

# **THE EAST MIDLANDS COMBINED COUNTY AUTHORITY REGULATIONS 2024**

## **REPORT UNDER SECTION 20 OF THE LEVELLING-UP AND REGENERATION ACT 2023**

### **About this report**

Section 20(6) of the Levelling-up and Regeneration Act 2023 (“the 2023 Act”) provides that at the same time as laying a draft of a statutory instrument containing regulations under section 19(1) of the 2023 Act before Parliament, the Secretary of State must also lay a report explaining the effect of these regulations which confer public authority functions on the combined county authority, and why the Secretary of State considers it appropriate to make the regulations.

This report accompanies the East Midlands Combined County Authority Regulations 2024 (“the Regulations”) which are to be made, subject to Parliament’s approval, under provisions within the 2023 Act.

### **1. Description of the Combined County Authority**

- 1.1. The East Midlands Combined County Authority (“the EMCCA”) is to be established by the Regulations. The EMCCA’s area comprises the local government areas of Derby City, Derbyshire County, Nottingham City and Nottinghamshire County.
- 1.2. A Devolution Deal – an agreement between the government and Derby City Council, Derbyshire County Council, Nottingham City Council and Nottinghamshire County Council (“the constituent councils”) to establish a Mayor and devolve a range of powers and responsibilities to a mayoral combined county authority – was agreed on 30 August 2022. This includes the conferral of a number of local authority and public authority functions onto the new EMCCA.
- 1.3. The Regulations establish the position of an elected Mayor for the East Midlands. They provide that the first election for the position of Mayor will take place on 2 May 2024 and subsequent elections will take place on the ordinary day of elections every fourth year thereafter. They also provide that the Mayor will take office on the fourth day after the election for the return of the Mayor, except for 2024, as this day is a bank holiday, the Mayor will take office on the 7 May 2024. In the period between the establishment of the combined county authority and the Mayor taking office the Regulations provide for an interim chair.
- 1.4. The provisions in the Regulations confer on the EMCCA functions agreed in the Devolution Deal and make appropriate constitutional arrangements. Some functions are specified to be exercisable by the Mayor personally (“the mayoral functions”) and others by the EMCCA collectively (“the non-mayoral functions”). The non-mayoral EMCCA functions will come into force the day after the Regulations are made and the Mayor is to be able to exercise mayoral functions from 7 May 2024.

1.5. Prior to the Secretary of State seeking Parliamentary approval to the Regulations, the constituent councils undertook a public consultation on the proposal to establish the combined county authority with its functions. The consultation took place prior to the 2023 Act coming into force; section 45(5) of the 2023 Act provides that requirement to carry out a public consultation may be satisfied by things done before the coming into force of the Act. The constituent councils submitted a summary of the consultation responses to the Secretary of State. The Secretary of State when deciding to seek Parliamentary approval to the Regulations has considered the proposal, the consultation and the summary of the consultation responses provided by the constituent councils.

## **2. Conferral on EMCCA of public authority functions under section 19 (Other public authority functions)**

- 2.1. Section 19(1)(a) of the 2023 Act empowers the Secretary of State to make provision for a function of a public authority that is exercisable in relation to a combined county authority's area to be a function of the combined county authority.
- 2.2. Section 19(1)(b) of the 2023 Act further provides that the Secretary of State may by regulations make a provision for conferring on a combined county authority in relation to its area a function that a public authority has in relation to another area.
- 2.3. Section 19(2)(a) of the 2023 Act provides that regulations may include further provision about the exercise of the function, including provision for the functions to be exercisable by the public authority or combined county authority subject to conditions or limitations specified in the regulations.
- 2.4. Section 19(3) of the 2023 Act provides that the provision for the exercise of the function that may be included in regulations under subsection 19(1)(a) includes, in particular, provision for the function to be exercisable by the combined county authority concurrently with the public authority.
- 2.5. Section 53 of the 2023 Act empowers the Secretary of State by regulations to make incidental, consequential, transitional, transitory or supplementary provision for the purpose of, or in consequence of, regulations under Part 2 of that Act or for giving full effect to such a regulation.
- 2.6. Section 252(1) and (2) of the 2023 Act (Regulations): A power to make regulations under this Act includes the making of provisions for different purposes and areas, and may include power to make 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 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 19 powers.

## **3. Consultation**

- 3.1. Derby City, Derbyshire County, Nottingham City and Nottinghamshire County councils undertook a consultation on the proposal to establish the EMCCA, including proposals

for the conferral of a number of local authority and public authority functions onto the EMCCA, for eight weeks between 14 November 2022 and 9 January 2023. The consultation was led by each council in relation to their local authority area, supported by Ipsos UK.

