

CITIES AND LOCAL GOVERNMENT DEVOLUTION BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Cities and Local Government Devolution Bill [HL] as brought from the House of Lords on 21 July 2015 (Bill 64).

- These Explanatory Notes have been prepared by the Department of Communities and Local Government and the Home Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a provision of the Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

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Overview of the Bill

- 1 The Bill is intended to support delivery of the Government's manifesto commitment to "devolve powers and budgets to boost local growth in England", in particular to "devolve far-reaching powers over economic development, transport and social care to large cities which choose to have elected mayors" and "legislate to deliver the historic deal for Greater Manchester". The Bill takes forward a number of reforms which are intended to allow for the implementation of devolution agreements with combined authority areas and with other areas. It is enabling legislation which provides a legislative framework which can be applied flexibly to different areas by secondary legislation. It will enable secondary legislation to:
 - enable any public authority function relating to an area to be conferred on a county council or district council;
 - provide for streamlined local governance as agreed by councils;
 - enable any public authority function relating to an area to be conferred on a combined authority;
 - confer any local government function on a combined authority (these are currently limited to economic development, regeneration, and transport);
 - provide for an elected mayor for a combined authority's area who would exercise specified functions individually and chair the authority; and
 - provide for the possibility for the mayor additionally to undertake the functions of Police and Crime Commissioner for the combined authority area (in place of the Police and Crime Commissioner).
- 2 The Bill also
 - streamlines the process for establishing and changing the area of a combined authority or an economic prosperity board, and removes geographical limitations as to the establishment of combined authorities and economic prosperity boards;
 - makes certain other changes to arrangements for local governance.

Policy background

Devolution

- 3 There has already been devolution in the form of City Deals, Growth Deals and the more recent devolution agreements between the Government and Greater Manchester, Leeds City Region, Sheffield City Region and Cornwall. The Government's first devolution agreement with Greater Manchester made on 3 November 2014 provided for an offer of powers and budgets from Government on the basis that Greater Manchester would deliver certain reforms and measures. Central to this agreement is a reformed governance system for the Greater Manchester Combined Authority which will involve adopting a model of a directly elected mayor covering the whole of the Greater Manchester area, and the Combined Authority receiving a number of new powers from local authorities, other local public services and devolved powers from Government Departments and agencies.
- 4 In its manifesto the Government committed to devolve powers over budgets to boost local

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growth in England. The Government therefore is ready to have conversations with any area about the powers that area wishes to be devolved to it and about their proposals for the governance to support these powers if devolved. The Government's intention is to conclude bespoke Devolution Deals with areas. Such Deals may involve powers being conferred on county councils, district councils and combined authorities. This Bill allows functions of public authorities to be conferred on county councils, district councils and combined authorities, including broadening the scope of powers that it is possible to confer on a combined authority.

Combined Authorities

- 5 Part 6 of the Local Democracy, Economic Development and Construction Act 2009 contains powers which enable the Secretary of State to make an order establishing a combined authority for an area which meets certain specified conditions. A combined authority is a corporate body which enables local authorities to work jointly to deliver improvements in economic development, regeneration and transport across a functional economic area. Before making an order the Secretary of State must be satisfied that its creation will improve the efficiency and effectiveness of transport and economic development in the area; and Parliament must approve the order. Five combined authorities have so far been established.
- 6 The Government considers that combined authorities are suitable governance structures to undertake a greater set of functions within their local area. This Bill would broaden the scope of powers that it is possible to confer on a combined authority and on all other local authorities including those in non-metropolitan areas.

Elected Mayors

- 7 As stated in the manifesto commitment, "we will devolve far-reaching powers over economic development, transport and social care to large cities which choose to have elected mayors". With the devolution of powers from the centre to cities to give them greater control over powers currently exercised by ministers over transport, housing, skills and healthcare, the Government considers that it is necessary for the people of the area to have a single point of direct accountability. The Government's view is that for cities, elected mayors for combined authority areas will achieve this and ensure the continuation of strong democracy.
- 8 The Government will consider on a case by case basis the merit of transferring police and crime commissioner functions to the mayor of a combined authority area.

Legal background

- 9 The legislation relating to the existing policy is set out in a combination of primary and subordinate legislation. The current provisions are:
 - Localism Act 2011
 - Police Reform and Social Responsibility Act 2011
 - Local Democracy, Economic Development and Construction Act 2009
 - Local Government and Public Involvement in Health Act 2007
 - Local Government Act 2003
 - Local Government Act 2000

- Local Government Act 1999
- Police Act 1996
- Local Government Finance Act 1992
- Local Government and Housing Act 1989
- Local Government Finance Act 1988
- Representation of the People Act 1983
- Local Government Act 1972
- And secondary legislation made under the above Acts.

