

# **Giving local authorities greater flexibility in forming a combined authority or economic prosperity board**

## **The Legislative Reform (Combined Authorities and Economic Prosperity Boards) (England) Order 2015**

### **Explanatory Document by the Department for Communities and Local Government**

#### **Contents**

<b>Chapter 1 Introduction</b>	Page 2
<b>Chapter 2 Background</b>	Page 3
The Legislative and Regulatory Reform Act 2006	Page 3
The Local Democracy, Economic Development and Construction Act 2009	Page 3
The consultation	Page 6
<b>Chapter 3 The draft Legislative Reform (Combined Authorities and Economic Prosperity Boards) (England) Order 2015</b>	Page 7
The burdens	Page 7
What does the Legislative Reform Order do?	Page 8
Compliance with conditions in section 3 of the 2006 Act	Page 10
Other Ministerial duties in the 2006 Act	Page 12
<b>Chapter 4 The consultation</b>	Page 14
<b>Annex A List of consultees</b>	Page 22
<b>Annex B List of relevant statutes</b>	Page 23
<b>Annex C The consolidated text of Part 6 of the Local Democracy, Economic Development and Construction Act 2009 (should all amendments be accepted)</b>	Page 24



# Chapter 1 Introduction

1. This explanatory document is laid before Parliament in accordance with section 14 of the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”) together with the draft of the Legislative Reform (Combined Authorities and Economic Prosperity Boards) (England) Order 2015 (“the draft Order”) which we propose to make under section 1 of that Act. The purpose of the draft Order is to amend provisions within Part 6 of the Local Democracy, Economic Development and Construction Act (“the 2009 Act”).
2. The 2009 Act enables the establishment of combined authorities and economic prosperity boards, facilitates the collaboration and joint working between local authorities to improve economic development, regeneration and transport in functional economic areas, thus promoting economic growth. Economic prosperity boards have functions in relation to economic development and regeneration only.
3. The 2009 Act contains a number of conditions which need to be met before the Secretary of State can make an order, subject to Parliament’s approval, establishing a proposed combined authority or economic prosperity board.
4. The Secretary of State considers that some of the conditions within the 2009 Act can create unnecessary inflexibilities and barriers to the establishment of combined authorities and economic prosperity boards. These can prohibit local authorities in some areas from forming combined authorities and economic prosperity boards (which can prevent local authorities working jointly to support economic growth), and provide an overly burdensome process in making minor changes to existing authorities and boards.
5. The Secretary of State wishes to make some changes to the 2009 Act to reduce these inflexibilities and, having undertaken the necessary statutory processes including a consultation, intends, subject to Parliamentary approval, to make these changes through a Legislative Reform Order.
6. This explanatory document is laid before Parliament in accordance with section 14 of the 2006 Act together with the draft Order which the Secretary of State proposes to make under section 1 of the 2006 Act. The purpose of this draft Legislative Reform Order is to reduce inflexibilities to:
  - i. enable local authorities with non-contiguous boundaries to join or form a combined authority or economic prosperity board, or to enable a “doughnut shaped” combined authority or economic prosperity board;
  - ii. enable a county council to delegate or share its transport functions with a combined authority for part of the county council’s area; and
  - iii. simplify the administrative processes required to make less significant changes to an existing combined authority or economic prosperity board.
7. The Secretary of State is satisfied that the statutory requirements have been met under the relevant sections of the 2006 Act. This includes that the order serves a purpose under section 1(2) of the 2006 Act, that the pre-conditions under section 3 of the 2006 Act have been met, and that the appropriate consultation has been carried out in accordance with section 13 of the 2006 Act.

## Chapter 2 – Background

### *The Legislative and Regulatory Reform Act 2006*

8. The 2006 Act enables amendments to primary legislation to be made through a Legislative Reform Order if certain conditions are met.
9. Section 1 of the 2006 Act enables a Minister of the Crown to make a Legislative Reform Order for the purpose of removing or reducing any burden to which any person is subject as a result of any legislation, where “burden” is defined as:
  - i. a financial cost;
  - ii. an administrative inconvenience;
  - iii. an obstacle to efficiency, productivity or profitability; or
  - iv. a sanction, criminal or otherwise, which affects the carry on of any lawful activity.
10. A Legislative Reform Order can only be used to change primary legislation if all of the preconditions in section 3 of the 2006 Act are met, which are that:
  - i. there are no non-legislative alternatives that will achieve the intended outcome of the provision;
  - ii. the effect of the provision is proportionate to the policy objective;
  - iii. the provisions strikes a fair balance between the public interest and the interests of any person adversely affected by it;
  - iv. the provision does not remove any necessary protection;
  - v. the provision does not prevent anyone from continuing to exercise and right or freedom which they might reasonably expect to continue to exercise; and
  - vi. the provision is not constitutionally significant.
11. Section 13 of the 2006 Act requires the Secretary of State to consult on the draft Legislative Reform Order.

