

THE GREATER MANCHESTER COMBINED AUTHORITY (FUNCTIONS AND AMENDMENT) ORDER 2019

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 Greater Manchester Combined Authority (Functions and Amendment) Order 2019 (“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 Greater Manchester Combined Authority (GMCA) was formed by the Greater Manchester Combined Authority Order 2011 (S.I. 2011/908) under the Local Democracy, Economic Development and Construction Act 2009. Following the passing of the Cities and Local Government Devolution Act 2016 which allowed for combined authorities to have directly elected mayors, it became a mayoral combined authority through the Greater Manchester Combined Authority (Election of Mayor with Police and Crime Commissioner Functions) Order 2016 (S.I. 2016/448). The GMCA’s constituent councils are Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Stockport, Tameside, Trafford and Wigan.
- 1.2. Greater Manchester and the Government have agreed five devolution deals in November 2014, July 2015, November 2015, November 2016 and November 2017. These have devolved significant budgets, including investment funds of £900 million over 30 years and a range of powers to the GMCA, and in many cases to the Mayor directly, covering transport, planning, housing, police, fire, skills, justice and health.
- 1.3. The Government has conferred functions on the GMCA covering areas including health, fire, police, planning and transport, some of which can be exercised solely by the mayor. This has been done through 10 prior statutory instruments specifically providing for the GMCA, as well as primary legislation such as the Bus Services Act 2017 and subsequent regulations made under that Act.
- 1.4. The Bus Services Act 2017 provided mayoral combined authorities with new powers to implement smart ticketing, bus franchising and other options such as partnership models to improve bus services in their area. The Order amends the governance and accountability around these functions by making all the operational functions related to buses exercisable only by the mayor. Currently they are exercisable by the GMCA board

consisting of the mayor and the leaders of the 10 councils and are funded primarily by a transport levy paid by the constituent councils.

- 1.5. Making these functions exercisable only by the mayor aligns with the initial devolution deal in November 2014 which agreed that the mayor would have power over bus franchising and smart ticketing. It also allows the GMCA to fund improvements to bus services through the setting of a mayoral precept.
- 1.6. This order will be the 11th order made under the Local Democracy, Economic Development and Construction Act which have conferred a range of functions and duties on the GMCA and its Mayor.

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

- 2.1. Section 105A(1)(a) of the 2009 Act 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) 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 105A(4) provides that an order made under Section 105A(1)(a) of the 2009 Act may provide that a scheme may be prepared for the transfer of property, rights and liabilities from any public authority to the combined authority and abolish the public authority if all of its functions have been transferred.
- 2.6. Section 107D(1) and (7)(c) provide that the Secretary of State may by order make provision for any function of a mayoral combined authority to be a function exercisable only by the Mayor and such an order may confer ancillary powers on the Mayor for the purposes of the exercise of general functions, which are any functions exercisable by the Mayor other than Police and Crime Commissioner functions.
- 2.7. 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.

- 2.8. 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.

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

- 3.1. Although the 2014 devolution deal only required that bus franchising and advanced (“smart”) ticketing were made mayoral, this order confers all operational bus powers to be exercisable solely by the mayor. This is for clarity of governance and to ensure that the mayor can also raise funding for alternatives to bus franchising, such as advanced quality partnership schemes and enhanced partnership plans and schemes, should the mayor wish to pursue them.

The Order transfers the travel concessionary authority function for the purpose of reimbursing operators and the function of entering into agreements with operators providing service subsidies from Transport for Greater Manchester, which is the Passenger Transport Executive for the area, to the GMCA to be exercised by the mayor. The transfer of responsibility for the travel concessionary authority is because, should a franchising scheme be introduced, fare income would belong to the GMCA and so concessionary fare and subsidised services would be subsumed into the overall franchising budget.

The GMCA currently spends circa £86.7 million on bus functions (reimbursing operators in respect of mandatory concessionary fares, discretionary concessionary fares and bus service subsidies) which is funded by the constituent councils through the transport levy paid to the GMCA and apportioned according to the population of each council area.

- 3.2. The order makes provision for the constituent councils to commit to funding bus services, with the amounts apportioned by population, up to the current expenditure level of £86.7m but no further. This £86.7m is not index-linked. The mayor would have to fund any further increase in spending on buses through the mayoral precept. Any change to this arrangement would require the unanimous approval of the constituent councils. This will allow for the gradual shift of funding away from the transport levy to the mayoral precept. Staggering this shift prevents a very sudden redistribution in how bus services are funded in Greater Manchester from a system where the burden is apportioned by population to one where it is apportioned by the council tax base.

