

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

24th Report of Session 2016–17

**Draft Cambridgeshire and
Peterborough Combined
Authority Order 2017**

Includes 2 Information Paragraphs on 2 Instruments

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Secondary Legislation Scrutiny Committee

The Committee was established on 17 December 2003 as the Merits of Statutory Instruments Committee. It was renamed in 2012 to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

The Committee's terms of reference are set out in full on the website but are, broadly, to scrutinise —

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of these specified grounds:

(a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;

(b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;

(c) that it may inappropriately implement European Union legislation;

(d) that it may imperfectly achieve its policy objectives;

(e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation;

(f) that there appear to be inadequacies in the consultation process which relates to the instrument.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

| | | |
|---------------------------|-------------------------------|--|
| Baroness Andrews | Lord Hodgson of Astley Abbots | Lord Rowlands |
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| Lord Goddard of Stockport | Rt Hon. Lord Janvrin | Rt Hon. Lord Trefgarne (<i>Chairman</i>) |
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Registered interests

Information about interests of Committee Members can be found in the last Appendix to this report.

Publications

The Committee's Reports are published on the internet at www.parliament.uk/seclegpublications

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at <http://www.legislation.gov.uk/uksi>

Information and Contacts

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is hseclegscrutiny@parliament.uk.

Twenty Fourth Report

INSTRUMENT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Cambridgeshire and Peterborough Combined Authority Order 2017

Date laid: 23 January 2017

Parliamentary procedure: affirmative

This draft Order proposes to establish the mayoral Cambridgeshire and Peterborough Combined Authority (CPCA) across the local government areas of Cambridge, South Cambridgeshire, Huntingdonshire, Fenland, East Cambridgeshire, Cambridgeshire and Peterborough, providing for a directly elected Mayor for the CPCA from May 2017. The picture of local views painted by the Department for Communities and Local Government in the Explanatory Memorandum is incomplete and at times self-serving. We look to Government to present a fuller and more accurate account of such matters.

We draw this instrument to the special attention of the House on the ground that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation.

1. The Department for Communities and Local Government (DCLG) has laid this draft Order with an Explanatory Memorandum (EM). It proposes to establish the mayoral Cambridgeshire and Peterborough Combined Authority (CPCA) across the local government areas of Cambridge, South Cambridgeshire, Huntingdonshire, Fenland, East Cambridgeshire, Cambridgeshire and Peterborough; and to confer on the CPCA powers which cover transport, economic development and regeneration, and housing and planning. It also provides for the governance arrangements of the Combined Authority, including that there will be a directly elected Mayor for the CPCA from May 2017.

Background—East Anglia Devolution Deal

2. DCLG explains that an East Anglia Devolution Deal was agreed between the constituent members of a proposed East Anglia Combined Authority and the Government in March 2016. However, after contact with communities and councils across East Anglia, local leaders sent proposals to Government for two deals, one for Cambridgeshire and Peterborough, and one for Norfolk and Suffolk. In November 2016, King's Lynn and West Norfolk Borough Council decided not to proceed with the proposed Norfolk and Suffolk Devolution Deal.

