

The West of England Combined Authority Order 2017

About this report.

Section 105B of the Local Democracy, Economic Development and Construction Act 2009 (“the 2009 Act”), inserted by section 7 of the Cities and Local Government Devolution Act 2016, sets out the procedure for making orders under section 105A of the 2009 Act which makes provision for a Combined Authority to exercise functions exercised by a public authority. Section 105B provides that at the same time as laying a draft of a statutory instrument containing an order under that section before Parliament, the Secretary of State must lay before Parliament a report explaining the effect of the order and why the Secretary of State considers it appropriate to make the order.

This report accompanies the West of England Combined Authority Order 2017 (“the Order”) which is to be made, subject to Parliament’s approval, under provisions within the 2009 Act including section 105A.

1 Description of the Combined Authority

1.1 The West of England Combined Authority (WoECA) is to be established by this Order, to enable greater integration between housing delivery and transport infrastructure improvements, to promote economic development and regeneration, and to provide a single point of accountability for implementation of the Spatial Development Strategy and Local Transport Plan. The WoECA is to be constituted of the local authorities for the areas of Bath and North East Somerset; Bristol City; and South Gloucestershire.

1.2 A devolution deal¹ – an agreement with Government to devolve a range of powers and responsibilities to a mayoral combined authority – was agreed between Bath and North East Somerset; Bristol City; North Somerset; and South Gloucestershire councils in March 2016. It included establishing a Combined Authority, to be led by an elected mayor, and for the conferral of a number of local authority and public authority functions on the Combined Authority.

1.3 North Somerset Council subsequently decided that they did not want to ratify the Devolution Deal. The three councils of Bath and North East Somerset; Bristol City; and South Gloucestershire decided to proceed with the establishment of the WoECA and the implementation of the deal. The three councils published a scheme and governance review², and undertook a consultation on their proposals.

1.4 The provisions in this Order establish the WoECA and the constitutional arrangements for that authority; establish the position of directly elected Mayor; and confer on the WoECA, once established, functions agreed in the Devolution Deal.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508112/160315_West_of_England_Devolution_Agreement_Draft_-_FINAL.pdf

² <http://www.westofenglanddevolution.co.uk/wp-content/uploads/2016/07/Governance-Review-for-Bristol-Bath-South-Gloucestershire-2016.pdf>

1.5 The Order specifies the term of office for the Mayor, the dates on which elections for the return of a mayor shall take place and the intervals between elections (four years). The first election is to take place on 4 May 2017 and the Mayor will take office on 8 May 2017.

2 Conferral on the Combined Authority of public authority functions: powers

2.1 Section 105A(1)(a) of the 2009 Act (other public authority functions) empowers the Secretary of State by order to make provision 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.

2.2 Section 105A(1)(b) of the 2009 Act further provides that the Secretary of State may by order make provision for 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.

2.3 Section 105A(2)(a) of the 2009 Act provides that an order may include further provision about the exercise of the function, including provision for the function to be exercisable by the public authority or combined authority subject to conditions or limitations specified in the order.

2.4 Section 105A(3) of the 2009 Act provides that the provision for the exercise of the function that may be included in an order under section 105A(1)(b) may include, in particular, provision for the function to be exercisable by the combined authority concurrently with the public authority.

2.5 Section 114 of the 2009 Act empowers the Secretary of State by order to make incidental, consequential, transitional or supplementary provision for the purposes of, or in consequence of, an order under Part 6 of that Act or for giving full effect to such an order. Section 117(5) of the 2009 Act provides that an order under Part 6 of the 2009 Act may include provision amending, applying (with or without modifications), dis-applying, repealing or revoking any enactment whenever passed or made. These powers have been used to modify the application to the proposed Combined Authority of the provisions in the Housing Act 1985, the Local Government and Housing Act 1989, Town and Country Planning Act 1990, the Greater London Authority Act 1999, the Planning and Compulsory Purchase Act 2004, the Housing and Regeneration Act 2008 and the Localism Act 2011.

3 Effect of the order; consideration informing the Secretary of State's decision

3.1 Power to pay grant

3.1.1 The Government committed in the Devolution Deal to giving the Mayor the responsibility for a devolved and consolidated transport budget consisting of various funding streams. In order to realise the ambitions of the Devolution Deal and enable coordination and integration of transport functions, the Mayor will set the annual budget for delivering transport functions across the WoECA. Consequentially, the Mayor will be able to pay grants to the constituent councils, and within this Order the power of the Secretary of State to pay grants to councils under Section 31 of the Local Government Act 2003 is conferred on the WoECA to be exercised by the mayor.

