

Briefing Note



Title	DCLG District Meeting		
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Distribution	Combined Authority Chief Executives and Officers		

1 Background and Context

1.1 Paul Rowsell and Alison Lyon, our key contacts in DCLG, held a session with District Chief Executives on Friday 7 August 2015, the key points discussed by DCLG are highlighted in this briefing note. This is to be read alongside the note entitled 'Membership, constitution and functions of a combined authority' drafted by DCLG (Appended to this report), to give background information and is used as the basis for this report.

2 Legal Basis

2.1 It was confirmed that the Combined Authority area is the area of its constituent members. The constituent councils of a combined authority are any County Council or District council in the Combined Authority's area. For the authorities within a two tier authority to be members of a Combined Authority both the County and all Districts would need to agree to be a constituent member of the proposed Combined Authority.

2.2 Subject to Parliamentary approval the Cities and Local Government Devolution Bill will remove the requirements for an area to be contiguous and to allow parts of a county that correspond to one or more district authorities, to become constituent members of a CA. In this case the county and district(s) would both (all) be constituent members, and could only become so if both (all) agree. The Bill is making its passage through Parliament. Subject to parliamentary approval this would come into force before the end of the financial year.

2.3 It would not be possible to change the requirement for a County to agree to be a constituent member if one or more of its district wants to be a constituent member (under the new legislation), as having one tier of the Council outside of a Combined Authority, and one tier of the Council inside the Combined Authority does not make sense.

2.4 A County cannot prevent a district from becoming a non-constituent member.

2.5 The Chair and Vice Chair of the Combined Authority are elected from among the constituent members, by the constituent members only. If an area decides to have a 'Metro' mayor, (as proposed to be enabled by the Cities and Local Government Devolution Bill, and subject to Parliamentary agreement) she or he would be elected by the electorate within the constituent authorities and represent the constituent authorities only.

2.6 The mayor would be the Leader/Chair of the Combined Authority (clause 3 of the Cities and Local Government Devolution Bill, at new section 107A(7) of the 2009 Act: “A mayor for the area of a combined authority is by virtue of that office a member of, and the chair of, the combined authority.”) .

3 Non-constituent Voting

3.1 The combined authority may choose to appoint a number of non constituent members, who must be non-voting members. (s104 2009 Act read in conjunction with s85(4) of the Transport Act 2008). However, it is possible for the voting members of the combined authority to allow a non constituent member to vote on all or certain issues. This is achieved by resolving that provision in the order providing that the number of non constituent members must be non-voting members is not to apply in the case of the authority. (S85(5) 2008 Act). This would be determined at local level and not included within the Order.

4 Powers and Functions

4.1 The 2009 Act does not provide for the combined authority to take on economic development, regeneration and transport functions of a non constituent member.

4.2 The Combined Authority must exercise its functions *in relation* to its area. The exercise of functions of a Combined Authority therefore are not strictly limited to the Combined Authority area (the constituent authorities area) but any exercise of function must be *in relation* to its area – i.e. not for the sole benefit of a non-constituent member.

4.3 If the Combined Authority wanted to exercise functions in an authority that is not one of the constituent members and the link between the Combined Authority area could not be seen as strong enough to be *in relation* to its area, a Joint Committee could be established, and s101 of the 1972 Act may be used as necessary. This raises the question of how ‘in relation to’ is determined – and how this would play into a Devolution Deal. This query is being followed up by the programme office with DCLG.

5 Engagement

5.1 As the non-constituents are named in the Scheme, and the ambition is for the Combined Authority to collaborate across the 3 LEP area, the engagement must be across the whole 3 LEP geography. The Metropolitan areas have already begun engagement and to ensure that it is carried out across the 3 LEP area, the engagement plan is being discussed with District communications officers by the Combined Authority communications lead on 11 August 2015.