Territorial extent and application

- 10 The provisions of the Bill extend to the whole of England and Wales. In effect, all of the provisions except clause 20 apply only in England as Part 6 of the Local Democracy, Economic Development and Construction Act 2009 (which enables combined authorities to be established) and the other provisions relating to governance arrangements (clause 16), apply only in England.

Commentary on provisions of Bill

- 11 The Bill includes generic provisions (to be applied to individual areas agreeing deals by secondary legislation) which will:
- a. remove the current statutory limitation on functions that can be conferred on a combined authority (currently economic development, regeneration, and transport);
 - b. enable local governance to be streamlined as agreed by councils;
 - c. enable public authority functions to be conferred on a combined authority or local authority;
 - d. enable an elected mayor for the combined authority's area who would exercise specified functions individually and chair the authority;
 - e. enable the mayor to undertake the functions of Police and Crime Commissioner for the area (in place of the Police and Crime Commissioner); and
 - f. where a mayor is to have Police and Crime Commissioner functions, cancel Police and Crime Commissioner elections that would otherwise have taken place and allow the current Police and Crime Commissioner's term of office to be extended until the mayor is in place.

Reports and statements about local devolution

Clause 1: Devolution: annual reports

- 12 Clause 1 places a statutory duty on the Secretary of State to provide annual reports to Parliament which set out information about devolution in all areas of England. The report must include information on the areas of the country where devolution deals have been completed and the areas of the country that have made proposals to the Secretary of State

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where agreement has yet to be reached. Information on the additional financial resources and public functions that have been devolved through the deals should also be included.

Clause 2: Devolution statements

- 13 Clause 2 places a statutory duty on Ministers who introduce a Bill into either House of Parliament to make a devolution statement regarding the compatibility of the Bill with the principle that powers should be devolved to combined authorities or the most appropriate local level except where those powers can more effectively be exercised by central government. This statement must be made in writing before second reading.

Combined authorities

Clause 3: Power to provide for an elected mayor

- 14 Clause 3 inserts new Sections 107A and 107B into the Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act"), which empower the Secretary of State to provide by order for there to be an elected mayor of a combined authority area, who would be a member of, and chair, the combined authority.
- 15 Section 107B(1) provides that the Secretary of State can make an order for there to be an elected mayor of the area of a combined authority following a proposal being made by each county and district council within the area of a proposed, or existing, combined authority, or by an existing combined authority (the appropriate authorities) or with their consent. Section 107A(2) provides that such an order cannot be used as a condition for agreeing to the transfer of functions to a combined authority.
- 16 A proposal for there to be a mayor for the authority's area may be included in a scheme prepared and published under section 109 or 112 of the 2009 Act. Section 109 of the 2009 Act provides that if two or more of the authorities who have conducted a review in accordance with section 108 conclude that the establishment of a combined authority would be likely to improve the exercise of statutory functions they may prepare and publish a scheme.
- 17 Subsection (3) of new section 107B provides that an order can be made under new section 107A without a proposal being made if (a) the Secretary of State considers it appropriate and all constituent councils consent or (b) if all of the appropriate authorities, of an existing combined authority, consent but one does not wish to adopt the mayoral model. Subsection (4) of new section 107B provides that the Secretary of State must make an order changing the area of the combined authority by removing the area of the non consenting constituent council from the existing area of the combined authority.
- 18 Subsection (2) of clause 3 introduces new Schedule 5B into the 2009 Act. New Schedule 5B makes provision for a default term of office for a mayor of four years and default dates on which elections for mayors are to take place, and provisions for an order to be made as to the dates on which and years in which elections for the return of an elected mayor may or must take place, the intervals between elections for the return of an elected mayor, the term of office of an elected mayor, and the filling of vacancies in the office of elected mayor.

Clause 4: Deputy mayors, etc.

- 19 Clause 4 inserts new Section 107C into the 2009 Act, which requires a mayor of the area of a combined authority to nominate a deputy mayor from the members of the combined authority. The deputy mayor would take over the functions of the mayor in the event that the mayor is unable to act (e.g. due to illness) or the office of mayor is vacant (e.g. the mayor resigns).