### *The Local Democracy, Economic Development and Construction Act 2009*

12. Part 6 of the 2009 Act comprises provisions regarding the establishment and constitution of combined authorities and economic prosperity boards. The legislation is designed to enable local authorities in England, that so wish, to drive their own area’s growth through asking the Secretary of State to establish a combined authority or economic prosperity board to help them collaborate across the boundaries of the local authorities within the functional economic area (that is the area over which the local economic and its key markets operate) in order to promote economic growth. The Government recognises that combined authorities and economic prosperity boards will not be appropriate everywhere and there is no requirement for local authorities to set up such bodies.
13. The process for establishing a combined authority or economic prosperity board is set out below, together with the key conditions that need to be met.

14. The 2009 Act obliges local authorities that wish to establish a combined authority or economic prosperity board to undertake a review of their governance arrangements. The governance review for a proposed combined authority should consider how the options for collaboration between the authorities available impact on the effectiveness and efficiency of arrangements to promote economic development and regeneration within the area, and the effectiveness and efficiency of transport within the area covered by the review. A governance review for an economic prosperity board would need to consider how the options impact on the effectiveness and efficiency of arrangements to promote economic development and regeneration within the area covered by the review. Economic prosperity boards do not have transport functions.

15. The geographical area of the review would need to be the same as that for the proposed combined authority or economic prosperity board. Sections 88 and 103 of the 2009 Act specify a number of conditions that the geographical areas of a proposed combined authority or economic prosperity board would need to meet, which are that:

- i. Condition A - the area consists of the whole of two or more local government areas in England.
- ii. Condition B - no part of the area is separated from the rest of it by one or more local government areas that are not within the area.
- iii. Condition C - there is no local government area that is surrounded by local government areas that are within the area, but that is not itself within the area.
- iv. Condition D - no part of the area forms part of -
  - i. the area of a/an other economic prosperity board, or
  - ii. the area of a/an other combined authorityand in the case of combined authorities:
  - iii. an integrated transport area
- v. Condition E - each local government area that forms part of the area was included in a scheme for the board or authority prepared and published under section 98 (for economic prosperity boards) or section 109 (in the case of a combined authority).

where local government area means the area of a county council or a district council

16. Where local authorities have conducted a governance review and concluded that the establishment of a combined authority or economic prosperity board would be likely to meet the statutory conditions (see paragraph 16 below), the local authorities may prepare and publish a scheme detailing how they envisage the combined authority or economic prosperity board would work - for example its proposed area, functions and constitution. All local authorities whose areas are within the area of the proposed economic prosperity board or combined authority must be involved in the preparation of, or consent to its inclusion in, the scheme.

### The statutory conditions

17. These are the matters that the 2009 Act requires must be met before a combined authority or economic prosperity board can be established:
  - i. the local authorities concerned and Secretary of State must consider that establishing a combined authority is likely to improve:
    - a. the exercise of statutory functions relating to economic development and regeneration in the area
    - b. the exercise of statutory functions relating to transport in the area;
    - c. the effectiveness and efficiency of transport in the area; and
    - d. economic conditions in the area.(for an economic prosperity board only matters a and d apply)
  - ii. the Secretary of State must also have regard to the need to:
    - a. reflect the identities and interests of local communities; and
    - b. secure effective and convenient local government.
18. After the local authorities have undertaken and published a governance review and scheme, the Secretary of State will consider whether to lay a draft order for approval by Parliament which would enable the establishment of the proposed combined authority or economic prosperity board. Before doing so the Secretary of State must consult each local authority included in the review and scheme as well as other persons as he considers appropriate.
19. If the Secretary of State considers that the establishment of the combined authority or economic prosperity board is likely to improve the matters in paragraph 17i, and having regard to the matters in paragraph 17ii, he can lay a draft order for approval by Parliament which would enable the establishment of the combined authority or economic prosperity board. Before it can be made and the new body established, a draft of the order must be laid before and approved by a resolution of each House of Parliament.
20. Whilst the Secretary of State will, as statute requires, consider any proposal local authorities make for a combined authority or economic prosperity board, the Government has adopted a localist policy to which the Secretary of State will have regard. This policy is that where the local authorities concerned propose that a combined authority should be established, which meets the statutory tests and has wide local support, the Secretary of State will seek Parliament's approval to establish the combined authority. The Secretary of State considers that combined authorities are not appropriate everywhere, and in no way are required or compulsory.
21. The 2009 Act also provides that changes can be made to an existing combined authority or economic prosperity board, for example, a local authority could leave or join a combined authority or economic prosperity board, or there could be a change in the functions or constitution. The same process as outlined in paragraphs 14 to 19 above must be undertaken.

## *The consultation*

22. Before a Legislative Reform Order can be made, section 13 of the 2006 Act requires the Secretary of State to consult appropriate organisations – which include representative organisations of interests substantially affected by the proposals; statutory bodies which undertake functions referred to in the proposals (together with their representative organisations), and any other persons he considers appropriate.
23. The Secretary of State considers that this requirement has been met through the consultation between 19 December 2014 and 26 January 2015 on proposed changes, a draft Legislative Reform Order, and the Secretary of State's views on how the preconditions are met  
<https://www.gov.uk/government/consultations/proposal-to-use-a-legislative-reform-order-in-forming-a-combined-authority-or-economic-prosperity-board>.
24. This consultation built and refined proposals consulted on in April to June 2014  
<https://www.gov.uk/government/consultations/proposals-to-amend-legislation-relating-to-combined-authorities-and-economic-prosperity-boards>.

