

# 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 introduced in the House of Lords on 28 May 2015 (HLBill 1).

- These Explanatory Notes have been prepared by the Department of Communities and Local Government and 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:
  - provide for an elected mayor for the combined authority's area who would exercise specified functions individually and chair the authority;
  - 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);
  - 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;
  - remove the current statutory limitation on functions that can be conferred on a combined authority (currently economic development, regeneration, and transport); and
  - provide for streamlined local governance as agreed by councils.

## Policy background

### Devolution

- 2 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 and Sheffield City Region. 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. The Government is committed to devolution and is keen to agree further deals.

## Combined Authorities

- 3 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.
- 4 There are currently five combined authorities that have been established by order:
  - a. Greater Manchester;
  - b. Barnsley, Doncaster, Rotherham and Sheffield;
  - c. Durham, Gateshead, Newcastle Upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland;
  - d. Halton, Knowsley, Liverpool, Sefton, St Helens and Wirral; and
  - e. West Yorkshire.
- 5 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.

## Elected Mayors

- 6 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 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. In the Government's view city-wide, elected mayors for combined authority areas will achieve this and ensure the continuation of strong democracy.
- 7 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

- 8 The legislation relating to the existing policy is set out in a combination of primary and subordinate legislation. The current provisions are:
  - 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

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- 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**

- 9 The provisions of the Bill extend to the whole of England and Wales. In effect, these provisions 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 provisions relating to governance arrangements (clause 10), apply only in England.

## Commentary on provisions of Bill

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

### Mayoral combined authorities

#### Clause 1: Power to provide for an elected mayor

- 11 Clause 1 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.
- 12 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. 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.
- 13 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.
- 14 Subsection (2) of clause 2 introduces new Schedule 5B into the 2009 Act. New Schedule 5B makes provision 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 2: Deputy mayors etc

- 15 Clause 2 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 3: Functions

- 16 A mayoral combined authority is a single body corporate, which comprises the mayor and the remaining members of the combined authority. Clause 3 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. 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.
- 17 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.
- 18 Clause 3 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 4: Financial matters

- 19 Clause 4 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. Subsection (3) 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 (4) 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 5: Local authority functions

- 20 Clause 5 amends sections 105, 108, 109, 110, 112 and 113 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 order can be laid if the authorities concerned undertake a review and publish a scheme or the Secretary of State considers that the order is appropriate and the authorities provide consent. The authorities' review would consider whether the proposed changes would improve the exercise of the statutory functions. This replaces the statutory tests previously required, which require the Secretary of State to consider that establishing or changing the combined authority is likely to improve: exercise of statutory functions relating to transport, regeneration and economic development; the effectiveness and efficiency of transport; and economic conditions in the area.

### Clause 6: Other public authority functions

- 21 Clause 6 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. An order made under subsection (1)(a) of new section 105A may make provision for the combined authority to have the function instead of the public authority or for the public function to be exercised concurrently with the public authority. An order under subsection (1)(a) of new 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.
- 22 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) if, 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 area relates.

## Combined authorities: other provision

### Clause 7: Overview and scrutiny committees

- 23 Clause 7 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) 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 8: Funding of combined authorities

- 24 Clause 8 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 9: General power of competence

- 25 Clause 9 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. Clause 9 requires the appropriate authorities to consent before such a power can be conferred.

## Local authorities: governance and constitution

### Clause 10: Governance arrangements etc of local authorities in England

- 26 Clause 10 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.
- 27 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.
- 28 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.
- 29 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.
- 30 This power is intended to 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.

## Final provisions

### Clause 11: Minor and consequential amendments

- 31 Clause 11 enables the Secretary of State to make amendments consequential on any provision in this Act, including transitional, transitory or savings provisions.

### Clause 12: Extent

- 32 Clause 12 provides for the Act to extend to England and Wales.

### Clause 13: Commencement

- 33 Clause 13 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 14: Short title

- 34 Clause 14 provides the short title of the Cities and Local Government Devolution Act 2015.

## Schedules

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

- 35 Schedule 1 inserts Schedule 5B into the 2009 Act to make provisions about the elections of mayors of combined authority areas. It enables the Secretary of State to make 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.
- 36 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.
- 37 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.
- 38 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

- 39 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.

- 40 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

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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.

- 41 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

- 42 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. It sets out the functions and enables overview and scrutiny committees to set up sub committees. Schedule 3 enables the Secretary of State to make provision by order about matters including membership, voting and the chair. It prevents members of the combined authority from being a member of any overview and scrutiny committee.

### Schedule 4: Minor and consequential amendments

- 43 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', and to allow the Secretary of State to make different provisions for different authorities or different descriptions of authority.

## Commencement

- 44 The extent, commencement and short title of this Act, together with the powers conferred by the Bill to make secondary legislation, 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

- 45 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

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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.

## Related documents

46 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>
- 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>Mayoral combined authorities</i>							
Clause 1	✓						
Clause 2	✓						
Clause 3	✓						
Clause 4	✓						
<i>Combined authorities: additional functions</i>							
Clause 5	✓						
Clause 6	✓						
<i>Combined authorities: other provision</i>							
Clause 7	✓						
Clause 8	✓						
Clause 9	✓						
<i>Local authorities: governance and constitution</i>							
Clause 10	✓						
<i>Final provisions</i>	✓						
Clause 11	✓						
Clause 12	✓						
Clause 13	✓						
Clause 14	✓						

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