Clause 5: Functions

- 20 A mayoral combined authority is a single body corporate, which comprises the mayor and the remaining members of the combined authority. Clause 5 inserts new Section 107D into the 2009 Act. Subsection (1) of new section 107D allows the Secretary of State to provide by order that any function that is a function of the mayoral combined authority is exercisable only by the mayor. Such an order may only be made with the consent of all appropriate authorities. Subsection (3) provides that the mayor may arrange (a) for the deputy mayor to exercise any function exercisable by the mayor or (b) for any other member or officer of the combined authority to exercise any such function. Subsection (4) provides that an order made under subsection (1) may provide that the mayor may only delegate certain functions or that the mayor cannot delegate certain functions.
- 21 Subsection (6) of new section 107D provides that an order made under that section may (a) provide for members and officers of a mayoral combined authority to assist the mayor in the exercise of his/her functions, (b) confer ancillary powers on the mayor, (c) authorise the mayor to appoint a political adviser, and (d) provide for the terms and conditions of any appointment of a political adviser.
- 22 Clause 5 also inserts new section 107E into the 2009 Act. This enables the Secretary of State by order to enable the mayor to exercise the functions of a Police and Crime Commissioner in relation to the area. Such an order may only be made with the consent of all appropriate authorities. Where such an order is made, subsection (5) requires the Secretary of State to provide that there will be no Police and Crime Commissioner for that area from a specified date (in practice this will be the date that the mayor takes office) and enables the Secretary of State to cancel any Police and Crime Commissioner ordinary election that would otherwise take place in the area (whether before the date that the mayor takes over or after). The order can also extend the term of the existing Police and Crime Commissioner for the area and cancel any Police and Crime Commissioner by-election to fill a vacancy that arises in the six month period before the date that the Police and Crime Commissioner functions pass to the mayor.

Clause 6: Financial matters

- 23 Clause 6 amends sections 39 and 40 of the Local Government Finance Act 1992 ("the 1992 Act") to include a mayoral combined authority as a major precepting authority, and enables a precept to be set in relation to funding of the mayoral functions. It also inserts a new section 107F in the 2009 Act which enables the Secretary of State to make provision for the costs of a mayor for the area of a combined authority that are incurred in, or in connection with, the exercise of mayoral functions to be met by precepts issued by the combined authority under section 40 of the 1992 Act.
- 24 Subsection (2) of new section 107F provides that only the mayor, acting on behalf of the combined authority, may issue precepts. Where a mayor takes on Police and Crime Commissioner functions, subsection (4) of the new section 107F provides that the precept is required to have two components: one for the mayor's PCC functions and one for their general functions. Calculating the PCC component of the precept will be a PCC function exercisable only by the mayor.
- 25 Subsection (5) of new section 107F provides that the Secretary of State may by order make provision (a) requiring the mayor to maintain a fund in relation to receipts arising and liabilities incurred, in the exercise of the mayor's functions, and (b) about the preparation of an annual mayoral budget. Subsection (6) provides that an order about the preparation of a mayoral budget may in particular make provision for (a) the mayor to prepare a draft budget, (b) the scrutiny of the draft budget, (c) the making of changes to the budget following

scrutiny, (d) the approval of the draft by the mayoral combined authority, and (e) the basis on which such approval is to be given.

Combined authorities: additional functions

Clause 7: Local authority functions

- 26 Clause 7 amends sections 105, 108, 109, and 112 of the 2009 Act to enable any combined authority by order to be conferred a broader set of functions than economic development, regeneration and transport. The authorities concerned can undertake a review of the exercise of statutory functions in the area and publish a scheme for the establishment of the combined authority. The authorities' review would consider whether the proposed changes would improve the exercise of the statutory functions. This replaces the previous requirements for the authorities' review to consider whether establishing or changing the combined authority is likely to improve the exercise of statutory functions relating to transport, regeneration and economic development; the effectiveness and efficiency of transport; and economic conditions in the area.

