



# Cities and Local Government Devolution Act 2016

## 2016 CHAPTER 1

*Combined authorities: additional functions*

### 7 Other public authority functions

After section 105 of the Local Democracy, Economic Development and Construction Act 2009 insert—

#### **“105A Other public authority functions**

- (1) The Secretary of State may by order—
  - (a) 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;
  - (b) 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) An order under subsection (1) may include further provision about the exercise of the function including—
  - (a) provision for the function to be exercisable by the public authority or combined authority subject to conditions or limitations specified in the order;
  - (b) provision as to joint working arrangements between the combined authority and public authority in connection with the function (for example, provision for the function to be exercised by a joint committee).
- (3) The provision that may be included in an order under subsection (1)(a) includes, in particular, provision—
  - (a) for the combined authority to have the function instead of the public authority,

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- (b) for the function to be exercisable by the combined authority concurrently with the public authority,
  - (c) for the function to be exercisable by the combined authority and the public authority jointly, or
  - (d) for the function to be exercisable by the combined authority jointly with the public authority but also continue to be exercisable by the public authority alone.
- (4) An order under subsection (1)(a) may, in particular, include—
- (a) provision for the making of a scheme to transfer property, rights and liabilities (including criminal liabilities) from the public authority to the combined authority (including provision corresponding to any provision made by section 17(4) to (7) of the Localism Act 2011);
  - (b) provision to abolish the public authority in a case where, as a result of the order, it will no longer have any functions.
- (5) An order under this section may not provide for a regulatory function that is exercisable by a public authority in relation to the whole of England to be exercisable by a combined authority in relation to its area if the regulated function is itself exercisable by the combined authority by virtue of an order under this section.
- (6) Subsection (7) applies where an order under subsection (1) contains a reference to a document specified or described in the order (for example, in imposing a condition by virtue of subsection (2)(a) for an authority to have regard to, or to comply with, a statement of policy or standards set out in the document).
- (7) If it appears to the Secretary of State necessary or expedient for the reference to the document to be construed—
- (a) as a reference to that document as amended from time to time, or
  - (b) as including a reference to a subsequent document that replaces that document,
- the order may make express provision to that effect.
- (8) See also section 18 of the Cities and Local Government Devolution Act 2016 (devolving health service functions) which contains further limitations.
- (9) In this section—
- “function” (except in subsection (4)(b)) does not include a power to make regulations or other instruments of a legislative character;
  - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;
  - “public authority”—
    - (a) includes a Minister of the Crown or a government department;
    - (b) does not include a county council or district council;  - “regulated function” means the function of carrying out an activity to which a regulatory function relates;
  - “regulatory function” has the meaning given by section 32 of the Legislative and Regulatory Reform Act 2006.

### **105B Section 105A orders: procedure**

- (1) The Secretary of State may make an order under section 105A only if—
  - (a) a proposal for the making of the order in relation to the combined authority has been made to the Secretary of State by the appropriate authorities, or
  - (b) the appropriate consent is given and the Secretary of State considers that the making of the order is likely to improve the exercise of statutory functions in the area or areas to which the order relates.
- (2) For the purposes of subsection (1)(b), the appropriate consent is given to the making of an order under section 105A only if—
  - (a) in the case of an order in relation to an existing combined authority, each appropriate authority consents;
  - (b) in any other case, each constituent council consents.

Paragraph (a) is subject to subsections (3) and (4).
- (3) Subsection (4) applies where—
  - (a) an order under section 105A in relation to an existing combined authority is the first such order to be made in relation to that authority,
  - (b) the authority is not a mayoral combined authority, and
  - (c) there are one or more constituent councils who do not consent to the making of the order.
- (4) For the purposes of subsection (1)(b), the appropriate consent is given to the making of the order if the combined authority and at least two constituent councils consent to the making of the order.
- (5) Where an order under section 105A is made by virtue of subsection (4) of this section, the Secretary of State must make an order under section 106 to remove the area of each non-consenting constituent council from the existing area of the combined authority.
- (6) The requirement in subsection (1)(b) for the appropriate consent to be given to the making of an order under section 105A does not apply where—
  - (a) the order revokes (in whole or in part), or otherwise amends, a previous order under that section, and
  - (b) the only purpose of the order is to provide for a health service function of a combined authority to cease to be exercisable by the authority.
- (7) In subsection (6)(b), “health service function of a combined authority” means a function which—
  - (a) relates to the health service, as defined by section 275(1) of the National Health Service Act 2006, and
  - (b) is exercisable by the combined authority by virtue of an order under section 105A.
- (8) The requirement in subsection (1)(b) for the appropriate consent to be given is subject to section 106A.
- (9) At the same time as laying a draft of a statutory instrument containing an order under this section before Parliament, the Secretary of State must lay before

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Parliament a report explaining the effect of the order and why the Secretary of State considers it appropriate to make the order.

- (10) The report must include—
- (a) a description of any consultation taken into account by the Secretary of State,
  - (b) information about any representations considered by the Secretary of State in connection with the order, and
  - (c) any other evidence or contextual information that the Secretary of State considers it appropriate to include.
- (11) A proposal under subsection (1)(a) may be included in a scheme prepared and published under section 109 or 112.
- (12) For the purposes of this section “the appropriate authorities” are—
- (a) each county council the whole or any part of whose area is within the area for which the combined authority is, or is to be, established,
  - (b) each district council whose area is within the area for which the combined authority is, or is to be, established, and
  - (c) in the case of an order in relation to an existing combined authority, the combined authority,
- and a “constituent council” is a council within paragraph (a) or (b).”