This power to pay grants is not specifically limited to the allocation of transport budgets, and if further devolved grants are provided to the WoECA then the Mayor will have the ability to

allocate such funds to individual councils of the WoECA. For the purposes of this Order, the power is being conferred to allow the Mayor to be able to pay funds to the constituent councils for functions for which they are the Highways Authority, and this is exercisable with consideration given to the conditions which are contained within the Order, these being:

- the Mayor must have regard to the desirability of ensuring that the council has sufficient funds to facilitate the effective discharge of those functions;
- the Mayor must take into account any other sources of funding available to the council for expenditure incurred or to be incurred in relation to the exercise of its highways functions; and
- the Mayor must take into account the most recent determination by the Secretary of State of an amount of grant paid to the council for those purposes.

3.1.2 The three councils' scheme, which set out their proposals for the Combined Authority, stated that the devolved transport fund will enable "*greater surety of funding, more effective and efficient long-term asset management and procurement arrangements*". In response to the consultation, although no specific question was asked on the allocation of transport funds to the constituent councils, over three-fifths (61 per cent) of respondents agreed that the strategic transport proposals would enable longer-term planning and allow for more ambitious schemes with a greater impact through guaranteed funding each year.

3.1.3 Having had regard to the governance review, scheme and the summary of consultation responses provided by the three councils, the Secretary of State considers that the transfer of the function of the Secretary of State to pay grants to local authorities, will lead to an improvement in the exercise of these statutory functions, by providing the Mayor of the Combined Authority with the power to pay grants across the area for transport functions and grants for any future budgets which may be devolved.

3.2 Development of a spatial development strategy

3.2.1 Part VIII of the Greater London Authority Act 1999 contains provisions relating to the preparation of a spatial development strategy for Greater London. These provisions require the Mayor of London to produce a spatial development strategy: an overall strategic plan for London, setting out an integrated economic, environmental, transport and social framework for the development of London for future years.

3.2.2 The Devolution Deal agreed between the Government and West of England stated that the new directly elected Mayor would have powers to create a spatial development strategy for the WoECA area which would act as the framework for managing planning across the whole area. In the governance review, which the councils undertook before proposing the Combined Authority, the three councils state that a spatial development strategy would enable more efficient implementation of plans and accelerated delivery of agreed developments.

3.2.3 Respondents to the three councils' consultation on their detailed proposals for planning functions to be conferred on the WoECA were supportive of the impact this would have on housing. 47 per cent of respondents agreed the proposals would improve planning processes and decisions, 35 per cent disagreed. Supportive comments included that: "*It should be able to look at the region as a whole instead of the current practice where the constituent authorities work in isolation.*" The Homes and Communities Agency (HCA) responded stating that: "*It is clear from the consultation that West of England is committed to*

accelerating the pace of house building and contributing to the accelerated delivery of new homes in line with the Government's objectives."

3.2.4 Taylor Wimpey responded that: *"the delivery of significant levels of new housing through the Joint Spatial Plan is absolutely critical to the success of the West of England and we reiterate our desire to work with the constituent authorities (and North Somerset) to realise ambition plans for this area."* Gladman Development Ltd stated that: *"A key issue is the delivery of significant levels of new homes through the Joint Spatial Plan, and this is critical to the success of the West of England. We would like to continue to work with the constituent authorities (and North Somerset) to deliver the necessary and ambitious objectives for the region."*

3.2.5 Having had regard to the Devolution Deal, the governance review and scheme, and the summary of the consultation responses, the Secretary of State considers that the conferral of the Mayor of London's powers regarding a spatial development strategy would support an improvement of spatial planning functions in the West of England, by enabling more efficient implementation of plans and accelerated delivery of agreed developments, and that it is appropriate to propose to make an order conferring these functions, under powers in section 105A(1)(b) of the 2009 Act.

3.3 Land acquisition and disposal

3.3.1 Chapter 1 of the Housing and Regeneration Act 2008 (the 2008 Act) establishes the HCA, and provides that the HCA will operate across England, with a view to meeting the needs of people in England, by:

- improving the supply and quality of housing;
- securing the regeneration or development of land or infrastructure;
- supporting in other ways the creation, regeneration, or development of communities or their continued well-being; and
- contributing to the achievement of sustainable development and good design.

3.3.2 Chapter 2 of the 2008 Act gives the HCA powers:

- to provide housing or other land;
- for regeneration;
- for the development or effective use of land; and
- in relation to infrastructure.

3.3.3 The three councils have requested that the Secretary of State makes provision for certain functions of the Homes and Communities Agency (HCA) to be exercisable in relation to the WoECA area and for these to be functions of the WoECA, once established. The functions are to be exercised concurrently with the HCA.

3.3.4 Respondents to the three councils' consultation on their detailed proposals for planning functions to be conferred on the combined authority were mostly supportive of the impact this would have on housing. 47 per cent of respondents agreed the proposals would improve planning processes and decisions, 35 per cent disagreed.

3.3.5 The HCA are supportive of the principle that the WoECA would have the same compulsory purchase order (CPO) powers as the HCA stating that: *"We recognise the key role that CPO powers can play in unlocking site assembly to deliver housing and employment*

land. We suggest that the combined authority's CPO powers should be widely drawn so as to enable a CPO to be made for any of the statutory purposes and objects of the combined authority."

