCA together with the generic functions that all combined authorities have.

Part 3: Transfer of Functions, Property, Rights, Assets and Liabilities and Associated Provision

- 5.11 This part ensures that all relevant functions, property, rights, assets and liabilities can transfer effectively from NECA and NoTCA into NEMCA. It also enables NEMCA to continue all aspects of work started within NECA and NoTCA including those undertaken by them through the joint transport committee. It specifically provides for the transfer of staff into NEMCA and ensures NEMCA has the required statutory officers in place on establishment and enables the financial accounts of NECA and NoTCA to be closed effectively.

Part 4: Election of Mayor

- 5.12 This part provides for the cancellation of the scheduled mayoral election for NoTCA, due to take place on 2 May 2024. It further provides for there to be a Mayor for the area of NEMCA with the first election to take place on 2 May 2024 and subsequent elections taking place on the ordinary day of election in every fourth year thereafter.

Part 5: Transport

- 5.13 Part 5 of the Order confers onto NEMCA a range of functions that will allow it to maintain and improve transport services in the NEMCA area. The Tyne and Wear Passenger Transport Executive which is currently an executive body jointly of NECA and NoTCA, will be an executive body of NEMCA.
- 5.14 NEMCA is to be responsible for the delivery of the area's local transport plan under Part 2 (local transport) of the Transport Act 2000. Local transport plans are statutory documents used by areas to assess the transport needs and challenges in their area and set out actions and spending plans to maintain and improve services. This function of NEMCA is exercisable by the Mayor individually.
- 5.15 NEMCA is to be responsible for bus partnerships, tendering of some bus services, ticketing and concessionary fares schemes, and to have the power to introduce bus franchising, if it chooses to do so (Parts 4 and 5, Transport Act 1985; Part 2, Transport Act 2000).
- 5.16 Constituent authorities will remain the highway and traffic authorities for the area. However, NEMCA is to have the following highways and traffic authority functions in relation to the NEMCA area, held concurrently with constituent councils and exercisable by NEMCA with the consent of the constituent council where the function is to be exercised:
- functions that enable NEMCA to enter into agreements with the Minister or strategic highways companies relating to the exercise of functions with respect to trunk roads etc (section 6, Highways Act 1980) and to enter into agreements with local highway authorities and strategic highways companies for the doing of certain works (section 8, Highways Act 1980);
 - functions in relation to the preparation, implementation and variation / revocation of permit schemes arising from the Traffic Management Act 2004 and the Traffic Management Permit Scheme (England) Regulations 2007;
 - the ability to issue penalty charge notices in respect of bus lane contraventions. (Part 6 and paragraph 9 of Schedule 8, Traffic Management Act 2004; the Civil Enforcement of Road Traffic Contraventions (Approved Devices; Charging Guidelines and General Provisions) (England) Regulations 2022; and the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (England) Regulations 2022); and
 - the functions of the constituent councils specified in section 39 of the Road Traffic Act 1988 relating to measures designed to promote road safety and studies into vehicular accidents.
- 5.17 NEMCA is to have the function of paying grants to bus service operators (section 154(1), Transport Act 2000) for eligible bus services operating within their area. This function of NEMCA is exercisable by the Mayor individually and is held concurrently with the Secretary of State for Transport.
- 5.18 NEMCA is to have the function of paying grants to the constituent councils of the Combined Authority (section 31, Local Government Act 2003). This will enable NEMCA to pay to constituent councils funds, including highways maintenance funding, which NEMCA receives as part of a consolidated grant under the devolution deal. NEMCA must have regard to the desirability of ensuring that the councils have sufficient funds to facilitate the effective discharge of their highways functions. This function is exercisable by the Mayor individually and a Minister of the Crown, but not by NEMCA.

- 5.19 From April 2025 and for each subsequent financial year, NEMCA will be able to issue three levies to cover the costs attributable to the exercise of its functions relating to transport - one each for Durham, Northumberland and for the areas of the five councils in the metropolitan county of Tyne and Wear, under section 74 of the Local Government Finance Act 1988, and in accordance with the Transport Levying Bodies Regulations 1992. For the 24-25 financial year, these levies will have been set by NECA and NoTCA.
- 5.20 NEMCA is to be a constituent authority of the Transport for the North sub-national transport body instead of NECA and NoTCA.

