

THE GREATER MANCHESTER COMBINED AUTHORITY (ADULT EDUCATION FUNCTIONS) ORDER 2018

THE LIVERPOOL CITY REGION COMBINED AUTHORITY (ADULT EDUCATION FUNCTIONS) ORDER 2018,

THE WEST OF ENGLAND COMBINED AUTHORITY (ADULT EDUCATION FUNCTIONS) ORDER 2018

THE WEST MIDLANDS COMBINED AUTHORITY (ADULT EDUCATION FUNCTIONS) ORDER 2018

THE TEES VALLEY COMBINED AUTHORITY (ADULT EDUCATION FUNCTIONS) ORDER 2018

THE CAMBRIDGESHIRE AND PETERBOROUGH COMBINED AUTHORITY (ADULT EDUCATION FUNCTIONS) ORDER 2018

About this report

Section 105B of the Local Democracy, Economic Development and Construction Act 2009 (“the Local Democracy 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 Local Democracy 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. Subsection 10 of Section 105B sets out that the report must include a description of any consultation taken into account the Secretary of State, information about any representations considered by the Secretary of State in connection with the Order and any other evidence or contextual information that the Secretary of State considers it appropriate to include.

This report accompanies the following Orders:

- The Greater Manchester Combined Authority (Adult Education Functions) Order 2018
- The Liverpool City Region Combined Authority (Adult Education Functions) Order 2018
- The West Of England Combined Authority (Adult Education Functions) Order 2018
- The West Midlands Combined Authority (Adult Education Functions) Order 2018
- The Tees Valley Combined Authority (Adult Education Functions) Order 2018
- The Cambridgeshire And Peterborough Combined Authority (Adult Education Functions) Order 2018

The Orders are to be made, subject to Parliament’s approval, under provisions within the Local Democracy Act, including section 105A. Each Order confers the same set of adult

education functions on each specified combined authority that will enable the combined authority to exercise the specified functions and to administer the associated Adult Education Budget (AEB) from academic year 2019/20.

1. Description of the Combined Authorities

Cambridgeshire and Peterborough (“CPCA”)

- 1.1. The CPCA was established on 2 March 2017 by the Cambridgeshire and Peterborough Combined Authority Order 2017 (S.I. 2017/251)¹ to facilitate co-ordination and integration of economic development, regeneration and transport functions. The CPCA is constituted of the local authorities for the areas of Cambridge, South Cambridgeshire, Huntingdonshire, Fenland, East Cambridgeshire, Cambridgeshire and Peterborough.
- 1.2. A Devolution Deal² - an agreement with Government to devolve a range of powers and responsibilities to a mayoral combined authority – was agreed between the CPCA and the Government on 16 March 2017. It included new powers in relation to transport, planning and skills as well as an investment fund to support the growth of the local economy over 30 years. It included a commitment to the conferral of a number of public authority functions on the CPCA including those required to administer the AEB.
- 1.3. The Cambridgeshire and Peterborough mayoral election was held on 4 May 2017. The first mayor, James Palmer, took office on 8 May 2017.

Greater Manchester (“GMCA”)

- 1.4. The GMCA was established on 1 April 2011 by the Greater Manchester Combined Authority Order 2011 (S.I. 2011/908)³ for the purpose of facilitating the co-ordination of economic development, regeneration and transport functions. The GMCA is constituted of the local authorities for the areas of Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Stockport, Tameside, Trafford and Wigan.
- 1.5. A Devolution Deal⁴ was agreed between Government and the GMCA on 16 March 2016, this updated the agreement that was published on 25 November 2015 to include new powers in relation to the conferral of the functions which relate to the administration of the AEB.
- 1.6. The Greater Manchester Combined Authority (Election of Mayor with Police and Crime Commissioner Functions) Order 2016 which came into force on 30 March 2016 provided for there to be a Mayor for the area of the GMCA. The first mayoral election took place on 4 May 2017 with the new mayor, Andy Burnham, taking office on 8 May 2017.