# Chapter 3 The draft Legislative Reform (Combined Authorities and Economic Prosperity Boards) (England) Order 2015

## *The burdens*

25. The 2009 Act conditions impose three burdens which the Secretary of State considers would be reduced by the Legislative Reform Order, if made. Having consulted, it is the Secretary of State's view that these conditions place unnecessary burdens in the form of an administrative inconvenience and an obstacle to efficiency, productivity or profitability, meeting the definition of burden as set out in section 1(3)(a) and 1(3)(b) of the 2006 Act.
26. **The first burden** is that local authority areas that do not all share boundaries are prevented from forming an economic prosperity board or combined authority, as are councils where the combined authority or economic prosperity board would result in a "doughnut" shape. The burdens are present in sections 88 and 103 conditions B and C, as set out in paragraph 14 above.
- i. Condition B - no part of the area is separated from the rest of it by one or more local government areas that are not within the area.
  - ii. Condition C - there is no local government area that is surrounded by local government areas that are within the area, but that is not itself within the area.
27. These are considered burdens under the definition of the 2006 Act because the conditions prevent some areas from realising the efficiency, productivity and profitability benefits that can come from collaborating in a combined authority or economic prosperity board. We are aware of at least one area that has not been able to progress its plans for a combined authority over its favoured geography because of this burden.
28. **The second burden** is in section 104 of the 2009 Act which applies section 87 of the Local Transport Act 2008 to combined authorities. This prevents a county council from delegating any functions to the combined authority for part of its area, which in practice means that in two tier local authority areas, a county council cannot be included within a combined authority's area for only part of its area.
29. This inflexibility means that areas in which the functional economic area does not align with the administrative boundary of a county council, are unable to establish a combined authority across the natural functional economic area – either all or none of the county council and the district councils within in it must be included in the area of the combined authority. The Secretary of State considers that this is both an administrative inconvenience and an obstacle to efficiency, productivity or profitability. We are aware of a number of areas which would be able to progress their plans for a combined authority if this burden were to be removed.

30. **The third burden is in** sections 100-102 and 111-113 of the 2009 Act which require a combined authority or economic prosperity board that wishes to make changes to its constitution or functions, funding arrangements, or boundaries (including dissolution of its area), to undertake the same process as required when forming a new combined authority or economic prosperity board as set out in paragraphs 14 – 19 above.
31. The Secretary of State considers these to be a burden on local authorities as they place a resource-intensive administrative inconvenience, irrespective of how minor or significant the proposed changes are. Requiring the authorities to undertake a governance review and publish a scheme means in practice that they need to undertake a local consultation. For minor changes, such as a different funding arrangement, membership or voting rights, the need for a local consultation prior to a Government consultation could be considered to be both an administrative inconvenience and an obstacle to efficiency, productivity or profitability.

### *What does the draft Legislative Reform Order do?*

#### Change 1 – Removal of the first burden

32. The draft Legislative Reform Order amends the 2009 Act to enable local authorities that do not have contiguous boundaries to form combined authorities and economic prosperity boards, and to enable combined authorities and economic prosperity boards which would be “doughnut” shaped, by removing conditions B and C.
- i. Condition B - no part of the area is separated from the rest of it by one or more local government areas that are not within the area.
  - ii. Condition C - there is no local government area that is surrounded by local government areas that are within the area, but that is not itself within the area.
33. Some respondents to the April – June 2014 consultation expressed concern that establishing a combined authority in an area which is non-contiguous or doughnut shaped could potentially increase the risk that there will be adverse impacts on neighbouring areas. The proposal in the statutory consultation and in the draft Legislative Reform Order was developed to include additional safeguards that:
- a. in the opinion of the constituent local authorities concerned the proposed area would be an appropriate functional economic area, over which collaboration on the body’s functions would promote economic growth in the area;
  - b. in the Secretary of State’s opinion the proposed area would be an appropriate functional economic area, over which collaboration on the body’s functions would promote economic growth in the area; and
  - c. the Secretary of State must have regard to the likely effect of creating the combined authority or economic prosperity board on surrounding areas.

34. The Secretary of State considers that this set of amendments would reduce burdens by enabling local authorities that could not currently form combined authority or economic prosperity board to do so, which would support them to collaborate effectively on economic development, regeneration (and for combined authorities, transport), thus promoting economic growth. This would reduce both an administrative inconvenience and an obstacle to efficiency, productivity or profitability. It also includes safeguards to protect the interests of the persons adversely affected by the provisions.
35. Forty respondents to the recent consultation commented on this proposed change, of which 34 or 85% agreed that it would reduce burdens. The 6 respondents who disagreed raised concerns that this change may increase, rather than reduce the burden. Thirty eight respondents commented on the safeguards, of which 28 or 74% supported the safeguards. Of the 10 respondents that did not support the safeguards, 2 considered them too burdensome; 1 raised concerns about avoiding giving a district or county council a veto over whether or not to join a proposed combined authority; 4 expressed concern that the safeguards did not go far enough. Chapter 4 provides more details on the consultation.