Part 6: Adult Education, Skills and Training

- 5.21 Part 6 of the Order is based on that made in 2019 for the transfer of these functions to NoTCA³. It relates to education, skills and training functions and provides for the conferral of certain adult education functions of the Secretary of State under the Apprenticeships, Skills, Children and Learning Act 2009 on to NEMCA to exercise them across the North East or in some cases to be exercised concurrently between NEMCA and the constituent councils. This part of the Order also sets conditions on the exercise of those functions and applies certain provisions of the 2009 Act with modifications for the purpose of NEMCA exercising the functions.
- 5.22 The Order provides for the transfer to NEMCA of the following adult education functions under the 2009 Act in relation to the 2024/25 academic year onwards such that they become exercisable by NEMCA over its area rather than by the Secretary of State. Section 86 relates to education and training for persons aged 19 or over; section 87 relates to learning aims and provision of facilities for such persons and section 88 to the payment of tuition fees for such persons. Functions relating to: (a) apprenticeship training (b) persons subject to adult detention; (c) the power to make regulations or orders, are not included in the Order.
- 5.23 In addition, functions of the Secretary of State under section 90 of the 2009 Act, which relate to the encouragement of education and training for persons aged 19 or over, and section 100(1) of that Act which relate to the provision of financial resources, are transferred to NEMCA in relation to its area and will be exercisable concurrently with the Secretary of State.
- 5.24 The Order sets the following conditions on the exercise of the specified functions. It requires NEMCA to adopt rules of eligibility for awards by an institution to which it makes grants, loans or other payments under section 100 of the 2009 Act in accordance with any direction which may be given by the Secretary of State. Such a direction may be for the purpose of ensuring that a consistent approach is taken as to the eligibility of persons who have a specified connection to the United Kingdom. In addition, in exercising the conferred functions NEMCA is required to have regard to guidance issued by the Secretary of State (as amended from time to time or as replaced by a subsequent document).
- 5.25 The Order also provides for the conferral of a number of other education, skills and training functions onto NEMCA 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 over compulsory school age but under the age of 19;

³ <https://www.legislation.gov.uk/ukxi/2019/1457/contents/made>

- in the Education Act 1996, the duty to promote high standards and fulfilment of potential and work experience for persons over compulsory school age; and
 - in the Education and Skills Act 2008, duties to promote the effective participation in education or training; duties to make arrangements to identify persons not in education or training; functions relating to the provision of services to encourage, enable or assist the effective participation of persons in education or training; functions relating to the provision of support and learning and support agreements; and functions relating to cooperation as regards provision of 14-19 education and training.
- 5.26 The transfer to NEMCA of the specified adult education functions forms part of the government’s wider devolution agenda and is focused on giving local areas a prominent role in managing and shaping their own economic prosperity. Through the transfer of the specified adult education functions, NEMCA and their elected Mayor will be able to better shape adult education provision that is available to their residents to ensure it meets the needs of the North East economic region. The Order forms a key part of the delivery of the devolution deal agreed between government and the combined authority in 2022.⁴
- 5.27 As a result of the devolution of adult education functions it will be the responsibility of NEMCA to enable access to appropriate adult education provision in relation to their area. NEMCA will be responsible for commissioning and contracting with providers to deliver such adult education and will be subject to the English Devolution Accountability Framework which sets out how areas with devolution deals will be scrutinised and held to account through local scrutiny by the public and by government.

Part 7: Housing, regeneration and planning

- 5.28 Part 7 of the Order makes provision for the housing, regeneration and planning functions under the Housing and Regeneration Act 2008 to be conferred on NEMCA, and to be exercisable concurrently with Homes England. This includes powers for land acquisition and disposal, to regenerate, develop, and manage land holdings. In addition, the Order confers powers on NEMCA under the Town and Country Planning Act 1990 to compulsorily acquire land, to acquire land by agreement, and to dispose, manage and develop land; these powers are exercisable concurrently with relevant constituent councils. The compulsory purchase of land will be a Mayoral function requiring the consent of each member of NEMCA (or substitute member acting in that member’s place) appointed by a constituent council whose local government area contains any part of the land subject to the proposed compulsory purchase. The final section of Part 7 provides for the Mayor to have a duty to produce a Spatial Development Strategy (SDS) for the NEMCA area – to confer this duty on the Mayor there must first be a unanimous vote in favour by the Mayor and each of the seven constituent council members.

