

THE WEST YORKSHIRE COMBINED AUTHORITY (ELECTION OF MAYOR AND FUNCTIONS) ORDER 2021

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 section 105A 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 Yorkshire Combined Authority (Election of Mayor and Functions) Order 2021 (“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 Yorkshire Combined Authority (WYCA) was established by the West Yorkshire Combined Authority Order 2014 (S.I. 2014/864). The Combined Authority’s area comprises the local government areas of Bradford, Calderdale, Kirklees, Leeds and Wakefield, and the metropolitan district councils for these areas are constituent members of the Combined Authority.
- 1.2. A Devolution Deal – an agreement with Government to establish a Mayor and devolve a range of powers and responsibilities to a mayoral combined authority – was agreed between the WYCA, the councils in West Yorkshire and Government on 11 March 2020. This includes the conferral of a number of local authority and public authority functions on the WYCA¹.
- 1.3. This Order establishes the position of elected Mayor for West Yorkshire, who will also take on the functions of a Police and Crime Commissioner; the separate office of the West Yorkshire PCC is abolished. It provides that the first election to this position will take place on 6th May 2021 and subsequent elections will take place on the ordinary day of election in 2024 and in every fourth year thereafter, It also provides that the Mayor will take office on the fourth day after the election for the return of the Mayor.
- 1.4. The provisions in this Order confer on the WYCA functions agreed in the Devolution Deal and make appropriate constitutional arrangements. Some functions are specified to be exercisable by the Mayor personally (“the mayoral functions”) and others by the WYCA collectively (“the non mayoral functions”). The non-mayoral WYCA functions

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872465/West_Yorkshire_Devolution_Deal.pdf

will come into force the day after the Order is made. The Mayoral functions will come into force on the fourth day after the election of the Mayor.

1.5. Prior to the Secretary of State seeking Parliamentary approval to this Order, the WYCA prepared a governance review and scheme which contained its proposals for the Order; the WYCA undertook a public consultation on the proposals contained in the scheme, supported by the councils, and submitted a summary of consultation responses to the Secretary of State. The Secretary of State has had regard to the WYCA's governance review, scheme, consultation and summary of responses to the consultation in deciding to seek Parliamentary approval to the Order. The WYCA and the five constituent authorities have all consented to the making of this Order.

2. Conferral on WYCA of public authority functions under section 105A of the 2009 Act (Other public authority functions)

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)(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.

2.6. 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 Apprenticeships, Skills, Children and Learning Act 2009, the Housing and Regeneration Act 2008 and the Localism Act 2011 for the purpose of conferring the relevant public authority functions on the combined authority using section 105A powers.

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

3.1. Education and Skills

- 3.1.1. The Government committed in the Devolution Deal to devolve Adult Education powers and the Adult Education Budget to allow West Yorkshire to shape local skills provision to respond to local needs.
- 3.1.2. The WYCA has requested that the Secretary of State make provision that WYCA be given devolved functions in respect of Adult Education, and for these powers to be conferred on to the WYCA to be exercisable by the Combined Authority. The governance review and scheme asked for particular functions from the Apprenticeships, Skills, Children and Learning Act 2009, so that the provision of adult skills in West Yorkshire could be better aligned with locally determined priorities to ensure the skills system is demand led so that all residents have the skills required to help businesses to grow, innovate and diversify.
- 3.1.3. The consultation asked for opinions on the proposal to confer skills and employment functions to a WYCA. In the consultation 2,954 of the 4,105 respondents to this question expressed their support for the proposals, while 605 provided responses in opposition. The reasons given for supporting the proposals were: having greater control over local decisions, enabling decisions to be based on knowledge and understanding of local needs, tailoring opportunities to the needs of local people, and the general support that these arrangements would deliver for education, training and employment skills. Comments received in disagreement to the proposals included that the changes were deemed to be unnecessary, that the money could be better spent elsewhere, that it would add to bureaucracy and that this policy area should remain at a national level.
- 3.1.4. Having had regard to the governance review, scheme and the summary of consultation responses, the Secretary of State considers that conferral on the WYCA of these Adult education functions will lead to an improvement in the exercise of these statutory functions, and hence is appropriate.
- 3.1.5. Part 3 of this Order transfers the Secretary of State's functions in the Apprenticeship, Skills, Children and Learning Act 2009 to the WYCA for education and training for persons aged 19 or over and others subject to adult detention; and to provide learning aims (provision of facilities and payment of tuition fees) for persons aged 19 and over.
- 3.1.6. Functions in the Apprenticeship, Skills, Children and Learning Act 2009 are conferred on the WYCA, exercisable concurrently with the Secretary of State, which relate to the encouragement of education and training for persons aged 19 or over and others subject to adult detention and to the provision of financial resources.