#### Change 2 – removal of the second burden

36. The second change would enable the county council to delegate its powers to the combined authority only for the areas of the districts which are within the combined authority, and therefore provide greater flexibility to enable part of a county council's area to join a combined authority's area (where that area is aligned with the areas of the district councils which are within the combined authority). This would need to be agreed by the county and district councils.
37. The Secretary of State considers that this would reduce burdens by enabling combined authorities to cover areas that reflect the functional economic area where that does not align with the boundary of the county council, supporting them to collaborate effectively on economic development, regeneration and transport, thus promoting economic growth. This would reduce both an administrative inconvenience and an obstacle to efficiency, productivity or profitability. 38 consultation respondents commented on this proposed change, of which 32 or 84% agreed that it would reduce burdens. Although only 6 respondents disagreed with this proposal, 4 of these were county councils. Some were concerned that the proposal would increase the level of burden, cost and unnecessary disruption while others thought that the proposal did not provide sufficient flexibility. Further details on the consultation are in Chapter 4.

### Change 3 – removal of the third burden

38. The final change within the draft Legislative Reform Order simplifies the process in making minor changes to existing combined authorities and economic prosperity boards. It removes the burdensome requirement that where a combined authority or economic prosperity board wishes to change its constitution, function or funding, it must undertake a review and publish a scheme, and replaces it with a requirement for all authorities concerned to consent to proposed changes before an application to make the changes is made to the Secretary of State. This is considered to reduce an administrative inconvenience. 40 consultation respondents commented on this proposed change, all of whom agreed that it would reduce burdens.

### *Compliance with conditions in section 3 of the 2006 Act*

39. The Secretary of State consulted on his preliminary view about how the proposed changes meet the pre-conditions for use of a Legislative Reform Order required by section 3 of the 2006 Act (see paragraph 9 above). Of the 25 respondents that commented on this question, 21, or 84% agreed with the Secretary of State's view. The Secretary of State has taken account of the respondents' comments in formulating his final view, as follows:

#### Precondition 1: There are no non-legislative solutions that will achieve the intended outcome of the provision

40. The process and conditions for establishing a combined authority or economic prosperity board are set out in the Local Democracy, Economic Development and Construction Act 2009. The proposed amendments to these conditions and the process can only be achieved by changing the provisions in the 2009 Act which cannot be achieved through non-legislative means.

#### Precondition 2: The effect of the provision is proportionate to the policy objective

41. The provisions within the proposed Legislative Reform Order are intended to provide greater flexibility for those local authorities wishing to establish or join a combined authority or economic prosperity board. The Secretary of State's intention in proposing these legislative changes is to give effect to its policy of localism, supporting local authorities to come forward with proposals for the establishment of a combined authority or economic prosperity board across a functional economic area. The Secretary of State considers that the proposed legislative changes are proportionate to the policy aim; they give greater local choice by removing certain inflexibilities within the 2009 Act without requiring any authorities to take up such flexibility, or indeed to join or form combined authorities or economic prosperity boards. Of the respondents to the consultation that disagreed with the Secretary of State's assessment of this precondition, one thought that the changes should go further in order to meet the policy objective, for example to enable part of a district council to be included within the area of a combined authority; and one thought that the provisions would not satisfactorily protect communities and local authorities located in the gaps resulting from non-contiguous combined authorities.

Precondition 3: The provisions in the Legislative Reform Order, taken as a whole, strike a fair balance between the public interest and the interests of the persons adversely affected by the provisions

42. The proposed legislative changes provide greater flexibility for local authorities to request that a combined authority or economic prosperity board is established. The Secretary of State's existing duties to a) consider that a proposed combined authority or economic prosperity board would enable the statutory tests to be met and b) have regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government will be retained, as will the need to secure Parliamentary approval. The Secretary of State considers that the combination of these ensures that there is a fair balance between the public interest and the interests of persons adversely affected.
43. Additionally, the first set of amendments – which enable local authorities to form or join combined authorities or economic prosperity boards where they do not all share boundaries - includes a new matter to which the Secretary of State must have regard, which is the impact of the creation of the proposed combined authority or economic prosperity board on the authorities neighbouring the proposed combined authority or economic prosperity board. The Secretary of State considers that this new matter further enhances the protection of the interests of any persons adversely affected.
44. 3 consultation respondents disagreed with this assessment and cited concerns that this *“undermines the very concept of functional economic areas. It is difficult to understand how an area can be deemed to be economically functional and coherent with either a hole in its centre or with part of it separated from the remainder by a gap”* and that an authority outside the proposed area should have the opportunity to make representations about a potential combined authority or economic prosperity board.