Consultation

3. DCLG says that the seven local authorities of Cambridge and Peterborough consulted on the proposals over a six-week period, from 8 July to 23 August 2016. The consultation was undertaken in part by means of an Ipsos MORI (MORI) telephone poll, based on carrying out 380 interviews in each local authority, with fixed quotas for gender, age, and work status; and in part through an online survey, run and analysed independently by Cambridgeshire County and Peterborough City councils. In total, MORI's survey of residents received 2,280 responses and the online survey received over 1,500 responses. There were also parish council responses to the consultation, and direct face-to-face sector and business engagement. The councils published a summary of the consultation in September 2016.¹
4. The two surveys produced differing results. DCLG says that, in the MORI survey, 61% of respondents supported a mayoral CPCA, while 23% were opposed; and 60% of respondents supported their local council becoming part of a Combined Authority along with other councils in Cambridge and Peterborough chaired by a directly elected Mayor, with 24% opposed. The Department states that, in the online survey, 55% of respondents supported the principle of devolution, with 37% opposed; and 44% supported the transfer of powers and funding to the CPCA, while 47% were opposed. Not mentioned by DCLG, but set out in the councils' summary of consultation, is the fact that 59% of online respondents opposed having an elected Mayor for the CPCA, while only 31% of online respondents supported the proposal. **We are disappointed by such a selective approach to reporting the results of the online survey; it gives the impression of a Department that is insufficiently concerned with transparency.**
5. DCLG says that the numbers of the online survey, according to the analysis by Cambridgeshire and Peterborough councils, "aren't representative of the population as a whole", and "the results represent a 'self-selecting' sample". It goes on to state that the somewhat more negative responses to the Mayoral Combined Authority model from the online survey are outweighed by the more positive responses to the model by the MORI poll. **We note that in the case of other draft Orders proposing to establish Combined Authorities, such as the draft West of England Combined Authority Order 2017, DCLG has made use of information produced by online consultation exercises without suggesting that such exercises were unrepresentative or self-selecting. We suggest that this raises the question of whether the Department is taking a consistent view of different approaches to consultation.**
6. DCLG notes that responses by the eight parish councils who formally responded to the consultation were mixed; and also that two of the eight parish councils voiced concerns that the summary document on the consultation website was insufficient and that the timing of the consultation was problematic as it took place during the holidays. The Department says that "this criticism of the process appears to be a minority view as it was not reflected in other comments and responses." **It seems to us, however, that holding a consultation over six weeks to late-August might well cause difficulties to small organisations whose members were on**

¹ See: <https://www.peterborough.gov.uk/upload/www.peterborough.gov.uk/council/strategies-polices-and-plans/Devolution-CambridgeshireAndPeterboroughConsultation-Summary-September2016.pdf?inline=true>

holiday during much of this period; whether or not the criticism was a “minority view” is irrelevant to the underlying issue, which is the need to arrange consultation in such a way that interested parties have a genuine opportunity to formulate and submit their views.

7. While DCLG, in the EM, presents the overall outcome of consultation in positive terms, the summary published by the councils includes the following statement:

“The telephone and online polls provide sufficient indicative data that local residents support the direction of travel towards greater devolution of powers for Cambridgeshire and Peterborough and believe it will reflect the identity and interests of their community. That is not to say that support for the proposals is unanimous. The consultation does also demonstrate concerns about the proposed changes which also need to be considered. One clear concern that comes through from some residents and stakeholders is that the new governance arrangements and Mayor will mean an extra layer of government, cost and bureaucracy. In order for the proposals to be successful and command local support it will therefore be important for Cambridgeshire and Peterborough Leaders to ensure the changes can bring about better arrangements which reduce costs and bureaucracy.”²

Conclusion

8. Proposals for devolution of functions to local government in Cambridgeshire and Peterborough are being progressed by the local councils themselves, and by the Government. It is clear, however, that there is variable enthusiasm among local residents for the proposals, and in particular that support for an elected Mayor for the new Combined Authority is far from overwhelming. **The picture of local views painted by the Department in the Explanatory Memorandum is incomplete and at times self-serving. We look to Government to present a fuller and more accurate account of such matters.**

2 Paras 5.3 and 5.4 of the September 2016 summary.

INSTRUMENT OF INTEREST

Draft Tees Valley Combined Authority (Functions) Order 2017

9. The Department for Communities and Local Government (DCLG) has laid this draft Order with an Explanatory Memorandum (EM). The Tees Valley Combined Authority (TVCA) was established on 1 April 2016³ and on 19 July 2016 the position of Mayor of the Tees Valley Combined Authority (“the Mayor”) was established for the Combined Authority, with the first election set for 4 May 2017.⁴
10. In the EM, DCLG says that the Devolution Deal agreed by the Government with local leaders in October 2015 included the commitment for the directly elected Mayor of the TVCA to hold responsibility for a consolidated transport budget, and the creation of a mayoral development corporation (MDC). On 19 February 2016, following the closure of the SSI Steelworks site in Redcar and Cleveland, local leaders and the Government announced proposals to establish an MDC for the Tees Valley (the first outside London). This Order confers on the TVCA functions corresponding to functions that the Mayor of London has in relation to Greater London, including the power to designate an area of land as a mayoral development area, and to decide that an MDC is to be the local planning authority for some or all of the area.
11. In the EM, DCLG states that the TVCA geography overlaps with the North York Moors (NYM) National Park, which is a local planning authority; and that it is considered appropriate that the Mayor should require the consent of the NYM National Park Authority if he or she proposes that an MDC should become the local planning authority for the whole or any part of the area of the National Park that overlaps with the TVCA area. We obtained additional information from DCLG about the relationship between the National Park Authority and the TVCA; we are publishing it as Appendix 1.

