

Get in on the Act

Cities and Local Government
Devolution Act 2016

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Background

The Cities and Local Government Devolution Bill was introduced in the House of Commons on 28 May 2015, completed its parliamentary stages on 12 January 2016 and received Royal Assent, thereby becoming law on 28 January 2016.

The Cities and Local Government Devolution Act 2016 (the Act) provides the legal framework for the implementation of devolution deals with combined authorities and other areas. It is an enabling piece of legislation, with further details for different areas to be set out in regulations that will be put before Parliament.

The Act is made up of nine parts as follows:

1. Reports about local devolution
2. Mayoral combined authorities
3. Combined authorities: additional functions
4. Combined authorities: accountability
5. Combined authorities and Economic Prosperity Boards: areas and procedures
6. Combined and local authorities: governance, constitution, and functions
7. Subnational transport bodies
8. National Park authorities
9. Final provisions

This publication aims to provide readers with an introduction to the Act and summarises the main issues on which the Local Government Association (LGA) campaigned.

The role of the LGA and local government in influencing the legislation

We worked with LGA Vice-Presidents, ministers, Members of Parliament, peers and civil servants to influence the Act. During the passage of the Act through Parliament the LGA:

- Worked with peers to introduce section 1, which requires the Secretary of State to make an annual report on devolution in England to both Houses of Parliament. The LGA felt this additional section was needed to increase transparency and accountability of the Secretary of State's powers.
- Worked with peers to introduce a new clause that would have required all Government Bills to include a statement that they were consistent with the principle of devolving power to the most appropriate level. This was passed by the House of Lords, but the Government moved an amendment in the House of Commons to remove this from the legislation.
- Secured reassurances from the Government that the powers to determine the composition of local governance arrangements and remove functions from local authorities without local consent would only be used in exceptional circumstances and with adequate safeguards to protect the viability of all affected authorities.
- Throughout the LGA's work on the Bill we continued our long-standing call for fiscal devolution alongside legislative change. We worked with parliamentarians to table amendments for business rates retention and multi-year settlements. While the Bill was still being debated, the Government announced full business rates retention and, in December 2015, the Department for Communities and Local Government announced a multi-year finance settlement for local government.

- The Act also includes changes to the arrangements for forming combined authorities and economic prosperity boards which were consulted on under the previous government. The LGA has consistently made the case for there to be greater flexibility in how councils could come together, and these changes are reflected in the Act.

The key provisions and their implications for local government

Reports about local devolution

Section 1 places a statutory duty on the Secretary of State to provide annual reports to Parliament setting out information about devolution in all areas of England. The report must be published as soon as possible after 31 March each year. 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 where agreement has yet to be reached. Information on the additional financial resources and public functions that have been devolved through the deals must also be included.

The LGA worked with peers to introduce this section in order to increase transparency and accountability of the Secretary of State's powers. The annual report will provide an opportunity to hold central government to account on the types of functions being devolved and the types of councils receiving deals. A standing annual announcement in Parliament will help to maintain the momentum for devolution deals now that the Act has passed.

Mayoral combined authorities

Section 2 empowers 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. The Act provides a default term of office of four years for a mayor and default dates on which mayoral elections will take place.

The Secretary of State can make an order following a proposal being made by each county and district council within the area, or by an existing combined authority. An order can also be made without a proposal being made if the appropriate authorities consent, or at least two of the constituent councils and the combined authority consent. In this case, the Secretary of State must change the area of the combined authority by removing non-consenting constituent councils.

Section 3 requires the mayor of a combined authority to nominate a deputy mayor from the members of the combined authority.

Section 4 allows an order to be made by the Secretary of State, with the consent of all appropriate authorities, to the effect that any function of a mayoral combined authority is exercisable only by the mayor. The section also amends the Local Democracy, Economic Development and Construction Act 2009 to enable mayors to exercise Police and Crime Commissioner (PCC) functions. The mayor may arrange for the deputy mayor or any other member or officer of the combined authority to exercise a function of the mayor. The section also allows for a mayor to jointly exercise functions with another authority.

Section 5 allows a mayoral combined authority to set a precept for funding mayoral functions and for the Secretary of State to make provisions for the costs of a mayor to be met by precepts. Where a mayor exercises the functions of a PCC, the precept is required to have one component for the mayor's general functions and one component for their PCC functions.

Combined authorities: additional functions

Section 6 amends the Local Democracy, Economic Development and Construction Act 2009 to enable combined authorities to exercise functions other than economic development, regeneration and transport.

Section 7 enables the Secretary of State to make provision for a public authority function in a combined authority's area to be undertaken by the combined authority. Such an order can only be made if the Secretary of State considers that it is likely to improve the exercise of statutory functions. A report to this effect must be placed before Parliament.

The order can be made if the appropriate authorities put forward a proposal or where an existing combined authority and each constituent council consents. Where an order is made for the first time, it may be made with the consent of at least two constituent councils, together with the combined authority. Where this is the case, the Secretary of State must make an order to remove any non-consenting councils from the area of the combined authority.

The power may be exercised by the combined authority instead of, concurrently with, or jointly with the public authority. Conditions can be specified on the transfer of powers. For example, health powers may be conferred on a combined authority but limited in that they cannot change the NHS Constitution. National regulatory functions cannot be conferred if the area would itself carry out the relevant functions.