- 3.2. The consultation methods utilised by the constituent councils included an online survey on the creation of the EMCCA, with options to cater for participants needs (i.e. translations, paper copies etc.); engagement with stakeholders, including local businesses and the voluntary sector; and two online events in which residents and stakeholders could make their views heard. To ensure that the consultation process was robust and accessible the constituent councils undertook an equality impact assessment to inform engagement. Additionally, a communication plan was developed for each of the constituent councils to support and promote the consultation within their areas. Following this, a summary of the consultation responses compiled by the constituent councils was submitted to the Secretary of State on 1 November 2023. A report on the consultation outcome authored by Ipsos UK on behalf of the constituent councils and has been made publicly available<sup>1</sup>.
- 3.3. As statute requires, the Secretary of State has had regard to the summary of the consultation responses when deciding the provisions to include in the Regulations. In accordance with requirements of section 46 of the 2023 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 response platform, hard copy response form, freepost address and dedicated consultation email address); and the summary, which included robust analysis.

#### **4. Effect of the regulations; 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 East Midlands the responsibility for a devolved and consolidated integrated local transport budget for the area of the East Midlands, consisting of the local highways maintenance funding (potholes and highways maintenance block funding) and the integrated transport block. These will be paid to the EMCCA supported by agreements between the government and the EMCCA; allocation decisions will be made by the Mayor, subject to the conditions set out in paragraph 4.1.6 below. The government 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 constituent councils in their proposal set out that the EMCCA should 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 use to pay grants to the constituent councils for exercising highway functions. The constituent councils requested that these functions are to be exercisable by the Mayor, concurrently with a Minister of the Crown. They

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<sup>1</sup> See Appendix 4 – Nottinghamshire Derbyshire Devolution Ipsos Consultation Report V7  
<https://www.nottinghamshire.gov.uk/dms/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/5755/Committee/538/SelectedTab/Documents/Default.aspx>

also requested that the combined county authority be granted powers under section 154 of the Transport Act 2000 to make grants to bus operators.

4.1.3. The Devolution Deal agreed on 30 August 2022 stated that the deal will bring new powers to improve and better integrate local transport, including the ability to introduce bus franchising, control of appropriate local transport functions e.g. local transport plans, and control of a Key Route Network. The deal will give the Mayor and EMCCA responsibilities for investment in transport infrastructure and services, including public transport. This will help develop an effective and efficient transport system for the long term and provide greater certainty over future funding for transport improvements. The consultation asked participants to what extent they agreed with proposals relating to transport. Of the 4,272 participants who provided a response agreeing or disagreeing with proposals on transport, 2,561 (60%) were supportive, whilst 1,711 (40%) were opposed. Those that supported the proposals highlighted:

- support for an integrated transport network across the East Midlands;
- a desire to have smart ticketing introduced; and
- additional funding £0.5m per annum to transport.

Those opposed detailed concerns about:

- transport resulting in larger cities with rural communities being neglected;
- proposals being insufficiently funded; and
- transport systems would not be managed or run effectively.

4.1.4. Having had regard to the constituent councils' proposal, consultation and consultation responses the Secretary of State considers that the conferral of the function to make grants to bus operators and pay grants to local authorities will lead to improvements within the EMCCA area by contributing towards improved highway maintenance, better investment in transport services, greater certainty for transport improvements and better integrated local transport services. These factors are likely to improve the economic, social and environmental well-being of those who live and work within the EMCCA's area, and hence is appropriate.

4.1.5. Part 6 of these Regulations confers on to the combined county authority a power to pay grants to constituent councils, using the powers under section 31 of the Local Government Act 2003, mirroring powers held by Ministers. These functions are to be exercisable by the Mayor. It also confers onto the combined county authority a power, to be exercisable by the Mayor, to exercise 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 operators, for eligible bus services operating within the EMCCA area.

4.1.6. These Regulations confer the power to allow the Mayor to pay funds to the constituent councils for functions relating to highways authority. This is exercisable with consideration to the conditions contained within the Regulations:

- 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 source of funding available to the council for expenditure incurred or to be incurred in relation to the exercise of its highways functions.

#### 4.2. Housing, regeneration and planning

4.2.1. Chapter 1 of the Housing and Regeneration Act 2008 (“the 2008 Act”) establishes the Homes and Communities Agency (HCA)<sup>2</sup>, 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.

4.2.2. 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.

4.2.3. The government committed in the Devolution Deal that the EMCCA would have broad powers to acquire and dispose of land to build houses, commercial space and infrastructure for the purposes of growth and regeneration. They will be able to invest to deliver housing for the area. Some of these would be mayoral powers.

