

LOCAL DEMOCRACY, ECONOMIC DEVELOPMENT AND CONSTRUCTION ACT 2009

EXPLANATORY NOTES

COMMENTARY

Part 6: Economic Prosperity Boards and Combined Authorities

Section 88 – EPBs and their areas

175. *Subsection (1)* provides that the Secretary of State can make an order establishing an Economic Prosperity Board (“EPB”) for an area. An EPB will have functions relating to the economic development and regeneration of its area.
176. *Subsections (2) to (6)* specify the conditions that need to be met for an area to be capable of designation as an EPB’s area.
177. *Subsection (2)* specifies that the area must consist of the whole of two or more local government areas in England.
178. *Subsections (3) and (4)* stipulate that the area must be made up of local government areas that have contiguous boundaries. It is not possible for the area of an EPB to completely surround an area which does not form part of it, nor for any area which does form part of it to have no common boundaries with any part of the rest of the area.
179. *Subsection (5)* stipulates that it is not possible for any local government area to be part of more than one area of an EPB, or part of an EPB’s area at the same time as being part of the area of a combined authority (see section 103).
180. *Subsection (6)* provides that each local government area that forms part of the area of an EPB must have been included in a scheme prepared and published under section 98.
181. *Subsection (7)* states that a local government area for this Part means the area of a county council or a district council. It does not therefore include Greater London or the Isles of Scilly.
182. *Subsection (8)* requires an order under this section to specify the name that the EPB will be known by.

Section 89 – Constitution

183. This section allows the Secretary of State to make an order about the constitutional arrangements of an EPB.
184. *Subsection (1)* sets out what those arrangements are. An order could cover the membership of an EPB, the voting powers of members of the EPB, and the executive arrangements of the EPB. (Executive arrangements are arrangements for an EPB to set

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up an executive to make specific decisions, especially the day to day decisions, on its behalf. An executive would be expected to be a smaller and more stream-lined body than the EPB itself. Local authorities are required to operate executive arrangements).

185. *Subsection (2)* allows the order to make provision about the number of members of the EPB and how they are to be appointed. It also permits details of the remuneration of, and pensions or allowances payable to, members of the EPB to be included in such an order.
186. *Subsection (3)* states that the provision which may be made about the voting powers of each member includes provision about the different weight to be given to the vote of each member.
187. *Subsection (4)* explains what is meant by “executive arrangements” for the EPB, for instance the establishment of an executive and the arrangements by which that executive can exercise the powers of the EPB.
188. *Subsection (5)* provides that an order cannot provide that anyone other than the EPB has responsibility for agreeing its budget, so this function cannot be delegated to an executive of the EPB.

Section 90 – Constitution: membership and voting

189. This section sets out the provision which must be included in an order made under section 89 that deals with the number and appointment of members of an EPB. The order must provide that a majority of the EPB’s members are elected members of the local authorities for the EPB’s area.
190. *Subsection (5)* requires that the order must state that EPB members who are not elected members of its constituent local authorities will be non-voting members.
191. *Subsection (6)* allows for voting members of an EPB to resolve that provision made in accordance with *subsection (5)* does not apply, so that the voting members can decide to allow the members who are not elected members of its constituent local authorities to vote.

Section 91 – Exercise of local authority functions

192. *Subsection (1)* allows the Secretary of State to make an order that provides for functions of a county council or district council to be exercisable by the EPB. The functions must be exercisable by the council in relation to an area within the EPB’s area.
193. This power applies only if the Secretary of State thinks it appropriate for the EPB to exercise the functions in question.
194. *Subsection (3)* provides that an order may specify that the function be exercisable generally, or subject to conditions or limitations. *Subsection (4)* allows an order to make provision for functions to be exercisable by the EPB instead of the local authority, or concurrently with the local authority.
195. *Subsection (5)* provides that an EPB must perform functions that are exercisable by the EPB with a view to promoting economic development and regeneration in its area.