Liverpool City Region (“LCRCA”)

¹ <http://www.legislation.gov.uk/ukSI/2017/251/contents/made>

² <https://www.gov.uk/government/publications/cambridgeshire-and-peterborough-devolution-deal>

³ <http://www.legislation.gov.uk/ukSI/2011/908/made>

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/508116/Further_Devolution_to_Greater_Manchester_Combined_Authority_FINAL.pdf

- 1.7. The LCRCA was formed on 1 April 2014 by the Halton, Knowsley, Liverpool, St Helens, Sefton and Wirral Combined Authority Order 2014 (2014/865)⁵ for the purpose of facilitating the co-ordination of economic development, regeneration and transport function. The constituent areas later agreed to be referred to as the Liverpool City Region Combined Authority, this was established through the Liverpool City Region Combined Authority (Functions and Amendment) Order 2017 (S.I 2017/430)⁶.
- 1.8. A Devolution Deal⁷ was agreed between Government and the LCRCA on 17 November 2015. It included new powers and responsibilities in relation to transport, skills, business support and other areas. This deal also included the commitment to confer the functions which relate to administration of the AEB.
- 1.9. The Halton, Knowsley, Liverpool, St. Helens, Sefton and Wirral Combined Authority (Election of Mayor) Order 2016 (S.I. 2016/782) provides for there to be a mayor for the area of the LCRCA and 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. The first election took place on the 4 May 2017 with the new mayor, Steve Rotherham, taking office on 8 May 2017.

Tees Valley (“TVCA”)

- 1.10. The TVCA was established on 1 April 2016, by the Tees Valley Combined authority Order 2016 (S.I. 2016/449)⁸, to enable co-ordination and integration of economic development, regeneration and transport functions. The TVCA is constituted of the local authorities for the areas of Darlington, Hartlepool, Middlesbrough, Redcar and Cleveland and Stockton-on-Tees.
- 1.11. A Devolution Deal⁹ was agreed between Government and TVCA on 23 October 2015. This included giving TVCA greater control over transport, skills, business support and regeneration. This also included commitment to confer the functions which relate to administration of the AEB.
- 1.12. The Tees Valley Combined Authority (Election of Mayor) Order 2016 (S.I. 2016/783)¹⁰ provided for there to be a mayor for the area of the TVCA and specifies the terms of office for the Mayor, the dates on which elections for the return of a mayor shall take place and the intervals between elections. The first election took place on 4 May 2017, with the first mayor, Ben Houchen, taking office on 8 May 2017.

West Midlands (“WMCA”)

- 1.13. The WMCA was established on 16 June 2016 by the West Midlands Combined Authority Order 2016 (S.I. 2016/653)¹¹ to facilitate co-ordination and integration of economic development, regeneration and transport functions (and included dissolving

⁵<http://www.legislation.gov.uk/uksi/2014/865/contents/made>

⁶http://www.legislation.gov.uk/uksi/2017/430/pdfs/uksi_20170430_en.pdf

⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/477385/Liverpool_devolution_deal_unsigned.pdf

⁸<http://www.legislation.gov.uk/uksi/2016/449/made>

⁹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/470127/Tees_Valley_Devo_Deal_FINAL_formatted_v3.pdf

¹⁰<http://www.legislation.gov.uk/uksi/2016/783/contents/made>

¹¹<http://www.legislation.gov.uk/uksi/2016/653/contents/made>

the West Midlands Integrated Transport Authority and conferring its functions on the WMCA). The WMCA is constituted of the local authorities for the areas of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton.

- 1.14. A Devolution Deal¹² was agreed between the shadow WMCA and the Government on 17 November 2015. It included establishing a WMCA, to be led by an elected Mayor, and for the conferral of a number of local authority and public authority functions on the WMCA including those functions which relate to administration of the AEB.
- 1.15. The West Midlands Combined Authority (Election of Mayor) Order 2016 (S.I. 2016/933)¹³ – which was made on 15 September 2016 - provides for there to be a Mayor for the area of the WMCA and 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. The first election took place on 4 May 2017 and the mayor, Andy Street, took office on 8 May 2017.