Part 8: Mayoral Development Corporation (MDC)

- 5.29 Part 8 of the Order gives the Mayor the power to designate Mayoral Development Areas to support the development of strategic sites in the NEMCA area. This is the first step in establishing an MDC in the NEMCA 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.

⁴ <https://www.gov.uk/government/publications/north-east-devolution-deal--2/north-east-devolution-deal>

- 5.30 The relevant powers concerning MDCs are in the Localism Act 2011 (Part 8, Chapter 2; Schedule 21 and Schedule 22) (the ‘2011 Act’) 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 Cities and Local Government Devolution Act 2016⁵, to confer the corresponding functions from the 2011 Act on NEMCA to be exercised by the North East Mayor with the following modifications:
- references in the 2011 Act to the Greater London Authority (‘GLA’) and the London Assembly are to be read as references to NEMCA;
 - NEMCA is to have in relation to its area the corresponding functions that the Mayor of London has in relation to London;
 - the functions conferred on NEMCA are exercisable by the Mayor individually;
 - the Mayor may only exercise the functions conferred on NEMCA if the member for any constituent council whose council area contains any part of the area to be designated consents to the exercise of the functions;
 - to the extent that the functions include planning powers and where the exercise of these functions is in respect of any part of the areas of the Northumberland National Park Authority that overlap with the NEMCA area, the functions can be exercised only if the National Park Authority consents; and
 - the persons to be consulted before an area may be designated have been modified to reflect the conditions in NEMCA, specifically this includes the Northumberland National Park Authority, which have been added to the list of statutory consultees if the proposal includes any part of the area of the National Park.

Part 9: Mayoral functions and Funding

- 5.31 Part 9 of the Order prescribes which functions and powers are to be exercisable only by the Mayor. They are:
- housing and land acquisition powers;
 - power to draw up a local transport plan and strategies;
 - ability to pay grants to bus service operators;
 - power to pay grants to constituent councils;
 - power to compulsorily acquire land;
 - powers in relation to business rate supplements; and
 - power to designate a Mayoral Development Area and subsequently to oversee a Mayoral Development Corporation.
- 5.32 This part also includes the specific consent requirements for the designation of Mayoral Development Areas, the exclusion of land from Mayoral Development Areas, for the exercise of planning functions in respect of any Mayoral Development Areas, and the acquisition of land for housing purposes.
- 5.33 The Order provides that the Mayor may enter into arrangements jointly with NEMCA constituent councils and other councils in accordance with section 101(5) of the Local Government Act 1972 for the discharge of the general functions of NEMCA which are exercisable only by the Mayor.
- 5.34 Part 9 of the Order also provides for the funding of NEMCA. It achieves this by requiring the constituent councils to meet any reasonably incurred costs of NEMCA,

⁵ The Cities and Local Government Devolution Act 2016 - section 7 of the 2016 Act added section 105A to the 2009 Act (Other public authority functions).

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 portions 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 Authority⁶. The Mayor must also agree with NEMCA the total expenditure on Mayoral functions to be met by the constituent councils (i.e mayoral expenditure not met by other means including the mayoral precept) in advance of incurring this expenditure.

- 5.35 The Order also provides that NEMCA is to have in relation to its area, functions corresponding to the functions that the Greater London Authority has under the Business Rates Supplements Act 2009 to levy a supplement on business rates to raise money for expenditure on a project which will promote economic development in its area. Article 42 provides that the functions are exercisable only by the Mayor, that the Mayor may be assisted by members or officers of the authority in the exercise of the functions and that the general power of the Combined Authority under section 113A of the 2009 Act is conferred on the Mayor for the purposes of those functions. Article 46 provides for modification of the Business Rate Supplements Act 2009.

Part 10: Additional Functions

- 5.36 Part 10 of the Order provides that NEMCA is given powers to prepare an assessment of economic conditions for the area. This function is exercisable concurrently with constituent councils. The Order also confers data sharing functions on NEMCA, exercisable concurrently with the constituent councils and makes further incidental provision enabling NEMCA to operate effectively.