Precondition 4: The provision does not remove any necessary protection

45. The Secretary of State considers that the proposed amendments to the 2009 Act within the draft Legislative Reform Order do not remove any protection. The need for a combined authority / economic prosperity board proposal to continue to meet the statutory tests remains; as does the duty for the Secretary of State to have regard to the need to reflect the identities and interests of local communities and secure efficient and effective local government; and the requirement that Parliament approves the order before it is made and the body is established. Additionally, proposal 1 – the removal of the need for local authorities within a combined authority or economic prosperity board to have contiguous boundaries – introduces a new safeguard, for the Secretary of State to take into account the likely impact on neighbouring local authorities. 2 consultation respondents disagreed with this assessment and cited issues such as the proposals do not require an objective assessment or allow those who may be adversely impacted upon to make representations. The Secretary of State does not agree with these conclusions because the Secretary of State's consideration of whether the statutory conditions are likely to be met will be objective, and the Secretary of State is required to consult such persons that he considers appropriate. This

Government has consulted neighbouring local authorities on its proposals to establish combined authorities.

Precondition 5: The provision will not prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise

46. The Secretary of State considers that the proposed provisions do not impact on any person's rights or freedoms. Combined authorities and economic prosperity boards are entirely voluntary, locally-driven forms of collaboration. There is no requirement for local authorities to enter into such partnerships. The Government has also stated that as a matter of policy that local authorities can also leave such partnerships, if they wish in the future. No respondents disagreed with this assessment. The Secretary of State is of the view that there are many ways that local authorities can work together, such as a joint committee or pooling of back offices as per the Tri-Borough Initiative in London; a combined authority is just one option.

Precondition 6: The provision is not constitutionally significant

47. The Secretary of State considers that the proposed changes are not constitutionally significant, as they do not alter the structure or composition of local government. The functions of combined authorities are the same functions held by each of the constituent authorities. The provisions in the draft Legislative Reform Order do not alter the balance of power between central and local government. Only one respondent – a county council – considered that the proposed changes would be constitutionally significant.

*Other Ministerial duties in the 2006 Act*

Consultation

48. We are satisfied that the consultation met the requirements of section 1 of the 2006 Act. The Secretary of State consulted on a number of proposals for changing the legislation for 8 weeks between April and June 2014, and subsequently on refined proposals between 19 December 2014 and 26 January 2015, with a draft Legislative Reform Order. The purpose of the statutory consultation was to establish whether respondents considered the legislative mechanisms of the Legislative Reform Order to be appropriate for introducing the new measures. Further details of the consultation and the response can be found in Chapter 4 of the Explanatory Document.

Parliamentary procedure

49. The Minister recommends that the draft Order should be considered by Parliament under the affirmative resolution procedure, in accordance with sections 15 and 17 of the 2006 Act. The amendments to the legislation intend to introduce specific changes to the 2009 Act, rather than seeking to overhaul the process. While some respondents have commented that there would be adverse impacts in some areas, the Secretary of State's long-term engagement and both consultation exercises suggest there is overall support for these changes, further evidencing that the affirmative resolution procedure is appropriate.

### Compatibility with ECHR

50. The Minister does not believe that the changes proposed by the draft Order would prejudice any of the rights and freedoms protected by the European Convention on Human Rights.

### Compatibility with legal obligations arising from EU membership

51. The Minister does not believe that the amendments proposed are incompatible with the legal obligations arising from membership of the European Union.

### Territorial extent

52. The 2009 Act extends to England and Wales. However, Part 6 of the 2009 Act applies only to England; therefore the draft Order extends to England. Section 11 and 13(1) (c) of the 2006 Act are not engaged, therefore neither the agreement of the Assembly nor consultation with the Welsh Ministers is required.

### Binding the Crown

53. The Minister is satisfied that the proposed amendments will not bind the Crown.

### Impact Assessment

54. There was no requirement for an impact assessment to be conducted in this case. An impact assessment is only needed where proposals impact upon business or the public sector bodies, or have significant costs for the public sector. Our assessment is that the proposed changes will not bring about such impacts because all of these proposals are designed to reduce burdens placed on local authorities in order that they can collaborate effectively across the functional economic area.

## Chapter 4 The consultation

55. In its response to Lord Heseltine's March 2013 review "*No stone unturned – in pursuit of growth*" the Government committed to ensure that local authorities place growth at the heart of all that they do, and to make the legislation relating to combined authorities "fit for purpose". The Secretary of State consulted on a number of legislative changes in April – June 2014 which it thought would give effect to this commitment.
56. Taking account of the sixty one responses to that consultation, the Secretary of State refined and consulted on three proposals for changing the legislation, together with a draft Legislative Reform Order, from 19 December 2014 to 26 January 2015. The proposed changes to legislation that the Secretary of State consulted on were to:
- i. enable local authorities with non-contiguous boundaries to join or form a combined authority or economic prosperity board;
  - ii. enable a county council to delegate or share its transport functions with a combined authority for part of the county council's area, in effect, enabling some but not all of the district councils within a county council to join a combined authority; and
  - iii. simplify the administrative processes involved in making changes to the constitution, function or funding of an existing combined authority or economic prosperity board
57. We received 45 responses to this consultation, of which:
- i. 26 were from local authorities;
  - ii. 8 were from groups of local authorities;
  - iii. 3 were from local authority associations
  - iv. 3 were from combined authorities;
  - v. 2 were from local enterprise partnerships;
  - vi. There were 3 others – from the Royal Town Planning Institute, an individual councillor and solicitors' firm

### *Proposal 1 – to use a Legislative Reform Order to enable local authorities with non-contiguous boundaries to join or form a combined authority or economic prosperity board*

58. There were two questions within this proposal:
- i. Question 1 – do you agree that the proposal to enable local authorities that do not have contiguous boundaries to form combined authorities and economic prosperity boards will reduce a burden to collaboration? Why?
  - ii. Question 2 – do you agree that the proposed safeguards are necessary and sufficient? Why?