West of England (“WECA”)

- 1.16. The WECA was established on 9 February 2017 by the West of England Combined Authority Order 2017 (S.I. 2017/126)¹⁴. It provided for the governance arrangements of the WECA, including that the WECA would have a directly elected Mayor. It also provided certain local authority functions and certain public functions to be exercised by the WECA. The WECA is constituted of the local government areas of Bath and North East Somerset, Bristol City and South Gloucestershire. The first mayoral election took place in the West of England on 4 May 2017, with the new mayor, Tim Bowles, taking up office on 8 May 2017.
- 1.17. A Devolution Deal¹⁵ was agreed between Government and the WECA on 16 March 2016. This included providing the WECA with new powers over transport, planning, skills and employment. This also included commitment to confer the functions which relate to administration of the AEB.

2. Conferral on combined authorities of public authority functions: powers

- 2.1. Section 105A(1)(a) of the Local Democracy 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) 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) 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

¹²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/477421/West_Midlands_devolution_deal_unsigned_final_web.pdf

¹³<http://www.legislation.gov.uk/uksi/2016/933/contents/made>

¹⁴<https://www.legislation.gov.uk/uksi/2017/126/contents/made>

¹⁵<https://www.gov.uk/government/publications/west-of-england-devolution-deal>

the order.

- 2.4. Section 105A(3) 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.

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

- 3.1 These Orders provide for the transfer to each specified combined authority of the following adult education functions under the Apprenticeships, Skills, Children and Learning Act 2009 ("the 2009 Act"), and will be exercisable by the combined authority instead of by the Secretary of State in relation to the area of the combined authority:

3.1.1. Section 86 which relates to the education and training for persons aged 19 or over;

3.1.2. Section 87 which relates to the learning aims for such persons and provision of facilities ;

3.1.3. Section 88 which relates to the payment of tuition fees for such persons.

- 3.2 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 the combined authority in relation to the area and will be exercisable concurrently with the Secretary of State.

- 3.3 The transfer of these functions is subject to an exception in relation to apprenticeships training, persons subject to adult detention or any power to make regulations or orders.

- 3.4 The following conditions are set on the exercise of the transferred functions:

3.4.1 the combined authority must 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 given by the Secretary of State; and

3.4.2 in exercising the transferred functions, the combined authority must have regard to guidance issued by the Secretary of State (as amended from time to time or replaced by a subsequent document).

- 3.5 All the Orders to which this report refers include the provision referred to in paragraphs 3.1 – 3.4 of this report. In addition Part 3 of the Greater Manchester Order makes various consequential amendments to primary and secondary legislation as follows:

3.5.1 section 100 of the 2009 Act (provision of financial resources) so as to provide that the Secretary of State may provide financial resources under that section

in respect of functions under Part 4 of the 2009 Act which have been conferred on a combined authority;

3.5.2 section 122 of the 2009 Act to make provision with respect to information sharing following the conferral of such functions;

3.5.3 section 123 of the Education and Inspections Act 2006 so as to make related provision for inspections;

3.5.4 It also amends the Education (Fees and Awards) (England) Regulations 2007 so as to make provision with respect to the rules of eligibility adopted by a combined authority for awards by an institution to which it makes grants, loans or other payments under section 100 of the 2009 Act.

3.6 The Devolution Deals agreed between Government and each specified combined authority set out that Government will fully devolve the 19+ adult skills budget to the combined authority and that the combined authority will be responsible for allocations to providers and the outcomes to be achieved, consistent with statutory entitlements.

3.7 As part of seeking local area views each combined authority consulted on their proposed scheme, including the specific powers and responsibilities to be devolved as set out in the Devolution Deals. This included consulting on devolving responsibility for adult education as set out in the deal. For each of the combined authorities the consultations demonstrated a majority of local area support for devolving responsibility for adult education.

3.8 As a result of the transfer of the specified functions in relation to the area of each combined authority it will be the responsibility of that combined authority to enable access to appropriate adult education provision in relation to their area. The combined authority will be responsible for commissioning and contracting with providers to deliver such adult education.