3.3.6 Having had regard to the governance review and scheme, and the summary of consultation responses, the Secretary of State considers that conferral on the WoECA of functions corresponding to the land acquisition and disposal functions of the HCA, to be exercised concurrently with the HCA, will lead to an improvement in the exercise of these statutory functions by providing the WoECA, once established, with powers to act strategically to enable housing and other developments.

3.4 Powers to call-in planning applications of potential strategic importance

3.4.1 Sections 2A-2F in Part 1 of the Town and Country Planning Act 1990, as amended by the Greater London Authority Act 2007, provides the Mayor of London with call-in powers for applications of potential strategic importance. Call-in provides the Mayor with the power to direct that the Mayor will become the local planning authority for a planning application.

3.4.2 The Devolution Deal agreed between the Government and the West of England states that the new directly elected Mayor will have powers to call-in planning applications that are identified as being of potential strategic importance in the West of England.

3.4.3 The scheme produced by the three councils stated that the Mayor's powers to determine applications of potential strategic importance would be limited to applications which are strategic, cross-boundary, linear infrastructure applications.

3.4.4 Respondents to the consultation on the three councils' detailed proposals for planning functions to be conferred on the WoECA were mostly supportive of the impact this would have on housing. 47 per cent of respondents agreed the proposals would improve planning processes and decisions, 35 per cent disagreed. Supportive comments included that: *"It should be able to focus on leveraging strategic public sector land assets to deliver surplus land for housing and growth, and with a leadership team committed to the delivery of the devo deal there should be better collaboration on strategic planning."*

3.4.4 Having had regard to the governance review and scheme and the summary of consultation responses, the Secretary of State considers that conferral of call-in functions with the limitations proposed by the three councils, corresponding to the functions of the Mayor of London, to be exercised by the new directly elected Mayor for the West of England, will lead to an improvement in the exercise of these statutory functions, and that these will provide the Mayor with powers to act strategically to enable housing and other developments.

3.5 Mayoral development corporations

3.5.1 Part 8, Chapter 2 of the Localism Act 2011 ("the 2011 Act") provides the Mayor of London with powers to designate mayoral development areas leading to the creation of mayoral development corporations. These include powers in relation to:

- the designation of mayoral development areas;
- the exclusion of land from mayoral development areas;
- the transfer of property etc to a mayoral development corporation;

- the functions in relation to Town and Country Planning;
- the removal or restriction of planning functions;
- discretionary relief from non-domestic rates;
- reviews;
- the transfers of property, rights and liabilities;
- dissolution: final steps;
- guidance by the Mayor; and
- directions by the Mayor.

3.5.4 Schedule 21 to the 2011 Act provides the Mayor of London with functions in relation to mayoral development corporations, including:

- to provide for the membership of a mayoral development corporation;
- for the terms of appointment of members;
- for staff;
- for remuneration of members and staff
- for committees of a mayoral development corporation; and
- for proceedings and meetings.

3.5.3 The Devolution Deal agreed between the Government and the West of England councils stated that the new directly elected Mayor would have powers to initiate the creation of a mayoral development corporation to support the delivery of strategic sites in the West of England. The scheme proposes that a mayoral development corporation will expedite housing delivery on complex schemes. The HCA were supportive of the principle underpinning the councils' proposals for a mayoral development corporation.

3.5.4 Having had regard to the governance review and scheme and the summary of consultation responses, the Secretary of State considers that it is appropriate to confer functions corresponding to Part 8 of the 2011 Localism Act on the WoECA, to be exercised by the new directly elected Mayor for the West of England, and that these functions will allow the Mayor to act strategically to support the delivery of strategic sites in the WoECA area.

4 Consultation

4.1 The three councils undertook a consultation on proposals for a Combined Authority in their scheme and governance review from 4 July to 15 August 2016, aligned with a promotional campaign to raise awareness of the proposals. Following this, a summary of the consultation responses³ compiled by the three councils was submitted to the Secretary of State. The Secretary of State considers that the three councils' consultation on its scheme was sufficient in terms of its length, in that it ran for 6 weeks; the mechanisms used, in that the three councils offered digital and paper copies of the consultation, and welcomed both electronic and hard copy responses; the three councils' promotional activity included posters, media releases, internal communications within each council, social media, press releases, drop-in sessions for residents to better understand the proposals; and the summary provided demonstrates a robust analysis undertaken.

³ <http://www.westofenglanddevolution.co.uk/wp-content/pdf/BD8633-Summary%20of%20Consultation%20Responses%20D3.pdf>

4.2 The new directly elected Mayor of the West of England would be required to conduct a further statutory consultation before a mayoral development area could be designated and a mayoral development corporation established.

5 Material considered by the Secretary of State

- Governance Review submitted by the three West of England councils
- Scheme submitted by the three West of England councils
- The summary of consultation responses submitted by the three West of England councils
- Further representations submitted by local stakeholders