#### Question 1

59. Of the 40 respondents that commented on Q1, 34 (85%) support the proposed change. The 6 respondents that did not support this proposal were all local authorities. Table 1 below provides more detail.

Table 1: analysis of question 1

	Yes	No	No answer	Total
Local authorities	17	6	3	26
Combined authorities	3	0	0	3
Groups of local authorities	7	0	1	8
Local enterprise partnerships	2	0	0	2
Local authority associations	3	0	0	3
Other	2	0	1	3
Total	34	6	5	45

60. Those respondents that agreed with proposed change 1 welcomed the additional flexibility that this change would bring, in particular the ability to define the functional economic area without being constrained by existing boundaries.

*“Functional economic areas may not be co-terminus with existing local government areas - this will enable local authorities to establish the arrangements which are most suited to promoting economic growth.”* Group of local authorities

*“greater flexibility if one neighbouring LA [local authority] reluctant to join”* Group of local authorities

*“strongly agree - potential for economic growth should not be constrained by administrative boundaries”* Unitary local authority

61. The 6 respondents who rejected this proposal raised concerns that this change may increase, rather than reduce the burden.

- i. 2 authorities expressed concern that there could potentially be adverse impacts and destabilising implications for the neighbouring authorities. The Secretary of State considers that the additional safeguard – the Secretary of State must have regard to the likely effect of creating the combined authority or economic prosperity board – provides sufficient protection;
- ii. 2 authorities considered that it would be difficult for non-contiguous areas to form a functional economic area. The Secretary of State considers that the inclusion of new condition F – that the areas is one in which the proposed constituent members can collaborate effectively in the exercise of statutory functions for the purpose to promoting economic growth and administrative efficiency –provides sufficient protection;
- iii. 1 authority considered that satisfying the alternative criteria could be seen as an increase in burdens. However, these alternative criteria only need to be met where the local authorities concerned do not meet the existing conditions that they must all share boundaries, so this is not considered to be an additional burden; and

- iv. 1 authority was concerned that this could destabilise the relationship between upper county councils and district councils. However, the legislative requirement remains that all local authorities within the proposed area of the combined authority or economic prosperity board must consent to the proposals, which is a safeguard against this risk.

## Question 2

62. 38 respondents commented on Question 2, of which 28 (74%) agreed that the proposed safeguards were necessary and sufficient. Table 2 provides a more detailed breakdown.

Table 2: analysis of question 2

	Yes	No	No answer	Total
Local authorities	14	9	3	26
Combined authorities	3	0	0	3
Groups of local authorities	6	0	2	8
Local enterprise partnerships	2	0	0	2
Local authority associations	2	1	0	3
Other	1	0	2	3
Total	28	10	7	45

63. Those respondents that supported the safeguards agreed that they would help to protect against adverse impacts on neighbouring areas which are not in the combined authority or economic prosperity board:

*"Safeguards vital. Requirement for SoS [Secretary of State] to consult is vital"*  
Group of local authorities

*"The safeguards would contribute to strong growth and democratic accountability by ensuring CA [combined authority] and EPB [economic prosperity board] comprise functioning economic areas and not detrimental on other areas"* Group of local authorities

64. However, 10 respondents did not support the safeguards. 5 respondents considered that there should be further safeguards to protect areas outside the proposed authority – for example that the Secretary of State should be required to consult neighbouring local authorities; and that criteria should be published to set out how "likely effects" will be assessed. The Secretary of State considers that these further safeguards are unnecessary, because there is already a requirement to consult "appropriate authorities".

65. 2 respondents saw the safeguards as unnecessarily burdensome; 1 raised concerns about avoiding giving a district or county council a veto over whether or not to join a proposed combined authority.

*“safeguards don't go far enough - should also take into account scale of CA [combined authority] / EPB [economic prosperity board]; wider public service landscape; recognition of different types of economy”* Local authority association

*Proposal 2 – to use a Legislative Reform Order to enable a county council to delegate or share its transport function with a combined authority for part of the county council's area*

66. There was one question within this proposal – **Question 3 – do you agree that the proposal to enable a county council to delegate its function to a combined authority for part of the county council's area will reduce a burden to collaboration? Why?**

67. 38 respondents commented on question 3, of which 32 (84%) agreed with the proposed change, and six disagreed.

Table 3: analysis of question 3

	Yes	No	No response	Total
Local authorities	16	5	5	26
Groups of local authorities	7	0	1	8
Combined authorities	2	1	0	3
Local authority associations	3	0	0	3
Local enterprise partnerships	2	0	0	2
Other	2	0	1	3
Total	32	6	7	45

68. Of those that support this change, the most common reason was that local authorities would have new levels of flexibility and opportunities to be able to collaborate.