4.2.4. The EMCCA proposal and devolution deal detailed that the EMCCA should be granted devolution of the objectives and functions of Homes England under section 2(1) of the 2008 Act (within the combined county authority area) and that specified powers contained in the 2008 Act should 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 with the consent of member(s) of the combined county authority appointed by the constituent council(s) whose area(s) are within the area(s) of land to be compulsorily acquired. The consent of district council(s) and Peak District National Park will also be required where the compulsory acquisition of land falls within their area(s).

4.2.5. During the EMCCA consultation participants were asked to what extent they agreed with proposals relating to homes. Of the 4,152 participants who provided a response agreeing or disagreeing with proposals relating to homes 2,239 (54%) were supportive, whilst 1,913 (46%) were opposed. Those that supported the proposals highlighted:

- support for the constructing of additional, affordable and better-quality homes within the East Midlands; and
- that the greenbelt would be protected, with new homes being built on brownfield sites.

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<sup>2</sup> On January 2018 the HCA’s non-regulation arm adopted its new trading name, Homes England

Those opposed expressed concern about:

- the potential impact on the greenbelt from the construction of new homes;
- disagreement about the use of mayoral development areas and the power to acquire and dispose of land; and
- the potential lack of funding.

4.2.6. Having had regard to the EMCCA proposal, consultation and consultation responses the Secretary of State considers that conferral on the EMCCA 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 supply and quality of housing, and in securing the regeneration or development of land and infrastructure, and support the creation, regeneration or development of communities in the area. The Secretary of State considers that conferring these powers is likely to improve the economic, social and environmental well-being of those who live and work within the EMCCA's area, and hence is appropriate.

4.2.7. Part 4 of the Regulations provides that the public authority functions of the HCA in section 5 to 12 of the 2008 Act, including powers of land acquisition and disposal, are conferred on the EMCCA. The compulsory purchase powers are to be exercised by the Mayor, with the consent of:

- the lead member for any constituent council whose area contains any part of the land subject to the proposed compulsory acquisition, or a substitute member acting in place of such a member;
- each district council whose local government area contains any part of the land subject to the proposed compulsory acquisition; and
- the Peak District National Park Authority if the combined county authority proposes to exercise the functions in respect of the whole or any part of the area of the Peak District National Park.

As is the case when Homes England exercise 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.

### 4.3. Mayoral Development Corporations (MDCs)

4.3.1. The Devolution Deal includes that the Mayor will have the power to designate a mayoral development area in the area of the EMCCA to support delivery on strategic sites in the East Midlands. This is the first step in establishing a mayoral development corporation (MDC) in the EMCCA area and a further order would be necessary to create such a body.

4.3.2. The deal also set out that this power could be exercised only with the consent of:

- the lead member for any constituent council whose area contains any part of the land subject to the proposed compulsory acquisition, or a substitute member acting in place of such a member;
- each district council whose local government area contains any part of the land subject to the proposed compulsory acquisition; and
- the Peak District National Park Authority if the combined county authority proposes to exercise the functions in respect of the whole or any part of the area of the Peak District National Park.

4.3.3. 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 of restrictions of planning functions;
- discretionary relief from non-domestic rates;
- reviews;
- the transfers of property, rights and liabilities;
- dissolution: final steps
- guidance by the Mayor;
- directions by the Mayor; and
- consents.

4.3.4. Schedule 21 of 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.

4.3.5. During the EMCCA consultation participants were asked to what extent they agreed with the proposals relating to housing and planning, these proposals included the Mayor having powers to designate mayoral development areas and MDCs. Of the 4,152 participants who provided a response agreeing or disagreeing with the proposals, 2,239 (54%) were supportive, whilst 1,913 (46%) were opposed. Specific responses received included participants expressing support for MDCs, citing the potential for the construction of new homes; those that disagreed cited the establishment of mayoral development areas and the power to acquire and dispose of land as areas of concern.

4.3.6. Having had regard to the EMCCA proposal, consultation and consultation responses, the Secretary of State considers that it is appropriate to confer functions corresponding to Part 8 of the 2011 Act on the EMCCA to be exercisable by the Mayor, with the

consents from EMCCA members(s), district council(s) and the Peak District National Park Authority as outlined above. He considers that conferring these functions is appropriate because, together with other powers of the EMCCA, they will enable to Mayor and EMCCA to drive development and regeneration across the area.

#### **5. Material considered by the Secretary of State**

- East Midlands Devolution Deal;
- The EMCCA proposal submitted by the Derby, Derbyshire, Nottingham and Nottinghamshire Councils; and
- The EMCCA consultation and summary of consultation responses submitted by Derby City Council, Derbyshire County Council, Nottingham City Council and Nottinghamshire County Council.