Schedules

- 5.37 Schedule 1 makes provision for the constitution of NEMCA, including for its membership. This Schedule also provides for the proceedings of NEMCA including quoracy and the involvement in decisions of lead members for constituent authorities, and requirements for voting and consents on budgets and spending, plans such as the Local Transport Plan, and decisions requiring the consent of the lead member for the constituent council concerned – such as for Mayoral Development Areas or acquisition of land. The Schedule also set out rules for those who may be paid an allowance in connection with their involvement with NEMCA and requirements for the involvement of an independent remuneration panel in setting those allowances. The Schedule sets out requirements of NEMCA in keeping records of its proceedings at meetings and permits NEMCA to regulate those proceedings through standing orders.
- 5.38 Schedules 2 to 6 make necessary modifications to apply, or disapply, legislation to NEMCA in consequence of the provisions above.

6. Legislative and Legal Context

How has the law changed?

- 6.1 Part 6 of the 2009 Act provides for the dissolution of a combined authority area and the abolition of a combined authority and for the establishment of combined authorities for the areas of two or more local authorities in England. Combined

⁶ The UK Statistics Authority is a non-ministerial government department responsible for oversight of the Office of National Statistics maintaining a national code of practice for official statistics and accrediting statistics that comply with the code as National Statistics.

authorities are “bodies corporate” which have local and public authority functions conferred on them to be exercised in relation to their area.

- 6.2 Section 111 of the 2009 Act provides that where authorities wish to dissolve a combined authority area and abolish a combined authority, one or more of the local authorities may undertake a review of the exercise of statutory functions in relation to an area with a view to deciding whether to publish a scheme for this dissolution under section 112 of the 2009 Act.
- 6.3 Section 113 of the 2009 Act provides that before dissolving a combined authority area and abolishing a combined authority, the Secretary of State must carry out a public consultation unless:
- a scheme has been prepared and published under section 112 of the 2009 Act;
 - the authorities that prepared and published the scheme carried out a public consultation in connection with the proposals contained in the scheme and provided the Secretary of State with a summary of the consultation responses; and
 - the Secretary of State considers that no further consultation is necessary.
- 6.4 The Secretary of State may make an order dissolving a combined authority area and abolishing a combined authority only if:
- the Secretary of State considers that doing so is likely to improve the exercise of statutory functions in the area or areas to which the order relates;
 - a majority of the constituent councils consent to the making of the order, and in the case of an order in respect of a mayoral combined authority, the mayor for the area of the authority also consents; and
 - any consultation required has been carried out.
- 6.5 In considering whether to make an order dissolving a combined authority area and abolishing a combined authority, the Secretary of State is also required to have regard to the need:
- to reflect the identities and interests of local communities, and
 - to secure effective and convenient local government.
- 6.6 The process as outlined in paras 6.2 to 6.5 is very similar where authorities wish to establish a combined authority. This is outlined in sections 108 to 110 of the 2009 Act. The only difference is in the consents required. For dissolution and abolition, consent is required from a majority of constituent councils plus the mayor if it relates to a mayoral combined authority. If the Order relates to the establishment of a new combined authority all the councils in the area of the proposed combined authority must consent to its making.
- 6.7 This Order cites the following powers:
- Section 103(1) of the 2009 Act (combined authorities and their areas): the Secretary of State may establish a combined authority as a body corporate;
 - Section 104(1) 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 of members 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), (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. A function may be exercisable by the combined authority instead of, concurrently or jointly with, the public authority. An order under section 105A may also abolish a public authority and may include further provision about the exercise of the function, including for the exercise of the function to be subject to conditions or limitations. If an order under subsection (1) contains a reference to a document specified or described in the order, the document can be construed as reference to an amended document or a subsequent document that replaces that document;
- Section 107 of the 2009 Act (dissolution of a combined authority's area), the Secretary of State may by order dissolve a combined authority's area and abolish the combined authority for an area
- Section 107A of the 2009 Act (power to provide for election of mayor): the Secretary of State may by order provide for there to be a Mayor for the area of a combined authority;
- Section 107D(1), (3)(c)(ii), (4), (5),(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 a committee of the combined authority to exercise such a function; for members or officers of the combined authority to assist the mayor in the exercise of their functions and may confer ancillary powers on the mayor for the purposes of the exercise of these 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 arrangements under section 101(5) of the Local Government Act 1972 (joint committees) in relation to the functions exercisable by 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 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, and for application, disapplication, or modification of enactments;
- Section 115 of the 2009 Act (transfer of property, rights and liabilities): the Secretary of State may by order make provision for the transfer of property, rights and liabilities for the purposes of, or in consequence of, an order under this Part or for giving full effect to such an order;

