

THE NEWCASTLE UPON TYNE, NORTH TYNESIDE AND NORTHUMBERLAND COMBINED AUTHORITY (ESTABLISHMENT AND FUNCTIONS) ORDER 2018

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(9) 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 Newcastle Upon Tyne, North Tyneside and Northumberland Combined Authority (Establishment and Functions) Order 2018 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 Newcastle Upon Tyne, North Tyneside and Northumberland Combined Authority is to be established by this Order to boost economic growth, increase public service efficiency, improve Britain’s productivity, and rebalance the economy, including contributing to the Northern Powerhouse.
- 1.2. In November 2017 the Government announced it was minded to agree a devolution deal with three councils north of the Tyne (Newcastle upon Tyne, North Tyneside and Northumberland).¹ The deal includes 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. The deal also envisages the establishment of a joint transport committee to exercise transport functions jointly on behalf of the mayoral combined authority and the existing combined authority known as the North East Combined Authority.² When the “minded to” devolution deal was launched in November 2017, the Government explained this was on the basis that the deal would be formally concluded on the establishment of the new mayoral combined authority.
- 1.3. Following the announcement, the three councils published a scheme and governance review, and undertook a consultation on their proposals.³ The provisions in this Order establish a new mayoral combined authority for the area of Newcastle upon Tyne, North Tyneside and Northumberland; provide for certain functions to be exercised by the new mayoral combined authority and for some to be exercisable only by the mayor of that combined authority; amend the boundary of the Durham, Gateshead, Newcastle Upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority by removing the local government areas of Newcastle Upon Tyne, North Tyneside and Northumberland; and establish a joint transport committee to exercise the

¹ <https://www.gov.uk/government/topical-events/autumn-budget-2017>

² <https://northoftynedevelopment.com/deal/>

³ <https://northoftynedevelopment.com/wp-content/uploads/2018/02/North-of-Tyne-devolution-consultation-report.pdf>

transport functions of the two combined authorities so as to maintain integrated transport across the whole of the North East.

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)(b) 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)(a) 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 effect of the relevant provisions in the Housing and Regeneration Act 2008 (“the 2008 Act”) and the Localism Act 2011 (“the 2011 Act”) for the purpose of conferring the relevant public authority functions on the proposed combined authority using section 105A powers.

3 Effect of the order; considerations informing the Secretary of State’s decision

Housing and regeneration

- 3.1. The devolution deal includes that the mayoral combined authority will have broad powers to acquire and dispose of land to build houses, commercial space and infrastructure, for growth and regeneration, and they will be able to invest to deliver housing for the area. The devolution deal also provides that the Mayor will have compulsory purchase powers, subject to the agreement of the combined authority members appointed by the constituent council whose area includes the relevant land, and to the consent of the Secretary of State for Housing, Communities and Local Government.

- 3.2. Chapter 1 of the 2008 Act establishes the Homes and Communities Agency (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. 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.
- 3.4. It should be noted that on 11 January 2018 the HCA's non-regulation arm adopted its new trading name, Homes England.
- 3.5. The three councils have requested that the Secretary of State makes provision for certain functions of the HCA to be exercisable in relation to the North of Tyne area and for these to be functions of the mayoral combined authority, once established, and that the functions are exercisable concurrently with Homes England.
- 3.6. The consultation was broadly supportive of the proposals as they related to the improvement of the quality and affordability of housing and infrastructure in the North of Tyne. Of the 1,076 respondents to the question asking whether respondents agreed or disagreed with the proposals to help improve the quality and affordability of housing and infrastructure in the North of Tyne, 559 (52 per cent) agreed with the proposals, 169 (16 per cent) neither agreed nor disagreed with the proposals and 348 (32 per cent) disagreed with the proposals. 551 (51 per cent) opted to explain why they agreed, neither agreed nor disagreed, or disagreed with the proposals. The summary of consultation responses does not include any specific references to HCA powers, although 12 responses cited concerns over powers of compulsory purchase.
- 3.7. Having had regard to the governance review and scheme, and the summary of consultation responses, the Secretary of State considers that conferral on the mayoral combined authority of functions corresponding to the land acquisition and disposal functions of the HCA, to be exercised concurrently with Homes England, will lead to an improvement in the exercise of these statutory functions by providing the mayoral combined authority, once established, with powers to act strategically to enable housing and other developments.
- 3.8. Part 4 of this Order therefore provides that the public authority functions of the HCA in sections 5 to 12 of the 2008 Act, including powers of land acquisition and disposal, are conferred on the mayoral combined authority. The compulsory purchase powers are to be exercised by the Mayor, with consent from the combined authority members appointed by the constituent councils whose area contains the land in question. As is the case when Homes England exercises these powers, the Mayor may only implement a Compulsory Purchase Order with the consent of the Secretary of State. All HCA powers are to be exercised to improve the supply and quality of housing, to secure regeneration or

development of land or infrastructure, and to support the creation, regeneration or development of communities in the area. The functions are to be exercised concurrently with the HCA.