5.2 The requirement of Councils that would like to be a non-constituent member to approve the Governance Review and Scheme was discussed and DCLG advised that if a Council is to commit themselves as a non-constituent member it would be sensible and preferable from Government’s point of view for that Council to approve the Governance Review and Scheme. The 7 Metropolitan Councils are seeking Council approval of the Governance Review and Scheme through September and into October in order to create the new authority and become constituent members.

5.3 In the final amendments to the Governance Review following the August engagement period therefore, the specific 3 LEP area consideration will be taken directly into account to ensure that the Governance Review is strong enough in that respect.

6 Changes to the Scheme after publication

- 6.1 No further amendments can be made to the order after it is laid in Parliament. Any alterations to the Scheme before this date must be consistent with the Governance Review and with the statutory consultation. The order that the statutory of state consults on therefore must be the same as the one consulted on – no further non-constituent members can be added once the Secretary of State begins his consultation.
- 6.2 Preparation and publication of a scheme also enables engagement with those likely to be affected by the proposals. Therefore, if the proposals are substantially modified after the publication of the scheme, by for example, the addition of further non constituents, this could raise questions as to the extent to which the Secretary of State will be able to meet the requirement to have regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government. (section 110 of the 2009 Act). As a consequence the Secretary of State may need to undertake a longer and more detailed consultation prior to making an order establishing the combined authority if he does not think that he can confidently satisfy those conditions. The result of which could be to impact upon the timing of the making of the order.
- 6.3 Taking the above into account, the date that non-constituents could be added to the scheme and consequently the order to ensure that the order is not delayed, as this poses a risk to the Combined Authority being live on 1 April 2016, is the end of October 2015.

7 Changes to the Order once made

- 7.1 Once the Combined Authority is established, any changes to membership – either adding or removing constituent or non constituent members would require the area to follow the process set out in s111 – s113 of the 2009 Act. That is that the area would need to produce a revised governance review and a new Order approved by Parliament. The Cities Bill is seeking to speed up the process by removing the need for both a local consultation and a consultation by the Secretary of State.

Appendix 1

Membership, constitution and functions of a combined authority

1. The statutory basis for establishing a combined authority is set out in the [Local Democracy, Economic Development and Construction Act 2009](#). This note provides a lay interpretation of the legislation. Councils will wish to confirm their understanding by considering the relevant legislation directly.

Constituent Members

- 7 The area of the Combined Authority is determined by its constituent authorities.
- 8 Authorities may be constituent members of the combined authority if they meet the conditions set out in s103 of the 2009 Act. The effect of these is that the proposed combined authority is made up of the whole of two or more contiguous local authorities and that no part of the area forms part of an existing EPB, CA or an ITA. All constituent authorities must have (a) participated in the preparation of the scheme, or (b) consented to its inclusion in the scheme area.
- 9 The constituent councils of a combined authority are any county council or district council in the combined authority's area. For the authorities within a two tier authority to be members of a combined authority both the county and all districts would need to agree to be a constituent member of the proposed CA.
- 10 The Cities and Local Government Devolution Bill is looking to alter this. Subject to Parliamentary approval the Bill will remove the requirements for an area to be contiguous and to allow parts of a county that correspond to one or more district authorities, to become constituent members of a CA. In this case the county and district(s) would both (all) be constituent members, and could only become so if both (all) agree. The Bill is making its passage through Parliament. Subject to parliamentary approval this would come into force before the end of the financial year.
- 11 S104 and s105 of the 2009 Act enable the Secretary of State to make an order providing for the economic development, regeneration and transport functions of the constituent authorities to be exercised by the combined authority. This may be either concurrently or the functions may be ceded to the combined authority.
- 12 S104 when read with s84 and s85 of the [Local Transport Act 2008](#), in effect replaces 'ITA' with 'Combined Authority' in these sections, and sets out the provisions that an order can make in

respect of the combined authority's constitutional arrangements, including the number of and appointment of members of the Combined Authority.