Clause 8: Other public authority functions

- 27 Clause 8 inserts section 105A into the 2009 Act. Subsection (1) of new section 105A enables the Secretary of State by order to (a) make provision for a function of a public authority that is exercisable in relation to a combined authority's area to be undertaken by the combined authority; or confer on a combined authority, in relation to its area, a function which corresponds to a function which another public authority has in relation to another area. Conditions or limitations can be specified together with any conferral of powers on combined authorities. This might, for example, be used to specify that a transfer of health powers would not change responsibilities in relation to the NHS Constitution or mandate.
- 28 An order made under subsection (1)(a) of new section 105A may make provision for the combined authority to have a function instead of another public authority, for the public function to be exercised concurrently with the other public authority, for the public function to be exercised jointly by the combined authority and public authority, or for the function to be exercised jointly by the combined authority and public authority but also continue to be exercised by the public authority alone. An order under subsection (1)(a) of new section 105A may also make provision for (a) the making of a scheme to transfer property, rights and liabilities from the public authority to the combined authority and (b) abolishing the public authority if it will no longer have any functions. Functions of a national regulatory nature cannot be conferred on a combined authority.
- 29 The clause also inserts new section 105B which specifies that an order under new section 105A can only be made if (a) the appropriate authorities make a proposal for the making of the order or (b) in the case of an existing combined authority, the authority consents 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. When laying before Parliament an order which transfers functions to an authority, the Secretary of State must also place a report before Parliament which sets out the effect of the order and why the Secretary of State considers it is appropriate to make it. The report must include any consultation and information which has been taken into account, for example any discussions with Police and Crime Commissioners in respect of consideration of policing within any deal, as well as any other evidence or contextual information that the Secretary of State considers it appropriate to include.

Combined authorities: other provision

Clause 9: Overview and scrutiny committees

- 30 Clause 9 amends section 104 of the 2009 Act by inserting a new subsection (9) which introduces new Schedule 5A to the 2009 Act. New Schedule 5A requires all combined authorities to establish one or more overview and scrutiny committee(s) and an audit committee, with the functions and powers specified. It also enables the Secretary of State to make provision by order about the overview and scrutiny committee(s) of a combined authority. This provision may include details about the membership of an overview and scrutiny committee and the voting rights of such members; the person who is to be chair of such a committee; the appointment of a scrutiny officer of an overview and scrutiny committee; the circumstances in which matters may be referred to an overview and scrutiny committee; obligations on persons to respond to reports or recommendations made by an overview and scrutiny committee; the publication of reports, recommendations or responses; and the information which must, or must not, be disclosed to an overview and scrutiny committee.

Clause 10: Funding of combined authorities

- 31 Clause 10 amends section 74 of the Local Government Finance Act 1988 to enable the Secretary of State by regulations to provide that a combined authority can levy for transport and any specified functions with the consent of the constituent councils. Specified functions cannot include functions which are exercisable individually by the mayor. It also amends the Local Government Finance Act 2003 enabling the Secretary of State by order to enable a combined authority to borrow to fund these specified functions, with councils' consent.

Clause 11: General power of competence

- 32 Clause 11 enables the Secretary of State by order to confer the General Power of Competence, found in Chapter 1 of Part 1 of the Localism Act 2011, on a combined authority, which would align its General Power of Competence with that of its constituent councils. The General Power of Competence gives authorities the same power to act that an individual generally has. If such a power is conferred on a combined authority, the more limited General Power of Competence in section 113A will be dis-applied (see paragraph 9 of Schedule 4 to the Bill). Clause 11 requires the appropriate authorities to consent before such a power can be conferred.

Combined authorities and Economic Prosperity Boards: areas and procedure

Clause 12: Removal of geographical restrictions in relation to Economic Prosperity Boards

- 33 Clause 12 removes the current geographical restrictions in relation to the establishment of Economic Prosperity Boards (EPBs). Subsections (1) - (4) remove the requirements in the the 2009 Act which prevent EPB areas from being contiguous or doughnut shaped.
- 34 Subsection (5) inserts new subsections (3A) and (3B) into section 99 of the the 2009 Act. These subsections require that when the Secretary of State is considering making orders to establish EPBs for areas where part of the proposed area of the EPB is separated from the rest of the EPB area or where a local government area which is not part of the EPB area is surrounded by the EPB area, he must additionally have regard to the likely impact of the creation of the EPB on economic development or regeneration in neighbouring local authority areas.
- 35 Subsection (6) inserts new subsections (2A) and (2B) into section 102 of the the 2009 Act. These

apply when the Secretary of State is considering making changes to an existing EPB following a proposal from the area concerned. If the proposed area of the EPB includes part of the area which is separated from the rest of the area or if an area outside the EPB area is surrounded by local government areas within the area, the Secretary of State must have regard to the likely impact of the changes to the EPB on economic development or regeneration in each local government area adjacent to any part of the EPB area.