Section 92 – Funding

196. This section allows the Secretary of State to make an order that sets out how the EPB will be funded.
197. *Subsection (1)* enables the Secretary of State to make provision for the costs of an EPB to be met by its constituent councils and about the basis on which the amount payable by each constituent council is to be determined.

Section 93 – Accounts

198. This section requires that an EPB keeps a general fund whereby all receipts of the EPB shall be carried to that fund and all liabilities falling to be discharged by the EPB shall be discharged out of that fund. Accounts shall be kept of receipts carried to and payments made out of the general fund.

Section 94 – Change of name

199. This section provides that an existing EPB can pass a resolution to change its name. *Subsections (2), (3) and (4)* set out conditions which must be followed in passing that resolution. The EPB must notify the Secretary of State that it has changed its name and must publish notice of the change. The Secretary of State can direct the EPB as to the manner of publication.

Section 95 – Changes to boundaries of an EPB’s area

200. This section allows the Secretary of State to make an order changing the boundary of an existing EPB’s area. Such an order could either add to or take away the whole of the area administered by a county council or district council.
201. *Subsection (2)* reflects the conditions in *subsections (2), (3), (4) and (5)* in section 85, so that the revised area would have to meet the same conditions as have to be met for the initial designation of an area of an EPB.
202. An order changing the boundary of an EPB’s area cannot be made unless each of the councils in *subsection (3)* have agreed to the boundary change.

Section 96 – Dissolution of an EPB’s area

203. This section allows the Secretary of State to make an order to dissolve an EPB’s area and abolish the EPB.
204. An order dissolving an EPB cannot be made unless a majority of the councils whose territory is comprised in that EPB’s area have agreed to the dissolution. This applies to county councils and unitary district councils, but not district councils in a county council area.

Section 97 – Review by authorities: new EPB

205. *Subsection (1)* provides that any two or more authorities referred to in *subsection (2)* may review the effectiveness and efficiency of arrangements to promote economic development and regeneration within the geographical area covered by the review. Where a review is conducted by the county council, the review area must include the whole of any one or more of the districts within the county or, if there are no such areas, the whole area of the county council. Where it is conducted by the council for a district, the review area must include that district.
206. *Subsection (5)* enables a review area to include counties or districts the councils for which are not conducting the review. There is no compulsion on the councils of those areas included in the review under *subsection (5)* to then be part of a section 95 scheme, but if the conclusion of the review is to establish an EPB they can be included in the scheme if they agree to be included.

Section 98 – Preparation and publication of scheme: new EPB

207. This section stipulates that if two or more of the councils that have conducted a section 97 review conclude that the establishment of an EPB for an area would be likely to improve the exercise of statutory functions relating to economic development and regeneration and economic conditions within the area, then they have the power to prepare and publish a scheme for the establishment of an EPB for the area.

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208. *Subsection (3)* provides that the area of the proposed EPB must consist of all or part of the area covered by the review, may include one or more other local government areas, and must meet the conditions in *subsections (2), (3), and (4)* in section 88.
209. *Subsection (4)* prevents a local government area from being included in a scheme unless each appropriate authority for that area (defined in *subsection (5)*) has either participated in the preparation of the scheme or consented to the inclusion of the local government area in the scheme.

Section 99 – Requirements in connection with establishment of EPB

210. This section specifies that the Secretary of State may make an order establishing an EPB for an area if, having had regard to a scheme prepared and published under section 98, the Secretary of State considers that the establishment of an EPB for an area is likely to improve both the exercise of statutory functions relating to economic development and regeneration in the area and the economic conditions in the area.
211. *Subsection (2)* requires the Secretary of State to consult each of the local authorities for the area which is proposed to be included in the EPB's area and any other persons the Secretary of State considers appropriate before making the order.
212. *Subsection (4)* requires the Secretary of State to have regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government in making the order.