3.2. Power to pay grant

- 3.2.1. The Government committed in the Devolution Deal to giving the WYCA Mayor the responsibility for a devolved and consolidated local transport budget for the area of the WYCA, including all relevant devolved highways funding. These will be paid to the Combined Authority supported by agreements between the Government and Combined

Authority; and decisions will be made by the Mayor. It also committed to consider the making of relevant regulations to facilitate the transfer of bus functions and funding through the Bus Service Operator Grant to the Mayor.

- 3.2.2. The WYCA has requested for the Combined Authority to be able to exercise the functions of a Minister of the Crown contained in Section 31 of the Local Government Act 2003, which it would intend to use to pay grants to the constituent councils for exercising highway functions. The WYCA requested these functions to be exercisable by the Mayor, concurrently with a Minister of the Crown. They have also requested that the Combined Authority be granted powers under section 154 of the Transport Act 2000 to make grants to bus operators.
- 3.2.3. The WYCA's governance review and consultation stated that the West Yorkshire devolution deal will allow for significant investment in transport infrastructure and services, including public transport, and that these functions will help create an effective and efficient West Yorkshire transport system for the long term, and give greater certainty over future funding for transport improvements. The WYCA's consultation asked participants whether they support or oppose the proposals to devolve significant transport responsibilities and functions as set out in the scheme. Of the 4,114 who responded to this question, the majority (3,106) supported the proposals to devolve transport related responsibilities, while 677 participants opposed. Supportive comments referred to it as being long overdue and the need to improve the connectivity and integration of services within the region. There were 677 participants that opposed and expressed a view that the proposals were unnecessary. Comments received in disagreement to the transport proposals included: concern as to unnecessary, additional layers of bureaucracy and red tape, that the proposals were a waste of time and would not work due to having a bad track record elsewhere, and that there would likely be unfair representation, with big cities such as Leeds being prioritised at the expense of other areas. There are consent provisions included in the order which provide that the exercise of certain transport functions conferred requires the consent of each member of the Combined Authority appointed by a constituent council (but not the members appointed for political balance).
- 3.2.4. Having had regard to the governance review, scheme and the summary of consultation responses, the Secretary of State considers that the conferral of the function of the Secretary of State to pay grants to local authorities and the power to make grants to bus operators will lead to an improvement in the exercise of these statutory functions, and hence is appropriate.
- 3.2.5. Part 6 of this Order confers onto the Combined Authority a power, to be exercisable by the Mayor, to pay grants to constituent councils, using the powers under section 31 of the Local Government Act 2003, mirroring powers held by Ministers. It also confers onto the Combined Authority a power, to be exercisable by the Mayor, to exercise the functions under section 154(1) of the Transport Act 2000 that the Secretary of State has in relation to England – to pay grants to bus service operators, for eligible bus services operating within the WYCA area.

3.2.6. 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; and
- 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.

Housing and planning

3.2.7. Chapter 1 of the Housing and Regeneration Act 2008 (“the 2008 Act”) establishes the Homes and Communities Agency (HCA)², 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.

3.2.8. 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.

3.2.9. The Government committed in the Devolution Deal that the WYCA would have broad powers to acquire and dispose of land to build houses, commercial space and infrastructure, for growth and regeneration. They will be able to invest to deliver housing for the area. Some of these would be mayoral powers.

