

THE NORTH EAST MAYORAL COMBINED AUTHORITY (ESTABLISHMENT AND FUNCTIONS) ORDER 2024

REPORT UNDER SECTION 105B OF THE LOCAL DEMOCRACY, ECONOMIC DEVELOPMENT AND CONSTRUCTION ACT 2009

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 North East Mayoral Combined Authority (Establishment and Functions) Order 2024 (“the Order”) which is to be made, subject to Parliament’s approval, under provisions within the 2009 Act, including section 105A, and is subject to the transitional provision in sections 66(1), (11) and 67(4) of the Levelling-up and Regeneration Act 2023 (“the 2023 Act”).

1. Description of the combined authority

- 1.1 The North East Mayoral Combined Authority (NEMCA) when established will comprise the local government areas of seven councils across the North East who will be the constituent councils of the combined authority- Durham County Council, Gateshead Metropolitan Borough Council, Newcastle upon Tyne City Council, North Tyneside Metropolitan Borough Council, Northumberland County Council, South Tyneside Metropolitan Borough Council and Sunderland City Council.
- 1.2 A Devolution Deal – an agreement with Government to create the position of mayor and establish a mayoral combined authority to which a range of powers and responsibilities could be devolved – was agreed between these North East councils and Government on 28 December 2022. This included the abolition of the two existing combined authorities in the North East and the dissolution of their areas and the establishment of a new combined authority across the whole area (NEMCA) with a number of local authority and public authority functions to be conferred onto NEMCA.

1.3 This Order establishes the position of elected Mayor for the North East. It provides for the first election for this Mayor to take place on 2 May 2024 with the mayor taking office on 7 May, the fourth day after the election excluding the bank holiday. Subsequent elections will take place on the ordinary day of election in England every fourth year.

1.4 The provisions in this Order confer on NEMCA the functions agreed in the Devolution Deal and make appropriate constitutional arrangements. Some functions are specified to be exercisable by the mayor individually (“the mayoral functions”) and others by NEMCA collectively (“the non-mayoral functions”). The devolution deal is available at the following link [North East devolution deal \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

1.5 Prior to the Secretary of State seeking Parliamentary approval to make this Order, the seven North East councils prepared a governance review and scheme which contained their proposals for the Order; undertook a public consultation on the proposals contained in the scheme and submitted a summary of consultation responses to the Secretary of State.

1.6 The review and scheme was submitted to the Secretary of State prior to the coming into force on 26 December 2023 of the amendments made by the 2023 Act to sections 105B and 111 to 113 of the 2009 Act. This Order is therefore subject to the provision at sections 66(10), (11) and 67(4) of the 2023 Act where the amendments made by the 2023 Act to the 2009 Act do not have effect in relation to:

- the operation of section 105B of the 2009 Act in relation to a proposal under that section made before these sections of the 2023 Act came into force;
- the operation of section 111 of the 2009 Act in relation to a review that began before these sections of the 2023 Act came into force;
- the operation of section 112 of the 2009 Act in relation to the preparation and publication of a scheme following such a review;
- the making of an order under section 113 of the 2009 Act in response to a scheme under section 112 of that Act.

1.7 The Secretary of State has had regard to this governance review, scheme, consultation and summary of responses to the consultation in deciding to seek Parliamentary approval of the Order. The seven authorities have all consented to the making of this Order.

2. Conferral on NEMCA 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 also 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), disapplying, 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, the Localism Act 2011 and the Greater London Authority Act 1999 for the purpose of conferring the relevant public authority functions on the combined authority using section 105A powers.

3 Consultation

3.1 The seven constituent councils of the proposed North East Mayoral Combined Authority undertook a consultation, on the proposals reflected in their scheme and governance review. The consultation ran for eight weeks from 26 January to 23 March 2023 and consisted of a survey available on-line and in hard copy, stakeholder events across the seven councils for residents and specific sectors, stakeholder briefings and regular promotion of the consultation to encourage participation. On completion, the North East councils compiled a summary of responses and submitted it to the Secretary of State on 23 June 2023

3.2 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.

3.3 In accordance with the requirements at sections 110 and 113 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 paper versions and responses, face to face events, and focus groups for both the public and other key stakeholders); the promotional activity (including social media, media releases, and use of local press); and the analysis undertaken by the councils on the consultation responses.