*“Current situation restricts our opportunities to collaborate” – County council*

*“Allowing this will localise decision making bringing us closer to aspirations for the local area.” Borough council*

*“Support the flexibility” – district council*

*“Needs counties to be able to delegate any functions within a CA [combined authority].” – group of local authorities*

69. Although only 6 respondents disagreed with this proposal, 4 of these were county councils (of the 7 county councils that responded to this question). Some were concerned that the proposal would actually increase - rather than reduce – the level of burden, cost and unnecessary disruption. The Government’s localist approach means that the establishment of a combined authority is driven by the local authorities concerned. If establishment of a combined authority would not be considered to lead to such efficiencies, the proposal would not be taken forward.

*“we do not recognise a burden to collaboration under existing arrangements.” – county council*

*“splitting the planning and any other services currently carried out on a county wide basis such as transport will inevitably lead to additional costs, complexity and disruption.” – county council*  
*“difficult to understand circumstances in which Counties might want this.” Combined Authority*

70. And four respondents thought that the proposal did not go far enough in terms of flexibility, for example – they sought clarity regarding whether a county council could delegate non transport functions differentially in the area, and one thought that a county council should also be able to delegate its transport functions differentially within the area of a district council.

*“The need to be pragmatic and flexibility and allow for differential delivery in different parts of a functional economic area is simple common sense, and is essential to removing burdens” Combined Authority*

*Proposal 3 – to simplify the administrative processes involved in making changes to an existing combined authority or economic prosperity board*

71. There was one question within this proposal – **Question 4 – do you agree that the proposal to remove the review and scheme requirements for changes to a combined authority’s or economic prosperity board’s constitution, functions or funding will reduce a burden to collaboration?**

72. 40 respondents commented on question 4, all of whom agreed that this would reduce a burden.

Table 4: analysis of question 4

	Yes	No	No response	Total
Local authorities	23	0	3	26
Groups of local authorities	7	0	1	8
Combined authorities	3	0	0	3
Local authority associations	3	0	0	3
Local enterprise partnerships	2	0	0	2
Other	2	0	1	3
Total	40	0	5	45

73. However, several respondents considered that the proposal did not go far enough and the process for making such changes to an existing combined authority or economic prosperity board should be simplified further by enabling the body itself to make such changes without the need for the Secretary of State to make an Order, following approval from Parliament.

*“Right balance in respect of reducing burdens and requiring safeguards and protections.” – Borough Council*

*“reduce a burden to collaboration and enable CA [combined authority] and EPB [economic prosperity board] to operate in a more agile and flexible way in response to changing circumstances” – Borough Council*

*“streamlining the process of putting in place strong governance arrangements will enable these benefits to be realised more quickly than is currently possible” – Combined Authority*

### *Preconditions necessary for use of a Legislative Reform Order*

74. There was one remaining question – 5 – **do you agree that the three proposed changes meet the preconditions for use of a Legislative Reform Order?**

75. 25 respondents commented on Q5, of which 21 (84%) agreed with the analysis. There were very few comments on the individual preconditions, but in summary:

- i. No respondents disagreed with the assessment of precondition 1: There are no non-legislative solutions that will achieve the intended outcome of the provision.
- ii. 2 respondents disagreed with the assessment of precondition 2: The effect of the provision is proportionate to the policy objective.
- iii. 2 respondents disagreed with the assessment of precondition 3: The provisions in the Legislative Reform Order, taken as a whole, strike a fair balance between the public interest and the interests of the persons adversely affected by the provisions.
- iv. 2 respondents disagreed with the assessment of precondition 4: The provision does not remove any necessary protection.
- v. No respondents disagreed with the assessment of precondition 5: The provision will not prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise.
- vi. 1 respondent disagreed with the assessment of precondition 6: The provision is not constitutionally significant.

76. Having considered the responses, the Secretary of State considers that there is sufficient evidence that the preconditions are met.

77. Respondents also used this consultation as an opportunity to comment on other issues related to combined authorities but outside the remit of the consultation and this draft Legislative Reform Order. The most common issues raised were:

- i. 12 respondents considered the proposal to legislate to require combined authorities and economic prosperity boards to be required to establish one or more overview and scrutiny committee, with the chair preferably not being a member of the majority party, and the membership being representative of the local authorities within the area;
- ii. 8 respondents thought that the Legislative Reform Order should also broaden the set of powers that can be delegated to combined authorities and economic prosperity boards (over and above economic development, regeneration and transport);
- iii. 7 respondents thought that combined authority areas should be able to overlap i.e. that a local authority area should be able to be within more than one combined authority or economic prosperity board; and
- iv. 4 respondents thought that London Boroughs should be able to establish or join combined authorities and / or economic prosperity boards.