Clause 13: Removal of geographical restrictions in relation to combined authorities

- 36 Clause 13 removes the current geographical restrictions in relation to the establishment of combined authorities by removing the requirements in the the 2009 Act which prevent combined authority areas from being contiguous or doughnut shaped.
- 37 Subsection (5) inserts new subsections (3A) and (3B) into section 110 of the the 2009 Act. These require that when the Secretary of State is considering making orders to establish a combined authority in an area where part of the area of the combined authority is separated from the rest of the combined authority area or where a local government area which is not part of the combined authority area is surrounded by the combined authority area, he must additionally have regard to the likely impact of the creation of the combined authority on the exercise of functions in neighbouring local authority areas.
- 38 Subsection (6) inserts new subsections (2A) and (2B) into section 113 of the the 2009 Act. These apply when the Secretary of State is considering making changes to an existing combined authority following a proposal from the area concerned. If part of the proposed area of the combined authority is separated from the rest of the combined authority area, or if a local government area which is not part of the combined authority area is surrounded by the combined authority area, the Secretary of State must have regard to the likely impact of the changes to the combined authority on the exercise of functions in the neighbouring local authority areas.

Clause 14: Changes to existing Economic Prosperity Board

- 39 Clause 14 amends section 100 of the 2009 Act to amend the process by which minor changes can be made to an existing EPB's functions, constitution or funding. The requirement to undertake a review and publish a scheme is replaced by a requirement to make an application to the Secretary of State.

Clause 15: Requirements in connection with establishment etc. of combined authority

- 40 New clause 15 amends existing provisions within sections 110 and 113 of the the 2009 Act to amend the process required in the establishment of a combined authority and changes within an existing combined authority. Amended sections 110 and 113 set out that the Secretary of State may make an order establishing a combined authority or making changes to an existing combined authority if he considers that doing so is likely to improve the exercise of statutory functions and each of the councils consent. If a scheme has been published, the Secretary of State must have regard to the scheme. The Secretary of State must carry out a public consultation unless a scheme has been published, the constituent councils carried out a public consultation and provided the Secretary of State with consultation responses, and the Secretary of State considers that no further consultation is necessary.

Local authorities: governance, constitution and functions

Clause 16: Governance arrangements etc of local authorities in England

- 41 Clause 16 provides for the Secretary of State to make regulations making provisions about local authorities' governance arrangements, their constitution and membership, and structural and boundary arrangements. For these purposes a local authority is a county council in

England, a district council or a London Borough council.

- 42 Governance arrangements mean the arrangements an authority operates for taking decisions - executive arrangements, the committee system, or prescribed arrangements as provided for under Part 1A of the Local Government Act 2000.
- 43 For structural, boundary, or other changes, the context in which this power could be used is where Devolution Deals, conferring powers and budgets on an area, are agreed by Government with areas where it may not be appropriate simply for the existing councils to establish a combined authority, or indeed where a combined authority is not appropriate.
- 44 An example may be where a single county, which may or may not be a unitary authority, covers a functional economic area which may be the basis for a Devolution Deal, and all the constituent councils involved agree that the strong and accountable governance needed for the new powers and budgets to be conferred on the area necessitates simplifying the local government structures for the area. That may involve mergers of councils, moves to unitary structures, or changing the democratic representation of the area with different electoral cycles and fewer councillors.
- 45 This power will enable the Secretary of State to effect those changes simply and efficiently. Regulations under this clause are to be made only with the consent of the local authorities to which the regulations apply. Such regulations would be subject to the affirmative procedure in Parliament and may include transitional, transitory or saving provision. In addition, at the same time as the Secretary of State makes any such regulations, he is required to lay a report in Parliament explaining what these regulations do, describing why they are being made, and including details of any consultation, taken into account, any representations considered, and any other evidence or contextual information the Secretary of State considers appropriate.

Clause 17: Power to transfer etc. public authority functions to certain local authorities

- 46 Clause 17 enables the Secretary of State to make regulations which (a) make provision for a function of a public authority that is exercisable in relation to a local authority's area to be undertaken by the local authority; or (b) confer on a local authority, in relation to its area, a function which corresponds to a function which a public authority has in relation to another area. Conditions or limitations can be specified together with any conferral of powers on local authorities. Subsection (3) enables the regulations to make provision for the local authority to have the function instead of the public authority, for the public function to be exercised concurrently with the public authority, for the public function to be exercised jointly by the local authority and public authority, or for the function to be exercised jointly by the combined authority and public authority but also continue to be exercised by the public authority alone. Subsection (4) provides that regulations may also make provision for (a) the making of a scheme to transfer property, rights and liabilities from the public authority to the local authority and (b) abolishing the public authority if it will no longer have any functions. A regulatory function exercisable by a public body in relation to the whole of England cannot be conferred on a local authority.