Mayoral Development Corporations

3.9. The devolution deal also provides that the Mayor will have the power to create Mayoral Development Corporations (MDCs), which will support delivery on strategic sites in the area of the combined authority, and that this power may be exercised only with the consent of the combined authority members appointed by the constituent councils whose area contains the area in which the MDC is to be established, and the consent of the Northumberland National Park Authority.

3.10. Part 8, Chapter 2 of the 2011 Act provides the Mayor of London with powers to designate mayoral development areas leading to the creation of MDCs. 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 mayoral development areas;
- 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 Combined Authority; and
- Directions by the Combined Authority.

3.11. Schedule 21 to the 2011 Act provides the Mayor of London with functions in relation to MDCs, including:

- To provide for the membership of MDCs;
- For the terms of appointment of members;
- For staff;
- For remuneration of members and staff;
- For committees of MDCs; and
- For proceedings and meetings.

3.12. The three councils have requested that the Secretary of State makes provision for these Mayor of London powers to be exercisable in relation to the area of the combined authority and for these to be functions exercisable by the Mayor, with the consent of the combined authority members appointed by the constituent councils who area includes that where the MDC is to be established, and the consent of the Northumberland National Park Authority.

3.13. The consultation was broadly supportive of the proposals as they related to the improvement of the quality and affordability of housing and infrastructure in the North of Tyne, as described above. In addition, with specific reference to MDCs, the Northumberland National Park Authority supported the deal and sought assurance that its planning functions would not be affected unless specifically agreed by them, and

Historic England believed MDCs provided opportunities to enhance the historic environment.

- 3.14. Having had regard to the governance review, scheme and summary of consultation responses, the Secretary of State considers that it is appropriate to confer functions corresponding to Part 8 of the 2011 Act on the mayoral combined authority, to be exercised by the Mayor, and that these functions will allow the Mayor to take control of the regeneration of a particular area and drive local growth in a way that benefits the wider area.
- 3.15. Part 5 of this Order therefore provides for the conferral of functions corresponding to the public authority functions of the Greater London Authority (GLA), exercised by the Mayor of London, to designate mayoral development areas and so create a MDC. These functions are conferred on the mayoral combined authority to be exercised by the Mayor, and conferring these functions is the first step in establishing an MDC in the area of the new combined authority; a further order is necessary to create such a body if the Mayor decides to exercise these functions. The Mayor would need the consent from the combined authority members appointed by the constituent councils whose area includes the area of the proposed MDC, and would also need the consent of the National Park Authority if the mayor was proposing the MDC should become the local planning authority in the area of the National Park.

4 Consultation

- 4.1. The three North of Tyne councils undertook a consultation in accordance with the requirements of the 2009 Act on the proposals contained in their scheme. They led the consultation that ran for seven weeks from 14 December 2017 to 5 February 2018, and then prepared a summary of consultation responses that they submitted to the Secretary of State on 23 February 2018.⁴
- 4.2. As statute requires, the Secretary of State has had regard to that summary of consultation responses when deciding the provisions to include in the Order. In accordance with the requirements at section 113(2) of the 2009 Act, the Secretary of State has also reviewed the consultation, and is of the view that no further consultation is necessary. The Secretary of State is satisfied that the consultation was sufficient in terms of its length (seven weeks); the mechanisms used (online, paper copy, and face-to-face); the promotional activity (including print, radio and online press, social media and website promotion) and stakeholder events, and the analysis undertaken by the authorities.
- 4.3. The directly elected Mayor of the Newcastle Upon Tyne, North Tyneside and Northumberland Combined Authority would be required to conduct a consultation before a mayoral development area could be designated and an MDC established.

5 Material considered by the Secretary of State

- Governance Review published by the three councils⁵

⁴ <https://northoftynedevelopment.com/wp-content/uploads/2018/02/North-of-Tyne-devolution-consultation-report.pdf>

⁵ <https://northoftynedevelopment.com/wp-content/uploads/2017/12/Governance-review.pdf>

- Scheme published by the three councils
- Summary of consultation responses submitted by the three councils