School and Early Years Finance (England) Regulations 2017 (SI 2017/44)

12. The Department for Education (DfE) has laid these Regulations with an Explanatory Memorandum (EM). In the EM, DfE says that it allocates Dedicated Schools Grant (DSG) to local authorities; and that DSG comprises three blocks, for schools, high needs and early years, and must be spent only on the schools budget. Local authorities then distribute funding to their maintained schools through a locally determined formula.
13. DfE says that, in a consultation held in March–April 2016, it proposed that the existing distribution of funding to local authorities, largely based on historic decisions, would be replaced by national funding formulae from 2017–18 for each of the blocks. In July 2016, Ministers announced that these major changes to schools and high needs funding would be deferred until 2018–19, but that some new transitional arrangements, particularly relating to central expenditure, would take effect in 2017–18. As the existing Regulations⁵ only apply up to the end of the 2016–17 financial year, DfE is making these Regulations to enable local authorities to determine school

3 Under the Tees Valley Combined Authority Order 2016 (SI 2016/449). We drew the draft Order to the special attention of the House in our 27th Report, Session 2015–16 (HL Paper 107).

4 Under the Tees Valley Combined Authority (Election of Mayor) Order 2016 (SI 2016/783). We published information about this draft Order in our 4th Report, Session 2016–17 (HL Paper 15).

5 The School and Early Years Finance (England) Regulations 2015 (SI 2015/2033).

budgets for 2017–18. In December 2016, DfE published a response to the consultation.⁶

14. DfE explains that one of the main changes made by these Regulations relates to ending the Education Services Grant (ESG), which DfE previously provided to local authorities to support their education functions.⁷ The ESG will end from September 2017, with part of the funding being added to the DSG, which must be spent on the schools budget. As a result, many of the classes of expenditure that were previously funded by ESG have now been added to Schedule 2 of the 2017 Regulations, to enable DSG to be spent on them. In the EM, DfE says that 62% of respondents to the March–April 2016 consultation agreed with the proposal that authorities could retain funding for duties relating to maintained schools, subject to agreement by the maintained school members of the schools forum.
15. We obtained a good deal of additional information from DfE about this change which we are publishing at Appendix 2. Asked why the EM contained little detail about this, the Department has said that, because the Regulations do not implement the decision to remove the ESG in order to make £600 million of savings—which was made during the autumn statement 2015—this information was not set out explicitly in the EM. **We recognise that an Explanatory Memorandum should be concise and to-the-point. However, given the complexity of this change and its potential impact on local authorities, we consider that, in this case, the Department should have offered a better explanation of its intentions.**

6 See: <https://consult.education.gov.uk/funding-policy-unit/high-needs-funding-reform-2/> and https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/577357/Schools_national_funding_formula_government_consultation_response_stage_1.pdf

7 These functions were set out in the non-schools education budget, as prescribed in the Regulations made under the Schools Standards and Framework Act 1998.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2017

Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2017

Tees Valley Combined Authority (Functions) Order 2017

Transport Levying Bodies (Amendment) Regulations 2017

Draft instruments subject to annulment

London Borough of Bexley (Electoral Changes) Order 2017

South Cambridgeshire (Electoral Changes) Order 2017

Instruments subject to annulment

SI 2017/37 School Information (England) (Amendment) Regulations 2017

SI 2017/39 Non-Domestic Rating (Demand Notices) (Amendment) (England) Regulations 2017

SI 2017/44 School and Early Years Finance (England) Regulations 2017

SI 2017/53 Civil Legal Aid (Procedure) (Amendment) Regulations 2017

APPENDIX 1: DRAFT TEES VALLEY COMBINED AUTHORITY (FUNCTIONS) ORDER 2017

Additional Information from the Department for Communities and Local Government

Q: What views have been sought from, and expressed by, the North York Moors National Park Authority on the proposals for a Tees Valley mayoral development corporation (MDC)?