Section 100 – Review by authorities: existing arrangements

213. **Section 100** allows one or more of the authorities under *subsection (2)* - an existing EPB, a county council whose area or part of whose area is within an existing or proposed area of an EPB, and a district council whose area is within an existing or proposed area of an EPB — to review an “EPB matter”.
214. An EPB matter is, in relation to an existing EPB, any matter in respect of which the Secretary of State has power to make an order under sections 89, 91, 92, 95 and 96 (relating to the constitutional arrangements, functions, funding, boundaries and dissolution of the EPB) and also includes any matter concerning the EPB that the EPB itself can decide.
215. The review must relate to one or more existing areas or proposed areas of an EPB.

Section 101 – Preparation and publication of scheme: existing EPB

216. If one or more of the authorities who have conducted a section 100 review conclude that the exercise of economic development and regeneration functions, or economic conditions, in an existing or proposed area of an EPB would be likely to be improved by the making of an order under any one or more of sections 89, 91, 92, 95 and 96 (relating to the constitutional arrangements, functions, funding, boundaries and dissolution of the EPB), then those authorities have the power to prepare and publish a scheme proposing how this should be done.

Section 102 – Requirements in connection with changes to existing EPB arrangements

217. This section sets out the requirements applying to the Secretary of State's power to make orders under sections 89, 91, 92, 95 and 96 (relating to the constitutional arrangements, functions, funding, boundaries and dissolution of the EPB) in relation to an existing EPB.
218. Specifically, an order can be made in relation to an area if the Secretary of State considers that it is likely to improve statutory functions relating to economic development and regeneration in the area, or the economic conditions in that area.

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Before making the order the Secretary of State must consult such of the bodies specified in section 100(2) and such other persons as the Secretary of State considers appropriate. The Secretary of State must also have regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government.

Section 103 – Combined authorities and their areas

219. This section provides that the Secretary of State can make an order establishing a combined authority for an area which meets conditions specified in *subsections (2) to (6)*. A combined authority will have functions relating to economic development and regeneration and transport.
220. *Subsection (2)* specifies that a combined authority's area must consist of the whole of two or more local government areas in England.
221. *Subsections (3) and (4)* stipulate that a combined authority's area must be made up of local government areas that have contiguous boundaries. It is not possible for a combined authority's area to completely surround an area which does not form part of it, nor for any area which does form part of it to have no common boundaries with any part of the rest of the area.
222. *Subsection (5)* stipulates that no part of the area may form part of another combined authority's area, the area of an EPB or an integrated transport area.
223. *Subsection (6)* provides that each local government area that forms part of the combined authority's area must have been included in a scheme prepared and published under section 109.
224. *Subsection (7)* requires an order under this section to specify the name that the combined authority will be known by.

Section 104 - Constitution and functions: transport

225. The section allows the Secretary of State to make an order about the constitutional arrangements and functions of an individual combined authority.
226. The section enables the order to include any of the specified provisions in the Local Transport Act 2008 that may be made for an Integrated Transport Authority (ITA) in relation to constitutional arrangements (including provision about membership), delegation of local authority and Secretary of State functions, and a conferral of a power to direct.
227. *Subsection (4)* provides that the provision in the Local Transport Act 2008 relating to a change in name applies to a combined authority in the same way as it applies to an ITA.
228. *Subsections (5) and (6)* enable the Secretary of State by order to transfer any function of an ITA to a combined authority.
229. *Subsection (7)* enables the Secretary of State by order to provide for Public Transport Executive (PTE) functions to be exercisable by a combined authority, or the executive body of a combined authority.
230. *Subsection (8)* enables an order under *subsection (7)* to include any functions that have been conferred on an ITA by any enactment and relate to the functions of a PTE.

Section 105 – Constitution and functions: economic development and regeneration

231. *Subsection (1)* enables the Secretary of State to make in relation to a combined authority any provision that may be made in relation to an EPB under section 91.

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232. *Subsection (2)* provides that section 91(5), the duty to perform functions with a view to promoting economic development and regeneration, applies to the exercise of functions by a combined authority that are conferred on it by virtue of section 105(1).
233. *Subsections (3) and (4)* allow the Secretary of State by order to make in relation to a combined authority any provision that may be made in relation to an EPB with regards to funding. The order may only make provision in relation to the costs of a combined authority that are reasonably attributable to the exercise of its functions relating to economic development and regeneration.