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

4.1 Power to pay grant

- 4.1.1 The Government committed in the Devolution Deal to giving the mayor of the combined authority the responsibility for a devolved and consolidated local transport budget for the combined authority area including funding for highways and traffic functions exercised by constituent councils. 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.
- 4.1.2 The governance review and scheme from the North East requested that NEMCA 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 then use to pay grants to the constituent councils for exercising highways and traffic functions. They requested these functions to be exercisable individually by the mayor, concurrently with a Minister of the Crown. They have also requested that NEMCA be granted powers under section 154 of the Transport Act 2000 to make grants to bus operators.
- 4.1.3 The governance review and consultation stated that the North East 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 North East transport system for the long term, and give greater certainty over future funding for transport improvements.
- 4.1.4 The consultation asked participants whether they supported or opposed the proposals to confer transport and transport related functions onto NEMCA. Of the 2,606 replies to this question 1,731 (66.4%) were supportive and 631 (24.2%) were opposed.

- 4.1.5 Those in favour of the proposals highlighted the benefits of working towards a fully integrated transport system for the North East. Those opposed to the proposals cited possible detriment to some places such as rural area, and concern about too much power being in the hands of one person – the mayor.
- 4.1.6 Having had regard to the governance review, scheme and the summary of consultation responses provided by the councils, the Secretary of State considers that the abolition of the two existing combined authorities in the North East and the dissolution of their areas, and the simultaneous conferral of the function of the Secretary of State to pay grants to local authorities and the power to make grants to bus operators to NEMCA and its mayor will lead to an improvement in the exercise of these statutory functions, and hence is appropriate.
- 4.1.7 Part 5 of this Order confers onto NEMCA 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. This mirrors powers held by Ministers. It also confers on the Combined Authority 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 NEMCA area. These functions under the 2003 Act are to be exercisable by the Mayor individually.
- 4.1.8 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. In exercising this function 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 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.

4.2 Adult Education and Skills

- 4.2.1 The Government committed in the Devolution Deal to devolve adult education powers and budgets to allow NEMCA to shape local skills provision to respond to local needs.
- 4.2.2 The governance review and scheme from the North East requested that the Secretary of State make provision that NEMCA be given devolved functions in respect of adult education, and for these powers to be exercisable by the combined authority.

- 4.2.3 The governance review highlighted the need to prioritise education recovery to address COVID learning loss, address disparities and improve life chances for the area's citizens. To achieve this, the scheme proposed that NEMCA should be given particular functions from the Apprenticeships, Skills, Children and Learning Act 2009, so that the provision of adult skills in the North East could be better aligned with these locally determined priorities.
- 4.2.4 The consultation asked participants whether they supported or opposed the proposals to confer adult education functions onto NEMCA. Of the 2,591 replies to this question, 1,673 (64.6%) were supportive and 597 (23%) were opposed.
- 4.2.5 Those in favour of the proposals highlighted the benefit of the local area having greater control over local decisions, enabling decisions to be based on knowledge and understanding of local needs, and providing the ability to tailor opportunities to the needs of local people.
- 4.2.6 Those opposed to the proposals cited concern that NEMCA was too large an area for the delivery of skills leading to a fear that the hoped for improvements wouldn't materialise.
- 4.2.7 Having had regard to the governance review, scheme and the summary of consultation responses, the Secretary of State considers that the abolition of the existing combined authority in the North East with these functions and the dissolution of its area, and simultaneous conferral on NEMCA of these adult education, skills and training functions will lead to an improvement in the exercise of these statutory functions, and hence is appropriate.
- 4.2.8 The Order provides for the transfer to NEMCA of the following adult education functions under the 2009 Act in relation to the 2024/25 academic year onwards such that they become exercisable by the combined authority over its area rather than by the Secretary of State. Section 86 relates to education and training for persons aged 19 or over; section 87 relates to learning aims and provision of facilities for such persons and section 88 to the payment of tuition fees for such persons. Functions relating to: (a) apprenticeship training (b) persons subject to adult detention; (c) the power to make regulations or orders, are not included in the Order. 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.

4.2.9 The Order also provides for the conferral of a number of other education, skills and training functions onto NEMCA to be exercised concurrently with constituent local authorities including:

- in the Further and Higher Education Act 1992, the duty to provide education for named individuals over compulsory school age but under the age of 19;
- in the Education Act 1996, the duty to promote high standards and fulfilment of potential and work experience for persons over compulsory school age; and
- in the Education and Skills Act 2008, duties to promote the effective participation in education or training; duties to make arrangements to identify persons not in education or training; functions relating to the provision of services to encourage, enable or assist the effective participation of persons in education or training; functions relating to the provision of support and learning and support agreements; and functions relating to cooperation as regards provision of 14-19 education and training

4.3 Housing and planning

4.3.1 Chapter 1 of the Housing and Regeneration Act 2008 (“the 2008 Act”) established 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.