Clause 18: Section 17: procedure etc.

- 47 Clause 18 specifies the procedure to be followed for the Secretary of State to make regulations under clause 17. Regulations can only be made if the local authority consents and the Secretary of State considers that making the regulations is likely to improve the exercise of statutory functions in the local authority's area. Subsection (4) requires the Secretary of State to lay a report before Parliament when laying the regulations, which set out the effect of the regulation the reason that the Secretary of State considers them appropriate. Subsection (3) provides that the regulations may only be made following approval from each House of

Parliament. Subsections (4) and (5) provide that when laying the regulations before Parliament the Secretary of State must lay a report before both Houses of Parliament explaining what the regulations do and why he proposes to make the regulations, to include details of any consultation taken into account by the Secretary of State as well as any representations considered in connection with the regulations and any other evidence or contextual information that the Secretary of State considers it appropriate to include.

Clause 19: Devolving health service functions

48 Clause 19 requires that the Secretary of State responsible for such services must continue to be able to fulfil his statutory duties conferred by existing legislation notwithstanding any transfer of functions under clause 8, 17 or 18. It also requires that the combined authority or other public body to whom the functions are transferred should adhere to national standards and accountabilities which are attached to those functions under existing legislation.

Clause 20: Governance arrangements for local government: entitlement to vote

49 Clause 20 amends the Representation of the People Act 1983 to reduce the minimum voting age for local government electors in England and Wales from 18 to 16.

Clause 21: Referendums to undo change to mayor and cabinet executive

50 Clause 21 amends the Local Government Act 2000. It removes the existing moratorium on petitions for changing governance arrangements in areas that have directly elected mayors, where these have been elected following a referendum that had been required under an order made by the Secretary of State under that Act, and agreed by Parliament. As of the date of these Explanatory Notes, only Bristol has a mayor elected following a referendum.

Final provisions

Clause 22: Minor and consequential amendments

51 Clause 22 enables the Secretary of State to make amendments consequential on any provision in this Act, including transitional, transitory or savings provisions.

Clause 23: Extent

52 Clause 23 provides for the Act to extend to England and Wales.

Clause 24: Commencement

53 Clause 24 provides for the extent, commencement and short title of this Act, together with the powers conferred by the Bill to make secondary legislation, to come into force on the day on which it is passed. Other provisions will come into force two months after Royal Assent.

Clause 25: Short title

54 Clause 25 provides the short title of the Act as the Cities and Local Government Devolution Act 2015.

Schedules

Schedule 1: Mayors for combined authority areas: further provision about elections

55 Schedule 1 inserts Schedule 5B into the 2009 Act to make provisions about the elections of mayors of combined authority areas. The Schedule provides a default term of office of four years for an elected mayor, and the dates on which elections for the return of a mayor will take place. It enables the Secretary of State to make further provision on the timing of elections, for example the date on which an election is to be held and the length of a mayor's term.

- 56 It details that the voting system for an elected mayor will be by simple majority unless there are three or more candidates, in which case it will be by supplementary vote. In the supplementary vote system, electors give a first and second preference so that if no candidate has a majority of first preference votes, the second preference votes will be taken into account. The Schedule sets out that those entitled to vote are those that would be entitled to vote at local government elections.
- 57 The Schedule provides that an elected mayor for the area of a combined authority cannot also be a councillor and sets out the qualification and disqualification criteria for people to be able to stand for election or hold the office of elected mayor of the area of a combined authority.
- 58 The Schedule also provides that the Secretary of State, after consulting the Electoral Commission, may make provision about the conduct and the questioning of the elections for elected combined authority mayors.

Schedule 2: Mayors for combined authority areas: police and crime commissioner functions