A: The provisions contained in the draft Order reflect the outcome of discussions between the Department for Communities and Local Government (DCLG); the Department for Environment, Food and Rural Affairs (Defra); the North York Moors National Park (“the National Park Authority”); the Tees Valley Combined Authority (TVCA); and Redcar and Cleveland Council.

During the drafting of the Order, the National Park Authority and Defra highlighted their concerns that the conferral of functions onto the TVCA allowing for the designation of mayoral development areas and the subsequent creation of mayoral development corporations (MDCs) could impact on the planning powers of National Parks.

Following discussions about these concerns at the Ministerial level, officials in DCLG and Defra worked with all stakeholders to identify a solution that struck a balance between protecting the powers and status of National Parks, while supporting the local growth agenda.

The draft Order therefore specifically provides that powers under section 202 of the Localism Act 2011 (Functions in relation to Town and Country Planning) would only transfer to an MDC in respect of the area with the consent of the National Park Authority. This proposal was accepted by all parties, including the National Park Authority, during the drafting of the Order. This proposal offers the assurances sought by the National Park Authority in relation to their status and powers.

27 January 2017

APPENDIX 2: SCHOOL AND EARLY YEARS FINANCE (ENGLAND) REGULATIONS 2017 (SI 2017/44)

Additional information from the Department for Education

Q1: In the Explanatory Memorandum you say:

“The Department has previously provided a grant—the Education Services Grant (ESG) - to local authorities to support their education functions. These functions were set out in the non-schools education budget, as prescribed in the Regulations made under SSFA 1998. The ESG is ending from September 2017, with part of the funding being added to the Dedicated Schools Grant, which must be spent on the schools budget. As a consequence, many of the classes of expenditure that were previously funded by ESG have now been added to Schedule 2 of the 2017 Regulations, to enable DSG to be spent on them.”

What is the financial impact on local authorities of these changes?

A1: Local authorities will receive ESG transitional funding from April 2017 to August 2017 inclusive. The transitional grant will be delivered to local authorities at an annual rate of £66 per pupil. Further information on the transitional grant can be found online at: <https://www.gov.uk/government/publications/education-services-grant-esg-transitional-grant-2017-to-2018>

We recognise that local authorities will need to use other sources of funding to pay for education services once the ESG general funding rate has been removed. That is why we have amended regulations to allow local authorities to retain some of their maintained schools’ Dedicated Schools Grant (DSG) to cover the statutory duties they carry out on behalf of maintained schools only (see paragraph 7.5 to 7.6 of the Explanatory Memorandum).

Local authorities will continue to receive funding for the duties they carry out for all pupils, previously delivered through the ESG retained duties rate. In 2016–17, the retained duties rate was delivered to local authorities at an annual rate of £15 per pupil. In 2017–18, this funding has been added to local authorities’ DSG allocation. Local authorities are able to hold DSG funding centrally to pay for these duties, with the agreement of their school forum.

From 2018–19, this funding will be delivered through the new central school services block as part of the national funding formula

We have also announced additional school improvement funding for local authorities once the ESG general funding rate is fully removed from September 2017. This will include a grant to support local authorities in continuing to monitor and broker school improvement for weaker maintained schools in their area, and work with regional school commissioners (RSCs) where appropriate. This will be a £50m a year fund, commencing in September 2017; funding in the financial year 2017–18 will total £30m.

A further £140m will be set aside to create a new ‘Strategic School Improvement Fund’, which will support school improvement, alongside building school-led capacity in parts of the country where it is needed. Maintained schools and academies will be able to apply for this funding with the backing of a teaching school, local authority or RSC and will be able to use it for school improvement activity.

Further information on our school improvement strategy can be found online at <https://www.gov.uk/government/news/new-funding-for-school-improvement--2>.