Section 106 – Changes to boundaries of a combined authority’s area

234. This section allows the Secretary of State to make an order changing the boundary of the area of an existing combined authority. Such an order could either add or take away from a combined authority’s area the whole of the area administered by a county council or district council.
235. *Subsection (2)* provides that an order may be made if the new area meets the conditions in *subsections (2), (3), (4) and (5)* in section 103 and if each local authority specified under *subsection (3)* consents to the making of the order.
236. *Subsections (4) to (7)* require the order to designate one or more authorities as local transport authorities, to take over the transport functions for any areas removed from the combined authority’s area. The requirement does not apply to those areas that become part of an integrated transport area of an Integrated Transport Authority.

Section 107 – Dissolution of a combined authority’s area

237. This section allows the Secretary of State to make an order to dissolve a combined authority’s area and abolish its combined authority.
238. An order dissolving a combined authority’s area cannot be made unless a majority of the councils whose territory is partly or wholly within the combined authority’s area have agreed to the dissolution. This applies to county councils and unitary district councils, but not district councils in a county council area.
239. *Subsections (4) to (7)* require the order to designate one or more authorities as local transport authorities to take over the transport functions for the former area of the combined authority. The requirement does not apply to those areas that become part of an integrated transport area of an Integrated Transport Authority.

Section 108 – Review by authorities: new combined authority

240. This section provides that any two or more authorities of the types referred to in *subsection (2)* may review the effectiveness and efficiency of transport, and of the arrangements to promote economic development and regeneration, within the geographical area covered by the review. Where a review is conducted by a county council the review area must include the areas of one or more of the districts within the county or, where the county is a unitary authority, the area of the county council. Where it is conducted by a district council the review area must cover the area of the district council. The review can also be undertaken by an EPB or ITA but must include one or more local government areas within their existing area.
241. *Subsection (7)* enables a review area to include counties or districts the councils for which are not conducting the review. There is no compulsion on the councils of those areas included in the review area by virtue of *subsection (7)* to be part of a section 109 scheme but, if the conclusion of the review is to establish a combined authority and they agree to be included, they can be included in the scheme.

Section 109 – Preparation and publication of scheme: new combined authority

242. If two or more of the authorities who have conducted a section 108 review conclude that the establishment of a combined authority for an area would be likely to improve the exercise of statutory functions relating to transport and economic development and regeneration, the effectiveness and efficiency of transport in the area, and the economic conditions in the area, the authorities may prepare and publish a scheme for the establishment of a combined authority for the scheme area.
243. *Subsection (3)* provides that the scheme area must consist of or include the whole or any part of the review area, may include one or more other local government areas and must meet conditions set out in section 103(2) to (4).
244. *Subsection (4)* ensures that the scheme area will only include the local government areas of authorities which participate in the preparation of the scheme or consent to their inclusion in the scheme area.
245. *Subsection (5)* identifies the authorities who must participate in, or consent to the inclusion of their area in, the scheme.

Section 110 – Requirements in connection with establishment of combined authority

246. This section specifies that the Secretary of State may make an order establishing a combined authority for an area if, having regard to the prepared and published scheme, the Secretary of State considers that the establishment of a combined authority is likely to improve the exercise of statutory functions relating to transport and the effectiveness and efficiency of transport in the area as well as the exercise of statutory economic development and regeneration functions in the area and the economic conditions in the area.
247. *Subsections (2) and (3)* require the Secretary of State to consult each of the local authorities, any Integrated Transport Authority and any EPB for an area which, or part of which, is included within the area of the proposed combined authority, and any other persons the Secretary of State considers appropriate before making the order.
248. *Subsection (4)* requires the Secretary of State to have regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government in making the order.