- Section 116 of the 2009 Act (consequential amendments): The Secretary of State may by order make such provision as the Secretary of State considers appropriate in consequence of any provision made by this Part;
- Section 117(1A) and (5) of the 2009 Act (orders): an order under Part 6 of the 2009 Act may make different provision for different authorities or descriptions of authority or otherwise for different purposes and may include provision amending, applying (with or without modifications), disapplying, repealing, or revoking any enactment whenever passed or made; and
- Paragraph 3 of Schedule 5B to the 2009 Act, which enables the Secretary of State to make provision for the timing of mayoral elections.

6.8 The Levelling-up and Regeneration Act 2023 (the ‘2023 Act’) contains provisions to simplify the process for establishing new, and making changes to existing, combined authorities. These provisions came into force on 26 December 2023, two months after Royal Assent and replace the provisions for submitting a governance review and scheme with a “proposal” process. The 2023 Act also replaces the statutory test for establishing a new combined authority or making changes to an existing combined authority. The former test, as to whether establishing a new combined authority or making changes to an existing combined authority is likely to improve the exercise of statutory functions, is replaced with a new test that the establishment or change is likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the area. The 2023 Act provides that where a review and scheme process to establish a new, or change an existing, combined authority has been started under the existing provisions of the 2009 Act - that is before the amendments made by the 2023 Act come into force - that process may continue and remains valid. Therefore, the provisions as amended by the 2023 Act are not relevant to this Order whenever it is considered by Parliament but they will apply where relevant to future decisions and actions of all combined authorities.

Why was this approach taken to change the law?

6.9 The 2009 Act provides the only legislative route to deliver this Mayoral Combined Authority which is at the heart of implementing the devolution deal agreed with the North East Councils.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 As required by statute, the seven councils across the North East undertook a consultation on proposals in their scheme and associated governance review for eight weeks between 26 January and 23 March 2023. The consultation was led by each council in relation to their local authority area.
- 7.2 A communications toolkit was produced ahead of the launch of the consultation to enable partner organisations and key stakeholders of each council to help promote the consultation to their own internal and external audiences. The seven councils also advertised that a consultation would be forthcoming as soon as the deal was agreed and announced.
- 7.3 Each council together with NECA and NoTCA promoted the consultation through their websites with use of press releases and other local media such as the local press. They all made use of their social media followings to promote the consultation across the areas and produced easy-to-read versions of key consultation documents and the questionnaire to make the process more accessible. They also adjusted their methods

for both promotion and running of events for their individual local areas and responded to requests to provide tailored events to enable particular groups or people with protected characteristics to be able to take part. At least one in-person consultation event was held in each of the seven local authority areas, with a total of fifteen separate consultation events held for the public alongside nine regional stakeholder events aimed at specific sectors, including the voluntary and community sector, and the business, transport and education sectors.

- 7.4 Some 3,235 people or organisations took part in the consultation process, with 2,579 opting to complete an online or paper survey. 357 people attended the public consultation events and a further 263 people took part in the wider stakeholder events.
- 7.5 A report on the consultation outcomes prepared by the councils in the North East has been made publicly available at the following link
<https://democracy.northtyneside.gov.uk/documents/s12948/North%20East%20Devolution%20Report-Consultation%20Document-Appenix%201.pdf>
- 7.6 The proposals for governance of the deal's implementation to be driven by the creation of a combined authority led by a directly elected mayor, were supported by a majority of respondents. Of the 2,606 replies to this question, 1,595 (61.2%) supported the proposed governance arrangements and 772 (29.6%) were opposed.
- 7.7 The proposals to confer transport functions on the combined authority and mayor were supported by a majority of respondents. Of the 2,606 replies to this question, 1,731 (66.4%) were supportive and 631 (24.2%) were opposed.
- 7.8 The proposals to confer housing and planning functions on the combined authority and mayor were supported by a majority of respondents. Of the 2597 replies to this question, 1563 (60.2%) were supportive and 684 (26.3%) were opposed.
- 7.9 The proposals for NEMCA and the Mayor to work together to deliver the proposed finance and investment into the region were supported by a majority of respondents. Of the 2,594 replies to this question, 1373 (52.9%) were supportive and 860 (33.2%) were opposed.
- 7.10 The proposals to confer adult education and skills functions on the combined authority and mayor were supported by a majority of respondents. Of the 2,591 replies to this question, 1,673 (64.6%) were supportive and 597 (23%) were opposed.
- 7.11 The key themes from those in support of the proposals were that:
- the proposals were logical and provided the opportunity to create efficiencies and increase resources for the area;
 - the proposals should ensure a coordinated strategy across the region with increased powers and control over budgets enabling the region to drive local decision-making based on local needs;
 - NEMCA was the right level for delivering these functions for the region because the national level is too detached from local needs and local authorities too small to be efficient;
 - the proposals should lead to more long-term investment that will create opportunities and improve the region and create better infrastructure and opportunities for employment, thereby helping to close the north/south divide;
 - the proposals should specifically enable working together to improve transport across the area to deliver a more integrated transport system, provide the impetus to build more affordable and social housing and the ability to use adult education and skills funding in a way that is better targeted at the needs and priorities of the area;