3.9 The deals set out a series of readiness conditions for devolution:

3.9.1 Parliament has legislated to enable transfer to local authorities of the current statutory duties on the Secretary of State to ensure appropriate facilities for further education for adults from its budget and for provision to be free in certain circumstances.

3.9.2 Completion of the Area Review process leading to a sustainable provider base.

3.9.3 After the area-reviews are complete, agreed arrangements are in place between central government and the Combined Authority to ensure that devolved funding decisions take account of the need to maintain as sustainable and financially viable 16+ provider base.

3.9.4 Clear principles and arrangements have been agreed between central government and the combined authority for sharing financial risk and managing failure of 16+ providers, reflecting the balance of devolved and national interest and protecting the taxpayer for unnecessary expenditure and

liabilities.

3.9.5 Learner protection and minimum standards arrangements are agreed.

3.9.6 Funding and provider management arrangements, including securing financial assurance, are agreed in a way that minimises costs and maximises consistency and transparency.

3.10 The Department for Education and the Education and Skills Funding Agency (an executive agency of the Department for Education) will agree before the end of 2018 a collaborative approach through a Memorandum of Understanding that is intended to facilitate the alignment, where appropriate, of local and national policy. This arrangement is intended to ensure that decisions made by all parties will be made with a view to ensuring the effective delivery of adult education provision.

The Statutory Test

3.11 Under s105B(1)(b) of the Local Democracy Act the Secretary of State may make an order where the appropriate consent has been given and the Secretary of State considers that the making of the order is likely to improve the exercise of the statutory functions in the area or areas to which the order relates (“the statutory test”). In relation to each of the Orders, the Government has sought and obtained consent from the appropriate authorities, which are the specified combined authority and each of its constituent councils.

3.12 Each combined authority submitted an assessment of their capability to administer the adult education budget and exercise the functions in a way that would be likely to improve the exercise of the statutory functions in their area.

3.13 The Secretary of State considered each assessment and the associated evidence and information provided by each combined authority and has indicated in each case that he is satisfied that the transfer of the specified functions is likely to improve the exercise of those functions in relation to the area of each specified combined authority. This evidence included a letter of assurance from the CEO (or equivalent) of the combined authority, a strategic skills plan and accompanying evidence to demonstrate their plans for ensuring operational capacity to administer the AEB. Through this evidence each combined authority was able to demonstrate that they had a detailed understanding of the skills challenges facing their local area and has put in place plans to address those challenges. They also provided evidence to demonstrate how they will be in a position to effectively administer the AEB from an operational perspective.

3.14 As part of his consideration the Secretary of State provided detailed feedback to each combined authority commenting on specific areas where further work would benefit the combined authorities in their plans. Specifically for all the combined authorities this included encouraging them to give detailed consideration to their approach to monitor and evaluate the AEB in their area, a requirement that is set out in each of the devolution deals.

3.15 Having had regard to the devolution deals, the summary of the consultation responses in relation to adult education, an in principle agreement to a Memorandum of

Understanding, the consent of all the appropriate authorities and the evidence provided by each combined authority the Secretary of State is satisfied that the statutory test is met.

4 Consultation

- 4.1 Unlike the legislation relating to the establishment of a combined authority, or the conferral of local authority functions on a combined authority, a consultation is not required to confer public authority functions on a combined authority.
- 4.2 Each combined authority consulted extensively on its overall devolution scheme which included housing, regeneration and land regeneration, transport, culture and a spatial plan as well as proposals for education and skills. Each devolution scheme included specific reference to the devolution of adult education.
- 4.3 Each consultation used a variety of methods to engage with the public and key local stakeholders including: proactive media releases, proactive engagement with regional and local media, web content summarising each policy area, social media, workshops with elected members and letters to key stakeholders. Each was conducted over a six week period. As part of the responses to these consultations, each combined authority has produced a strategic skills plan designed to demonstrate how they will meet the needs of their residents through the devolution of the adult education budget.