Section 111 – Review by authorities: existing combined authority

249. **Section 111** allows one or more of the authorities under *subsection (2)* — an existing combined authority, a county council whose area or part of whose area is within an existing or proposed area of a combined authority, a district council whose area is within an existing or proposed area of a combined authority — to review a “combined matter”.
250. A combined matter is, in relation to an existing combined authority, any matter in respect of which the Secretary of State has power to make an order under sections 104, 105, 106 and 107 (relating to the constitutional arrangements, functions, funding, boundaries and dissolution of the combined authority) and also includes any matter concerning the combined authority that the combined authority itself can decide.
251. The review must relate to one or more existing areas or proposed areas of a combined authority.

Section 112 – Preparation and publication of scheme: existing combined authority

252. **Section 112** enables authorities to prepare a scheme if one or more of the authorities who have conducted a section 111 review conclude that the exercise of statutory transport or economic development and regeneration functions, the effectiveness and efficiency

of transport, or the economic conditions in an existing or proposed area of a combined authority would be likely to be improved by the making of an order under any one or more of sections 104, 105, 106 and 107 (relating to the constitutional arrangements, functions, funding, boundaries and dissolution of the combined authority).

Section 113 – Requirements in connection with changes to existing combined arrangements

253. This section sets out the requirements applying to the Secretary of State’s power to make orders under sections 104, 105, 106 and 107 (relating to the constitutional arrangements, functions, funding, boundaries and dissolution of the combined authority) in relation to an existing combined authority.
254. The Secretary of State may make an order if the Secretary of State considers that the making of the order is likely to improve the exercise of statutory functions relating to transport or economic development and regeneration, the effectiveness and efficiency of transport or the economic conditions in the combined authority’s area. Before making the order the Secretary of State must consult such of the bodies specified in section 111(2) and such other persons as the Secretary of State considers appropriate.
255. The Secretary of State must also have regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government.

Section 114 – Incidental etc provision

256. This section provides that the Secretary of State may make incidental, consequential, transitional or supplementary provision in support of an order made under this Part.
257. *Subsection (2)* allows the Secretary of State to make orders making amendments, repeals or revocations to, or applying or disapplying, primary and subordinate legislation in consequence of making an order, for instance to reflect the fact that a new EPB or combined authority has been established.

Section 115 – Transfer of property, rights and liabilities

258. This section specifies that the Secretary of State may make provision by order for the transfer of property, rights and liabilities for the purpose of, or in consequence of, an order under this Part. This includes the transfer of rights and liabilities under a contract of employment, to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply.

Section 116 – Consequential amendments

259. **Section 116** allows the Secretary of State, by order, to make provision in consequence of any provision made by this Part. This includes a power to amend, repeal or revoke provision contained in an enactment passed or made before the day on which the Act was passed.

Section 117 – Orders

260. This section sets out the procedure for making orders under the Part.
261. *Subsection (1)* requires an order under the Part to be made by statutory instrument.
262. *Subsections (2) and (3)* provide that an order under the Part is subject to the affirmative resolution procedure unless it is an order under section 116 alone and only amends legislation subject to the negative resolution procedure.
263. *Subsection (4)* enables the draft of an order to proceed as if it was not a hybrid instrument. This avoids the need for special procedures which apply to instruments which have a differential effect on people or places to be applied to these orders.

Section 118 – Guidance

264. *Subsection (1)* provides that the Secretary of State can issue guidance about anything which could be done under or by virtue of Part 6 by an authority referred to in *subsection (5)*.
265. The authority must have regard to any guidance given in exercising any function conferred or imposed by virtue of this Part.
266. *Subsections (3) and (4)* specify that the guidance must be given in writing and may be varied or revoked by further guidance in writing and that the guidance may make different provision for different cases.

Section 119 – Amendments relating to EPBs and combined authorities

267. This section introduces Schedule 6 which makes a number of amendments to apply provisions of local government and transport law to EPBs and combined authorities.

Section 120 – Interpretation

268. This section provides definitions for Part 6.