Q2: What classes of expenditure previously funded by ESG are not being added to Schedule 2 and hence will not receive funding from Department for Education (DfE)?

A2: All expenditure that was previously funded under the ESG has been included in Schedule 2 to the School and Early Years (England) Regulations 2017. All expenditure is in Parts 3 and 7 of Schedule 2, apart from medical support which is in Part 5 (paragraph 38), and non-intervention school improvement activity which is in Part 6 (paragraph 51).

We would like to clarify that these activities may all be funded from the DSG, but are not required to be. Local authorities can also use other sources of funding to pay for the expenditures listed in Parts 3 and 7, which will result in the expenditure being treated as part of the non-schools education budget—this is provided for by regulation 8(12).

Q3: Are local authorities expected to find funding to make good the loss of funding from DfE?

A3: We recognise that local authorities will need to use other sources of funding to pay for education services once the general funding rate has been removed. We are therefore amending regulations to allow local authorities to retain some of their maintained schools' DSG to cover the statutory duties that they carry out on behalf of maintained schools. The amount to be retained by the local authority will need to be agreed by the relevant maintained schools members of the schools forum (primary, secondary, special and PRU). If the local authority and schools forum are unable to reach consensus on the amount to be retained by the local authority, the matter can be referred to the Secretary of State. We believe it is the responsibility of local authorities to determine the balance to strike between seeking DSG funding, finding funding from other sources, and seeking efficiency savings within the system.

Further information on this can be found as part of the updated 2017–18 operational guidance to LAs, which is available at: <https://www.gov.uk/government/publications/schools-funding-arrangements-2017-to-2018>.

Q4: What views have been expressed by local authorities on these changes?

A4: The government announced its intention to make £600m of savings by cutting the ESG general duties rate at Spending Review 2015.

The first stage of our consultation on the national funding formula asked respondents to name which other duties funded from ESG they believed could be removed from the system. A small number of respondents recommended duties funded by ESG they thought could be removed from the education system and we are keeping these suggestions under review.

We also asked if respondents agreed with our proposal to allow local authorities to retain some of their maintained schools' DSG centrally—in agreement with the maintained schools members of the schools forum—to fund the duties they carry out for maintained schools. Of the 4933 responses we received to the consultation, 62% agreed with this proposal, 19% disagreed and 19% did not answer the question.

A small number of respondents argued that there should be a maximum cap on the amount of funding the local authority can retain. They argued that as more schools become academies there will be fewer maintained schools in each local authority, which could result in the local authority having to increase the amount of funding retained centrally thus resulting in increased costs for maintained schools.

Some respondents disagreed with our proposal because they did not support the removal of the ESG. Some respondents disagreed because they thought that all funding should be directly allocated to schools so that they are able to buy back services from the provider of their choice. Linked to this, others argued that all funding provided by the local authority should be delivered through the central school services block, removing the need for local authorities to retain some of their maintained schools' dedicated schools grant centrally.

We have considered whether we should set a cap on the level of funding a local authority can retain, and have concluded that it is not appropriate. Spend on duties funded through the ESG general funding rate varies considerably across the country, so we believe it is right that the level of funding retained centrally by the local authority should be agreed locally between the local authority and the maintained schools members of the schools forum. Local authorities and schools forums will have recourse to the Secretary of State where necessary when agreement cannot be reached.

Q5: Why was this information not included in the Explanatory Memorandum?

A5: These regulations do not implement the decision to remove the ESG in order to make £600m of savings, which was made during the autumn statement 2015, and the consequences of it formed part of the Spring 2016 consultation on the National Funding Formula. It is for that reason that this information was not set out explicitly in the explanatory memorandum. However, the links to the consultation documents and responses contained in the explanatory memorandum do contain the information about the impact of the decision and the views of local authorities.

6 February 2017

APPENDIX 3: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 7 February 2017, Peers declared no interests.

Attendance:

The meeting was attended by Baroness Andrews, Lord Bowness, Lord Goddard of Stockport, Lord Hodgson of Astley Abbots, Baroness Humphreys, Lord Janvrin, Lord Rowlands, Baroness Stern and Lord Trefgarne.