Combined authorities: accountability

Section 8 requires all combined authorities to establish one or more overview and scrutiny committee and an audit committee. The Secretary of State may make provision about the overview and scrutiny committee, including the membership, the voting rights of members, the chair, and the publication of reports.

Section 9 allows for a combined authority to levy for transport or any specified functions with the consent of the constituent councils and the combined authority, where those functions are not exercisable individually by the mayor. Constituent councils may make financial contributions for any function of the combined authority.

Section 10 allows for the General Power of Competence to be conferred on a combined authority, in the same manner as was introduced for principal authorities under the Localism Act 2011.

Combined authorities and Economic Prosperity Boards: areas and procedures

Section 11 removes geographical restrictions for establishing Economic Prosperity Boards (EPBs) that currently prevent authority areas from being non-contiguous or doughnut-shaped. However, in deciding whether to establish EPBs for areas where part of the area is separated from the rest of the EPB, the Secretary of State must have regard to the impact on economic development in neighbouring local authority areas.

Section 12 removes geographical restrictions for establishing combined authorities that currently prevent authority areas from being non-contiguous or doughnut-shaped. In issuing an order for a combined authority of this kind, the Secretary of State must have regard to the impact on economic development in neighbouring local authority areas.

Section 13 amends the process for minor changes to an existing EPB, replacing the requirement to undertake a review and publish a scheme with a requirement to make an application to the Secretary of State.

Section 14 amends the process required in the establishment of or change to a combined authority. Orders to add or remove an area to or from a combined authority require the consent of the relevant council, the combined authority, and, where applicable, the mayor. Where there is more than one relevant council, a proposal to add the area of one of those councils to an existing combined authority requires the consent of only one of the councils.

After consideration the Secretary of State may make an order if it is likely to improve the exercise of statutory functions and each of the councils consent. The Secretary of State must carry out a public consultation unless a scheme has been published and consulted on.

Combined and local authorities: governance, constitution, and functions

Section 15 allows the Secretary of State to make regulations making provisions about local authorities' governance arrangements, constitution and members, and boundary arrangements. This power could be used in devolution deals with areas where it may not be appropriate for the existing councils to establish a combined authority. For example, where a single county covers a functional economic area and all the constituent councils involved believe that simplifying the local government structures is necessary for strong governance. This may include council mergers, different electoral cycles, or a different number of councillors. Arrangements that allow the Secretary of State to use this power without the consent of all relevant local authorities will expire on 31 March 2019.

The LGA worked with parliamentarians to secure assurances from the Secretary of State that the powers to determine the composition of local governance arrangements and remove functions from local authorities without local consent will be used sparingly and only as a last resort.

Section 16 allows a function of a public authority that is exercisable in relation to a local authority's area to be made a function of the local authority. The Secretary of State may also confer on a relevant local authority in relation to its area a function corresponding to a function a public authority has in another area.

The power may be exercised by the local authority instead of, concurrently with, or jointly with the public authority. National regulatory functions cannot be conferred.

Section 17 sets out the process for section 16 powers to be conferred. The Secretary of State may make regulations by statutory instrument if the relevant local authority consents and the Secretary of State considers that the regulations are likely to improve the exercise of statutory functions in the area. A report explaining the regulations must be put before both Houses of Parliament.

Section 18 requires that the Secretary of State for Health must continue to fulfil his statutory duties with regard to the operation of the NHS and health services, notwithstanding any transfer of function.

Section 19 amends the National Health Service Act 2006 in connection with the exercise of health service functions of combined or local authorities, making it easier to share information between health and social care services.

Section 20 amends the Local Government Act 2000 to remove 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.

Sub-National Transport Bodies

Section 21 will enable regional groupings of councils to create statutory Sub-National Transport Bodies (STBs) to advise on strategic transport decisions and priorities for the local area. STBs will be able to provide a coordinated view of needs for their area and support more effective economic development. It is expected that as a minimum an STB will produce a strategic transport plan. An STB may also be requested by the Secretary of State for Transport to provide advice to Government, to coordinate transport activities in the STB area and potentially to take on transport responsibilities operated by other authorities in the area.

National Park authorities

Section 22 amends the Environment Act 1995 to provide English National Park authorities (NPAs) with a clear function-specific power of competence, which will assist NPAs to engage in devolution deals. The power largely mirrors that of the General Power of Competence for combined authorities set out in the Localism Act 2011.

Thank you

Throughout the passage of the Act through Parliament we worked closely with our President and Vice-Presidents, as well as other MPs and Peers, briefing them ahead of debates and suggesting amendments. On behalf of local government, we are grateful to all those parliamentarians who supported us and championed the concerns and arguments of local government.

Useful links

For the full text of the Act and the Explanatory Notes, please refer to:

www.legislation.gov.uk/ukpga/2016/1/contents/enacted

For the LGA's briefings at each stage of the Bill, please go to:

www.local.gov.uk/legislation

The LGA's DevoNext hub has background information on what devolution is and why it matters, as well as up-to-date information on the devolution deals and tools to help councils make the case for devolution in their area.

www.local.gov.uk/devolution

For more information on the Localism Act and the General Power of Competence, please refer to:

<http://www.local.gov.uk/localism>



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