4.3.2 Chapter 2 of the 2008 Act gives the HCA¹ powers:

- to provide housing or other land
- for regeneration;
- for the development or effective use of land; and
- in relation to infrastructure.

¹ On 11 January 2018, the HCA’s non-regulation arm adopted its new trading name, Homes England (HE).

- 4.3.3 The Government committed in the Devolution Deal that NEMCA would have broad powers to acquire and dispose of land to build houses, commercial space and infrastructure, for growth and regeneration. They will also be able to invest to deliver housing for the area. Some of these will be mayoral powers.
- 4.3.4 The scheme proposed that NEMCA should be granted devolution of the objectives and functions of Homes England under section 2(1) of the Housing and Regeneration Act 2008 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 individually with the consent of the member of NEMCA appointed by the constituent council(s) for the area(s) of land to be compulsorily acquired.
- 4.3.5 The scheme further proposed that the Mayor will have the power to create a statutory Spatial Development Strategy (SDS) for the combined area to ‘coordinate strategic land-use planning with strategic transport planning’ if it is agreed by NEMCA via a unanimous vote in favour by the mayor and all seven members from the constituent councils. These powers are based on functions exercised in relation to Greater London by the London Mayor as set out in the Greater London Authority Act 1999 (“the 1999 Act”).
- 4.3.6 The consultation asked participants whether they supported or opposed the proposals to confer Housing and Planning functions on to NEMCA. Of the 2597 replies to this question, 1,563 (60.2%) were supportive with 684 (26.3%) opposed.
- 4.3.7 Those in favour of the proposals highlighted their potential to enable a fully co-ordinated housing and planning strategy for the area to support the regions transport and economic development ambitions and help ensure that housing, regeneration and infrastructure projects can be strategically co-ordinated and not taken forward in isolation. Those opposed to the proposals indicated a preference for these functions to remain at local authority level and expressed concern that the proposals could lead to the development of substandard housing.
- 4.3.8 Having had regard to the governance review, scheme and the summary of consultation responses, the Secretary of State considers that the abolition of the existing combined authority in the North East with these functions, and the dissolution of its area, and simultaneous conferral on NEMCA of functions corresponding to the land acquisition and disposal functions of Homes England, to be exercised concurrently with them is appropriate because it should lead to an improvement in the exercise of these statutory functions by enabling

NEMCA 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.

- 4.3.9 The SoS further considers that the potential conferral of powers to produce a Spatial Development Strategy onto the NEMCA mayor based on functions exercised in relation to Greater London by the London Mayor as set out in the Greater London Authority Act 1999 would also be appropriate if in future NEMCA so decides via a unanimous vote in favour by the mayor and all seven members from the constituent councils.

4.4 Mayoral Development Corporations (MDCs)

- 4.4.1 The Devolution Deal includes that the mayor will have the power to designate mayoral development areas in the NEMCA area to support the development of strategic sites across the region. This is the first step in establishing Mayoral Development Corporations (MDC) in the NEMCA area where a further order would be necessary to create such bodies.
- 4.4.2 This power could be exercised only with the consent of the member(s) appointed by the constituent council(s) whose area(s) contain the area in which the MDC would be established. If the MDC is to be established within the area of the Northumberland National Park then the consent of the National Park Authority would also be required.
- 4.4.3 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.

4.4.4 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

4.4.5 The consultation addressed Mayoral Development Corporations within the housing and planning proposals, and there were no comments received on the proposed conferral of these powers onto the NEMCA mayor.

4.4.6 Having had regard to the governance review, scheme and the summary of consultation responses, the Secretary of State considers that the abolition of the existing combined authority in the North East with these functions and the dissolution of its area, and simultaneous conferral on NEMCA of functions corresponding to Part 8 of the 2011 Localism Act onto NEMCA to be exercisable by the mayor, with the consents from the relevant NEMCA member(s) and the National Park Authority as outlined above is appropriate to enable the mayor and NEMCA to drive development and regeneration across the area.

4.5 Conclusion

4.5.1 For the reasons set out above, the Secretary of State considers it appropriate to confer the functions on NEMCA relating to powers to pay grants for transport purposes, adult education and skills functions, certain Homes England functions and those arising from the GLA Act 1999 and the Localism Act 2011 in relation to housing and planning and mayoral development corporations.

5. Material considered by the Secretary of State

- Governance Review submitted by the seven North East councils
- Scheme submitted by the seven North East councils
- Summary of consultation responses submitted by the seven North East Councils
- Copies of the reports that the individual Cabinet meetings across the area used in considering whether to sign off on submitting the overall summary of consultation responses.