- the establishment of NEMCA and delivery of the powers to be devolved will stimulate and accelerate economic growth, create jobs and develop the skills, investment and infrastructure needed for the region enabling existing businesses to thrive and increasing the confidence of new businesses to invest in the area; and
 - a directly elected mayor for the whole region would also provide a figure-head to help create a higher profile for the region.
- 7.12 Those opposed to the proposals expressed concern that they would lead to:
- additional bureaucracy and cost for local people in the form of higher council tax;
 - an unfair distribution of resources and funds that would disadvantage rural areas;
 - the concentration of power in the hands of a mayor or a small group of people in the combined authority who would be unaccountable; and
 - inefficiencies because the area of NEMCA was too large to deliver transport improvements, a more tailored adult education and skills offering or an overall housing strategy.
- 7.13 Of those respondents who neither agreed nor disagreed with the proposals, the main reasons given were that they:
- felt that the proposals would have no impact;
 - agreed in principle and would support them if certain conditions were met such as a guarantee of a fair allocation of resources or that their particular priorities for the area were taken forward or they
 - needed more information or wanted to see the outcomes before making an assessment.
- 7.14 A summary of consultation responses was produced for consideration at the Cabinets of the constituent councils prior to them submitting to the SoS. This committed NEMCA, once established, to strive to address the concerns raised by those opposed to the proposals. This will be achieved by clear communication with residents, businesses, and other key stakeholders and by efficient and effective ways of working with clear accountability demonstrated through the NEMCA's Elected Mayor and Cabinet's decision-making processes.
- 7.15 Section 110(2) of the 2009 Act requires that the Secretary of State must carry out a public consultation unless the constituent councils have done so, on a scheme containing proposals for the combined authority and its functions. In accordance with those requirements the Secretary of State has reviewed the consultation and summary of responses and is of the view that no further consultation is necessary. The Secretary of State is satisfied that the North East consultation was sufficient in terms of its length (eight weeks) and the variety of mechanisms offered to encourage participation (online, paper responses and, direct communication with stakeholders), the promotional activity carried out and the analysis of responses undertaken by the area.

8. Applicable Guidance

- 8.1 No guidance is necessary to accompany this Order.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument because there is no or a low level of impact on businesses.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this Order does not relate to the legislation governing the establishment or running of businesses, charities or voluntary bodies and does not impose any requirements on these organisations.
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 As regards impact on the public sector, conferring functions on NEMCA 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 NEMCA 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. The Secretary of State is satisfied that these tests are met in relation to the provisions of the Order.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring of this legislation is that combined authorities are required under the devolution deals reached with the Government to put in place an extensive programme of evaluation, agreed with HM Treasury.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 Section 105(B)(9) of the Local Democracy, Economic Development and Construction Act 2009 (the ‘2009 Act’) requires a report to be laid before Parliament. That report is published alongside this memorandum providing information about the Order relating to the conferral of public authority functions.

12. European Convention on Human Rights

- 12.1 Jacob Young, Parliamentary Under Secretary of State for Levelling Up, has made the following statement regarding Human Rights:

“In my view the provisions of the North East Mayoral Combined Authority (Establishment and Functions) Order 2024 are compatible with the Convention rights.”

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”), and does not relate to withdrawal from the European Union.