3.2.10. The WYCA requested that the Secretary of State makes provision for certain functions of the HCA to be exercisable in relation to the WYCA’s area, and for those to be functions of the WYCA exercisable concurrently with Homes England

3.2.11. The governance review and scheme proposed that the WYCA should be granted devolution of the objectives and functions of Homes England under section 2(1) of the Housing and Regeneration Act 2008 and (within the Combined Authority area) and that specified powers contained in the 2008 Act would be conferred. These functions would be non-mayoral with the exception of the specific Homes England compulsory purchase powers in section 9 of the 2008 Act which would be exercisable by the Mayor with the consent of the member(s) of the Combined Authority appointed by the

² On 11 January 2018 the HCA’s non-regulation arm adopted its new trading name, Homes England.

constituent council(s) (who is not appointed for political balance) the area of which includes the area(s) of land to be compulsorily acquired.

3.2.12. The proposals to confer certain functions of the HCA to the WYCA were supported by the majority of respondents in the consultation, receiving 2,719 responses in support out of 4,105 responses to the relevant question (830 opposed). Supportive comments referred to the deal's potential to enable joined up thinking and co-ordination across the region for planning and housing. The most common opposing view was land acquisition concerns around compulsory purchases being made and concerns about the environment. Additional consent provisions have been made in the Order for the compulsory purchase of land – this will require the consent of each Combined Authority member (but not any additional member appointed for political balance), 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.

3.2.13. Having had regard to the governance review, scheme and the summary of consultation responses, the Secretary of State considers that conferral on the WYCA 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 enabling the WYCA to improve the supply and quality of housing, secure the regeneration or development of land and infrastructure and support the creation, regeneration and development of communities and their well-being, and hence is appropriate.

3.2.14. Part 4 of this Order 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 WYCA. The compulsory purchase powers are to be exercised by the Mayor, with consent from the Combined Authority member(s) appointed by the constituent council(s) whose area contains the land in question (not including the members appointed for political balance). 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 Homes England.

3.3. Mayoral Development Corporations (MDCs)

3.3.1. The Devolution Deal includes that the Mayor will have the power to designate a mayoral development area in the area of the WYCA to support delivery on strategic sites in the area of West Yorkshire. This is the first step in establishing a Mayoral Development Corporation (MDC) in the WYCA area and a further order would be necessary to create such a body.

3.3.2. The deal also set out that this power could be exercised only with the consent of the Combined Authority member(s) appointed by the constituent council(s) whose area(s)

contains the area in which the MDC would be established (but not the members appointed for political balance); where the MDC is to be established within the area of the Peak District National Park the consent of the Peak District National Park Authority would also be required.

3.3.3. 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 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 corporations;
- 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.

3.3.4. 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 mayoral development corporations;
- for the terms of appointment of members;
- for staff;
- for remuneration of members and staff;
- for committees of mayoral development corporations; and
- for proceedings and meetings.

3.3.5. The WYCA consultation addressed MDCs within the overall housing and planning proposal for the WYCA area. There were no significant comments of approval or opposition in relation to Mayoral Development Corporations in the consultation.

3.3.6. Having had regard to the governance review, 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 WYCA to be exercisable by the Mayor, with the consents from WYCA member(s) and the Peak District National Park as outlined above. He considers that conferring these functions is appropriate because, together with other powers of the WYCA, they will enable the Mayor and WYCA to drive development and regeneration across the area.

4. Consultation

4.1. The WYCA undertook a consultation, delivered in conjunction with the five constituent councils, on the proposals reflected in their scheme and governance review. The consultation ran for eight weeks from 25 May to 19 July 2020. Due to COVID-19

measures at the time, the online resource was the primary consultation channel. This was supported through Ipsos MORI who were commissioned to enhance the accessibility of the consultation for groups and individuals with difficulty accessing digital channels. Following this, a summary of the consultation responses compiled by the WYCA was submitted to the Secretary of State in September 2020.

- 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 (eight weeks); the mechanisms used (online and the YourVoice LA web page); the promotional activity (including media engagement, social media platforms and a focus group); and the summary, which included a robust analysis.
- 4.3. The Mayor of the WYCA would be required to conduct a further statutory consultation before a mayoral development area could be designated and an MDC established.

5. Material considered by the Secretary of State

- Governance Review submitted by the WYCA
- Scheme submitted by the WYCA
- Consultation document submitted by the WYCA
- Summary of consultation responses submitted by the WYCA

These are each accessible through the West Yorkshire Devolution page:
<https://www.yourvoice.westyorks-ca.gov.uk/WYdevolution>