- 59 Schedule 2 inserts Schedule 5C into the 2009 Act and makes further provision in relation to orders made under section 107E (orders transferring Police and Crime Commissioner functions to mayors). It is envisaged that, whilst an initial order under section 107E will set out that the mayor is to take over Police and Crime Commissioner functions from the Police and Crime Commissioners for the area, the detailed arrangements will be set out in a subsequent order under Schedule 5C.
- 60 Schedule 5C enables the Secretary of State to provide by order that the mayor may exercise all Police and Crime Commissioner functions or a limited number. But there are some functions that must always be exercisable by the mayor (including holding the relevant chief constable to account and issuing a police and crime plan). This Schedule also details a number of essential matters that, where Police and Crime Commissioner functions are transferred to a mayor, the Secretary of State must put in place by order. These include enabling the mayor to appoint a deputy mayor for Police and Crime Commissioner functions, requiring the establishment of a scrutiny panel for policing matters, giving the panel the power to suspend the mayor from exercising Police and Crime Commissioner functions and requiring the mayor to keep a police fund and prepare an annual budget in relation to the exercise of Police and Crime Commissioner functions.
- 61 Where a mayor is to exercise Police and Crime Commissioner functions, paragraph 8 of Schedule 5C requires the Secretary of State to apply the same disqualification criteria to persons being elected or holding office as a mayor as currently apply to Police and Crime Commissioners. These provisions will be additional to the criteria that already exist in relation to mayors (paragraphs 7 and 8 of new Schedule 5B) and therefore mean that more stringent qualification and disqualification criteria can be applied to mayors that exercise Police and Crime Commissioner functions, in line with the criteria that currently apply in relation to Police and Crime Commissioners.

Schedule 3: Overview and scrutiny committees

- 62 Schedule 3 inserts Schedule 5A into the 2009 Act. It places a requirement on all combined authorities to establish one or more overview and scrutiny committee and sets out the way in which such committees will be comprised and operate.
- 63 New Schedule 5A provides that an overview and scrutiny committee for a combined authority has the power to review and scrutinise decisions made, or action taken, by the combined authority and, in the case of a mayoral combined authority, the mayor on behalf of

the combined authority. The committee may also make reports and recommendations in respect of the discharge of functions of the combined authority and about any matters that affect the authority's area or its inhabitants. An overview and scrutiny committee will be able to call-in a decision which has been made but not implemented, direct that the decision cannot be implemented while it is called in, and recommend that the decision be reconsidered. Paragraph 3(2)(h) gives the Secretary of State the power to provide for a minimum or maximum call-in period. An overview and scrutiny committee may require the members and officers of the authority to answer questions before it.

- 64 Provisions about the membership and structure of an overview and scrutiny committee for a combined authority are also included in Schedule 5A. Paragraph 2(1) provides that an overview and scrutiny committee may appoint one or more sub-committees to discharge its functions. The Schedule provides that the majority of members of an overview and scrutiny committee must be members of constituent councils of the combined authority area and the membership may not include any member of the combined authority. Paragraphs 3(4) and 3(5) of Schedule 5A provide that the chair of the committee must be either an independent person or a member of a constituent council who is not of the same political party as, in the case of a mayoral combined authority, the mayor, or, in the case of any other combined authority, the largest political party on the combined authority. The Secretary of State may make further provision by order about matters including membership, voting and the chair.
- 65 New Schedule 5A also requires a combined authority to appoint an audit committee to review and scrutinise the authority's financial affairs, and review and assess the authority's risk management, internal control, corporate governance arrangements, and the economy, efficiency and effectiveness with which resources have been used. It requires that at least one member of the audit committee be an independent member.

Schedule 4: Minor and consequential amendments

- 66 This Schedule makes minor and consequential amendments to the Local Government Finance Act 1988 and to the 2009 Act relating to the newly created 'mayoral combined authority', to allow the Secretary of State to provide for a function to be exercised across part of the area of a combined authority, and to allow the Secretary of State to make different provisions for different authorities or different descriptions of authority.
- 67 Paragraph 4 amends section 104 of the the 2009 Act to enable a county council to transfer its transport functions to a combined authority for part of the county's area, which aligns with the areas of the district councils included within the area of the combined authority.
- 68 Paragraphs 13 to 17 of the Schedule amends sections 15, 17, 18 and 20 of the Localism Act 2011 to limit the power to transfer functions at section 15 of that Act to an EPB, as the Bill makes separate provision to transfer functions to combined authorities, county councils and district councils.

Commencement

- 69 The extent, commencement and short title of this Act, together with the powers conferred by the Bill to make secondary legislation to make saving, transitory or transitional provision in connection with the coming into force of any provision of this Act, will come into force on the day on which it is passed. Other provisions will come into force two months after Royal Assent.