- 13 The key point is that each constituent authority must appoint at least one elected member as a member of the combined authority and that the majority of members of the combined authority must be appointed by the constituent councils.
- 14 The Chair and Vice Chair of the Combined Authority are elected from among the constituent members, by the constituent members only. If an area decides to have a 'Metro' mayor, (as proposed to be enabled by the Cities and Local Government Devolution Bill, and subject to Parliamentary agreement) she or he would be elected by the electorate within the constituent authorities and represent the constituent authorities only. The mayor would be the Leader/Chair of the Combined Authority (clause 3 of the Cities and Local Government Devolution Bill, at new section 107A(7) of the 2009 Act: "*A mayor for the area of a combined authority is by virtue of that office a member of, and the chair of, the combined authority.*") .

Non-constituent authorities

- 15 The combined authority may choose to appoint a number of non constituent members, who must be non-voting members. (s104 2009 Act read in conjunction with s85(4) of the Transport Act 2008).
- 16 However, it is possible for the voting members of the combined authority to allow a non constituent member to vote on all or certain issues. This is achieved by resolving that provision in the order providing that the number of non constituent members must be non-voting members is not to apply in the case of the authority. (S85(5) 2008 Act). This would be determined at local level and not included within the Order.
- 17 The 2009 Act does not provide for the combined authority to take on economic development, regeneration and transport functions of a non constituent member.
- 18 However s101 (1) (b) of the Local Government Act 1972 provides that a local authority may arrange for the discharge of any of their functions by any other local authority. The definition of local authority here includes a combined authority. Again this would be achieved through local arrangements, and not set out in the Order.
- 19 The exercise of functions of a Combined Authority are not strictly limited to the constituent authorities area but any exercise of function must be *in relation* to its area – i.e. not for the sole benefit of a non-constituent member.
- 20 If the Combined Authority wanted to exercise functions in an authority that is not one of the constituent members and the link between the Combined Authority area could not be seen as strong enough to be *in relation* to its area, a Joint Committee could be established, and s101 of the 1972 Act may be used as necessary.

Changes to the Scheme after publication

- 21 The first stage of establishing a Combined Authority is for the area to conduct a governance review and publish a Scheme. The timing of this is with the local area. Once published the Secretary of State will consider it, a draft Order will be prepared by Government lawyers and the proposal consulted upon. This stage usually takes 4-5 months. After consultation and if the Secretary of State judges the proposal meets the Statutory tests the Order is laid in Parliament for debate in both House of Lords and House of Commons. If approved by Parliament the Order is then made setting a date for establishing the Combined Authority.
- 22 No further amendments can be made to the order after it is laid in Parliament. However any alterations to the Scheme before this date must be consistent with the Governance Review and with the statutory consultation. The Governance Review must make the case for the proposed Combined Authority, which would include the membership – constituent and non constituent. The Secretary of State, and subsequently Parliament, would be looking to understand the rationale for the boundary of the CA (the constituents) and for the inclusion of any other organisations as non-constituents.
- 23 The reason why authorities are required to prepare and publish a scheme for the establishment of a combined authority for the scheme area is in order to enable engagement with those likely to be affected by the proposals. Therefore, if the proposals are substantially modified after the publication of the scheme by the addition of further non constituents this could raise questions as to the extent to which the Secretary of State will be able to meet the requirements set out in section 110 of the 2009 Act before making the order (e.g. the Secretary of State to have regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government in making the order). As a consequence the Secretary of State may need to undertake a longer and more detailed consultation prior to making an order establishing the combined authority if he does not think that he can confidently satisfy those conditions. The result of which could be to impact upon the timing of the making of the order.

Changes to the Order once made

- 24 Once the Combined Authority is established, any changes to membership – either adding or removing constituent or non constituent members would require the area to follow the process set out in s111 – s113 of the 2009 Act. That is that the area would need to produce a revised governance review and a new Order approved by Parliament. The Cities Bill is seeking to speed up the process by removing the need for both a local consultation and a consultation by the Secretary of State.