4. Consultation

- 4.1. The Secretary of State is obliged to meet certain statutory tests before the Order can be laid before parliament. Those tests vary on the power that is used but, in this Order, the decision to transfer powers from one public body, Transport for Greater Manchester, to the GMCA, requires that a public consultation or a scheme has been prepared and published. It also requires that a report regarding the transfer of functions is published and that this must include any consultation and information which has been considered, as well as any other evidence or contextual information that the Secretary of State considers it appropriate to include.

The transfer of Transport for Greater Manchester's concessionary powers is being done to ensure that, should a franchising scheme be introduced, fare income would belong to the GMCA and concessionary fare and subsidised services would be subsumed into the overall franchising budget. This allows franchising to work effectively and therefore requires consultation on proposals for bus franchising being delivered by the mayor and how concessionary fares will be funded.

- 4.2. In advance of the election of the first directly elected mayor in May 2017, the GMCA consulted on its governance review and Scheme in two phases both of which are relevant to this Order and in particular to the transfer of TfGM powers to the GMCA. It was intended that the transfer of these powers and the changes around bus services in general should be included in a previous order but were delayed while the Bus Services Bill and its subsequent regulations became law. Greater Manchester then considered the impact of this legislation before asking for this further order which the Secretary of State agrees is appropriate.
- 4.3. The first phase of the consultation took place between 21 March 2016 and ran for six weeks ending on 18 May 2016. 243 responses to the consultation were received, with many respondents providing comments on each of the ten themes. This phase covered the introduction of bus franchising and making it a mayoral function.
- 4.4. The consultation proposed for certain GMCA functions to be mayoral functions, including transport functions relating to buses (including amendments in the Bus Services Bill, if enacted). This section of the consultation explicitly mentioned responsibility for franchised bus services and smart ticketing.
- 4.5. The second phase of the consultation ran from 4 July 2016 to 15 August 2016. It consulted on the proposed funding arrangements and the new Transport for Greater Manchester Committee. In total there were 278 online responses¹. 229 were from members of the public, 17 from public bodies, 4 from businesses and 28 others. As well as transport the consultation also focused on functions concerning fire, waste, planning, education and skills. It consulted on the proposed funding arrangements for transport, including around concessionary fares. It also consulted on the formation of a new Transport for Greater Manchester Committee, which does not require a S105B report.
- 4.6. The consultation proposed that the mayor's transport functions relating to buses should be funded by a statutory contribution from the constituent councils up to a maximum of £82 million per annum. This £82 million was the current level of support for bus functions at the time but this has since risen to £86.7 million hence the change in the order. Expenditure on buses above this number and any other mayoral transport expenditure will be funded through a mayoral precept; expenditure on non-mayoral transport functions will continue to be funded through the transport levy.
- 4.7. 278 respondents replied to the section of the consultation relating to transport. Of these responses 183 were supportive of proposals whilst 48 were not. 30 respondents neither agreed nor disagreed and 17 did not comment. Of the 278 responses to the section of the consultation relating to transport, 29 were from key stakeholders (i.e. established organisations and partnerships that were directly invited to engage in the consultation). Of the key stakeholders that commented on the proposals in the scheme, only 2 were unsupportive, citing concerns that nothing will change. 101 respondents, both key

¹ https://www.gmcameetings.co.uk/download/meetings/id/1222/8_gmca_phase_2_consultation_outcome

stakeholders and others, commented on whether the changes to transport would have a perceived impact on themselves. 68 felt proposals in the Scheme would have some positive personal impact, 21 felt the proposals would have a negative impact and 12 said proposals would have low or no impact.

- 4.8. Supportive comments on relevant issues included views such as ‘this is the most obvious area in which local government decisions should influence investment. The interplay between different forms of transport would work best on the Greater Manchester level. The bus services especially need rethinking and an integrated ticketing system in which a single ticket gets you there even if you use two bus routes and a tram - for example’. Other supportive comments highlighted the importance of regulated bus fares as well as the greater accountability for TfGM that the scheme offers.

5. Material considered by the Secretary of State

- [Greater Manchester Combined Authority phase 1 Governance Review](#)
- [Greater Manchester Combined Authority phase 1 Scheme](#)
- [Greater Manchester Combined Authority summary of consultation responses- phase 1](#)

- [Greater Manchester Combined Authority phase 2 Governance Review](#)
- [Greater Manchester Combined Authority phase 2 Scheme](#)
- [Greater Manchester Combined Authority summary of consultation responses- phase 2](#)