

THE BARNSELY, DONCASTER, ROTHERHAM AND SHEFFIELD COMBINED AUTHORITY (FUNCTIONS AND AMENDMENT) ORDER 2020

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 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.

This report accompanies the Barnsley, Doncaster, Rotherham And Sheffield Combined Authority (Functions and Amendment) Order 2020 (“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 Barnsley, Doncaster, Rotherham and Sheffield Combined Authority (“the Sheffield City Region Combined Authority”) was established by the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority Order 2014 (S.I. 2014/863).
- 1.2. A Devolution Deal – an agreement with Government to devolve a range of powers and responsibilities to a mayoral combined authority – was agreed between the Sheffield City Region Combined Authority (SCRCA) and the Government in October 2015, which included the conferral of a number of local authority and public authority functions on the SCRCA.¹
- 1.3. The position of elected mayor was established by the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority (Election of Mayor) Order 2016 (S.I. 2016/800), with the dates for mayoral elections amended by the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority (Election of Mayor) (Amendment) Order 2017 (S.I. 2017/432). The first election took place on 3 May 2018.
- 1.4. The provisions in this Order confer on the SCRCA functions agreed in the Devolution Deal and make appropriate constitutional arrangements. Prior to the Secretary of State seeking Parliamentary approval to this Order the SCRCA prepared a governance review and scheme which contained its proposals for the Order; as required by statute the SCRCA then undertook a public consultation on the proposals contained in the scheme and submitted a summary of consultation responses to the Secretary of State. The Secretary of State has had regard to the SCRCA’s governance review, scheme, and consultation in deciding to seek Parliamentary approval to the Order.

¹ https://sheffieldcityregion.org.uk/wp-content/uploads/2018/03/Sheffield_devolution_deal_October_2015_with_signatures.pdf

2. Conferral on SCRCA 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. Power to pay grant

- 3.1.1. The Government committed in the Devolution Deal to giving the SCRCA Mayor the responsibility for a devolved and consolidated transport budget consisting of various funding streams. 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.

- 3.1.2. The SCRCA has requested that the Secretary of State makes provision that his powers under section 31 of the Local Government Act 2003 to pay grants to constituent councils be conferred on to the SCRCA, to be exercisable by the Mayor.
- 3.1.3. The SCRCA's governance review stated that the devolved and consolidated transport budget would enable the SCRCA to invest in local transport priorities, ensure investment is aligned and provide better services. The SCRCA's consultation asked for opinions on the transport proposals as a whole, rather than the power to allocate funding to the constituent councils. However, the scheme's proposals were strongly supported by the public, receiving 558 responses in support out of 648 responses to the relevant question (434 'strongly agree,' and 124 'tend to agree'), with 60 negative responses. 18 out of 19 stakeholders supported the proposals (one neutral).
- 3.1.4. 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 will lead to an improvement in the exercise of these statutory functions, by providing the Mayor of the SCRCA with the power to pay grants across the area for transport functions and grants for any future budgets which may be devolved.
- 3.1.5. Article 4 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. This power is not specifically limited to the allocation of transport budgets, and if further devolved grants are provided to the SCRCA then the Mayor will have the power to allocate such funds to individual councils of the SCRCA.
- 3.1.6. 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.

3.2. Housing

- 3.2.1. 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.

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

- 3.2.2. 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.
- 3.2.3. The SCRCA has requested that the Secretary of State makes provision for certain functions of the HCA to be exercisable in relation to the SCRCA's area, and for those to be functions of the SCRCA exercisable concurrently with Homes England.
- 3.2.4. The proposals to confer certain functions of the HCA to the SCRCA were strongly supported by the public in the consultation, receiving 550 responses in support out of 650 responses to the relevant question (58 opposed). Stakeholders also responded positively, with 18 positive and 1 negative response out of 19. Various reasons were given in support of the proposals, including local decision-making and improvements to the quality and supply of housing. Public respondents in favour of the proposals wanted affordable housing (30 responses) and social housing (22 responses) to be prioritised.
- 3.2.5. Having had regard to the governance review, scheme and the summary of consultation responses, the Secretary of State considers that conferral on the SCRCA 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 SCRCA 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.
- 3.2.6. Part 4 of this Order therefore 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 Mayoral Combined Authority. The compulsory purchase powers are to be exercised by the Mayor, with consent from the Combined Authority members appointed by the constituent councils whose area contains the land in question. 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 create Mayoral Development Corporations (MDCs), which will support delivery on strategic sites in the area of the SCRCA, and that this power may be exercised only with the consent of the Combined Authority members appointed by the constituent councils whose area contains the area in which the MDC is to be established; 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 is also required.

3.3.2. 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.

3.3.3. 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.

3.3.4. The SCRCA have requested that the Secretary of State makes provision for these Mayor of London powers to be exercisable in relation to the area of the Combined Authority and for these to be functions exercisable by the Mayor, with the consent of the Combined Authority members appointed by the constituent councils whose area includes that where the MDC is to be established; 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 is also required. The SCRCA consultation addressed MDCs together with the proposal to develop a spatial framework for the SCRCA area. These were strongly supported by the public, receiving 513 responses in support out of 647 responses (79 opposed). Stakeholders also responded positively, with 18 positive and 1 negative response out of 19 (the Sheffield Green Party felt they could not support the proposals, “given the focus on economic and business growth”.) The Home Builders Federation supported the ability to establish Mayoral Development Corporations.

3.3.5. 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 SCRCA, and that these functions – together with other powers of the SCRCA – will enable the Mayor and SCRCA to drive development and regeneration across the area.

3.3.6. Part 5 of this Order therefore provides for the conferral of functions corresponding to the public authority functions of the Greater London Authority (GLA), exercised by the Mayor of London, to designate mayoral development areas and so create an MDC. These functions are conferred on the SCRCA to be exercised by the Mayor, and

conferring these functions is the first step in establishing an MDC in the area of the SCRCA; a further order is necessary to create such a body if the Mayor decides to exercise these functions. The Mayor would need the consent from the Combined Authority members appointed by the constituent councils whose area includes the area of the proposed MDC, and would also need the consent of the National Park Authority if the Mayor was proposing an MDC within the area of the National Park.

4. Consultation

- 4.1. The SCRCA undertook a consultation, delivered in conjunction with the four constituent councils, on the proposals contained in their scheme and governance review from 3 February to 15 March 2020, aligned with a promotional campaign to raise awareness of the proposals. Following this a summary of the consultation responses compiled by the SCRCA was submitted to the Secretary of State on 21 April 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 (six weeks); the mechanisms used (online and paper copy and welcomed both electronic and hard copy responses); the promotional activity (including media engagement, social media activity, posters in public buildings and proactive stakeholder engagement); and the summary provided demonstrates a robust analysis.
- 4.3. The Mayor of the SCRCA 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 and Scheme published by the SCRCA
<https://sheffieldcityregion.org.uk/wp-content/uploads/2020/02/Devolution-Governance-Review-web-version.pdf>
- Summary of consultation responses submitted by the SCRCA
<https://moderngov.sheffieldcityregion.org.uk/documents/s2487/Progressing%20the%20South%20Yorkshire%20Devolution%20Deal%20Summary%20of%20the%20Public%20Consultation%20-%20Amended.pdf>