Financial implications of the Bill

- 70 The powers within the Bill enable the Secretary of State, with consent from appropriate authorities, to establish the position of an elected mayor for the area of a combined authority and broaden the functions that combined authorities are able to undertake. This can lead to activity which can incur expenditure, such as needing to hold elections to the position of the elected mayor for the areas of a combined authority. However, where combined authorities are established the Bill requires the Secretary of State to consider that doing so would improve the exercise of the statutory functions - which includes improving their value for money. Exercising any of the powers conferred by the Bill is within the discretion of the Secretary of State, and it is open to the Secretary of State to refrain from exercising them if he were to consider this would lead to greater costs in the delivery of local services. Furthermore, where the mayor is also to take on the functions of the Police and Crime Commissioner, there will be no separate election for the Police and Crime Commissioner. Therefore it is expected that the establishment of a combined authority and / or the position of mayor would lead to greater efficiencies and greater local transparency and decision making, and therefore not increase public expenditure. The context in which the powers are to be exercised is expected to be where Government has agreed devolutionary deals with particular areas. For example, in November 2014 such a deal was agreed with Greater Manchester, the implementation of which is being enabled through the provisions in this Bill; the Greater Manchester deal will be cost neutral to the Exchequer.
- 71 Provision introduced by amendment in the House of Lords, amending the Representation of the People Act 1983 to reduce the minimum voting age for local government electors in England and Wales from 18 to 16, would have the effect of marginally increasing the cost of local government elections overall, as more voters are registered.

Parliamentary approval for financial costs or for charges imposed

- 72 A money resolution will be required in the House of Commons. The Bill is likely to result in expenditure in relation to conferring new functions on local authorities or combined authorities, and in relation to mayors, including funding the office of mayors, as well as voting.

Compatibility with the European Convention on Human Rights

- 73 Greg Clark, Secretary of State for the Department of Communities and Local Government has stated that in his view the provisions of the Cities and Local Government Devolution Bill are compatible with the Convention rights.

Related documents

- 74 The following documents contain further information which is relevant to this Bill

- Chancellor's "Northern Powerhouse" speech 23 June 2014 - <https://www.gov.uk/government/speeches/chancellor-we-need-a-northern-powerhouse>

- Government's devolution agreement with Greater Manchester 3 November 2014 - <https://www.gov.uk/government/publications/devolution-to-the-greater-manchester-combined-authority-and-transition-to-a-directly-elected-mayor>
- Government's manifesto - <https://www.conservatives.com/Manifesto>
- Chancellor's speech on 14 May 2015 - <https://www.gov.uk/government/speeches/chancellor-on-building-a-northern-powerhouse>

Annex A - Territorial extent and application

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion required?	Extends to Scotland?	Legislative Consent Motion required?	Extends to Northern Ireland?	Legislative Consent Motion required?
<i>Reports and statements about local devolution</i>							
Clause 1	Yes	No	No	No	No	No	No
Clause 2	Yes	No	No	No	No	No	No
<i>Mayoral combined authorities</i>							
Clause 3	Yes	No	No	No	No	No	No
Clause 4	Yes	No	No	No	No	No	No
Clause 5	Yes	No	No	No	No	No	No
Clause 6	Yes	No	No	No	No	No	No
<i>Combined authorities: additional functions</i>							
Clause 7	Yes	No	No	No	No	No	No
Clause 8	Yes	No	No	No	No	No	No
<i>Combined authorities: accountability etc</i>							
Clause 9	Yes	No	No	No	No	No	No
Clause 10	Yes	No	No	No	No	No	No
Clause 11	Yes	No	No	No	No	No	No
<i>Combined authorities and EPBs: areas and procedure</i>							
Clause 12	Yes	No	No	No	No	No	No
Clause 13	Yes	No	No	No	No	No	No
Clause 14	Yes	No	No	No	No	No	No
<i>Local authorities: governance, constitution and functions</i>							
Clause 15	Yes	No	No	No	No	No	No
Clause 16	Yes	No	No	No	No	No	No
Clause 17	Yes	No	No	No	No	No	No
Clause 18	Yes	No	No	No	No	No	No
Clause 19	Yes	No	No	No	No	No	No
Clause 20	No	Yes	No	No	No	No	No
Clause 21	Yes	No	No	No	No	No	No
<i>Final provisions</i>							
Clause 22	Yes	No	No	No	No	No	No
Clause 23	Yes	No	No	No	No	No	No
Clause 24	Yes	No	No	No	No	No	No

These Explanatory Notes relate to the Cities and Local Government Devolution Bill [HL] as brought from the House of Lords on 21 July 2015 (Bill 64)

Clause 25	Yes	No	No	No	No	No	No
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CITIES AND LOCAL GOVERNMENT DEVOLUTION BILL [HL]

EXPLANATORY NOTES

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