### *Conclusions from consultation*

78. The two consultations showed overall support for the proposed changes to the 2009 Act, and agreement that the preconditions were met for these changes to be made by use of a Legislative Reform Order.
79. Of the respondents to the latest consultation that responded to the individual questions, 34 or 85% supported proposal 1, 28 or 74% supported the safeguards of proposal 1, 32 or 84% supported proposal 2, all 40 considered that proposal 3 would reduce burdens, and 21 or 84% thought that the preconditions were met.
80. The Secretary of State considers that making the three changes outlined above will give local authorities greater flexibility to establish a combined authority or economic prosperity board. This would mean that some areas would be able to establish a combined authority or economic prosperity board covering the local functional economic areas, where the current legislation prevents this from happening.

## **List of consultees**

## **Annex A**

For both the April – June 2014 and the December 2014 – January 2015 consultations, the Secretary of State consulted:

- Local authorities
- Combined authorities
- Local Government Association
- Local enterprise partnerships
- Institute of Directors
- The Confederation of British Industry

Additionally, the Secretary of State sent copies of the statutory Legislative Reform Order consultation to the clerks of the House of Commons Regulatory Reform Committee and the House of Lords Delegated Powers and Regulatory Reform Committee on 19 December 2014.

## **List of relevant statutes**

## **Annex B**

The Legislative and Regulatory Reform Act 2006

The Local Democracy, Economic Development and Construction Act 2009

## Annex C

# The consolidated text of Part 6 of the Local Democracy, Economic Development and Construction Act 2009 (should all amendments be accepted)

### Part 6

#### Economic Prosperity Boards and Combined Authorities

##### *EPBs and their areas*

#### 88 EPBs and their areas

- (1) The Secretary of State may by order establish as a body corporate an economic prosperity board (an "EPB") for an area that—
- (a) meets each of conditions A to E , or
  - (b) meets conditions A, D and E and, in the opinion of the Secretary of State, meets condition F.
- (2) Condition A is that the area consists of the whole of two or more local government areas in England.
- (3) Condition B is that no part of the area is separated from the rest of it by one or more local government areas that are not within the area.
- (4) Condition C is that there is no local government area that is surrounded by local government areas that are within the area but that is not itself within the area.
- (5) Condition D is that no part of the area forms part of--
- (a) the area of another EPB, or
  - (b) the area of a combined authority.
- (6) Condition E is that each local government area that forms part of the area was included in a scheme prepared and published under section 98.
- (6A) Condition F is that the area is one in which the councils that would (for the purposes of section 90) be constituent councils of the proposed EPB can collaborate effectively in the exercise of statutory functions relating to economic development and regeneration, for the purpose of promoting economic growth and administrative efficiency in the area.
- (7) In this Part "local government area" means the area of--
- (a) a county council, or
  - (b) a district council.
- (8) An order under this section must specify the name by which the EPB is to be known.

##### *Constitution and functions of EPBs*

#### 89 Constitution

- (1) The Secretary of State may by order make provision in relation to an EPB about--
  - (a) the membership of the EPB;
  - (b) the voting powers of members of the EPB;
  - (c) the executive arrangements of the EPB.
  
- (2) The provision that may be made about membership includes provision about--
  - (a) the number and appointment of members of the EPB;
  - (b) the remuneration of, and pensions or allowances payable to or in respect of, any member of the EPB.
  
- (3) The provision that may be made about voting powers includes provision for different weight to be given to the vote of different descriptions of member.
  
- (4) The provision that may be made about executive arrangements includes provision about--
  - (a) the appointment of an executive;
  - (b) the functions of the EPB that are the responsibility of an executive;
  - (c) the functions of the EPB that are the responsibility of an executive and that may be discharged by a committee of the EPB or by a body other than the EPB;
  - (d) arrangements relating to the review and scrutiny of the discharge of functions;
  - (e) access to information on the proceedings of an executive of the EPB;
  - (f) the disapplication of section 15 of the Local Government and Housing Act 1989 (c 42) (duty to allocate seats to political groups) in relation to an executive of the EPB or a committee of such an executive;
  - (g) the keeping of a record of any arrangements relating to the EPB and falling within paragraphs (a) to (f).
  
- (5) An order under this section may not provide for the budget of an EPB to be agreed otherwise than by the EPB.

## **90 Constitution: membership and voting**

- (1) An order under section 89 that includes provision about the number and appointment of members of an EPB must provide--
  - (a) for a majority of the members of the EPB to be appointed by the EPB's constituent councils,
  - (b) for those members to be appointed from among the elected members of the constituent councils, and
  - (c) for each constituent council that is a representative council to appoint at least one of its elected members as a member of the EPB.
  
- (2) For the purposes of this section--
  - (a) a county council is a constituent council of an EPB if the area of the county council, or part of that area, is within the EPB's area;
  - (b) a district council is a constituent council of an EPB if the area of the district council is within the EPB's area.
  
- (3) For the purposes of this section, the following are representative councils in relation to an EPB--

- (a) if the EPB's area coincides with or includes the whole of the area of a county council, the county council;
- (b) if the EPB's area includes part of the area of a county council--
  - (i) the county council, or
  - (ii) each district council for an area within that part,

as determined by or in accordance with the order;

- (c) if the EPB's area includes the area of a unitary district council, the district council.

(4) In this Part "unitary district council" means a district council whose area is not part of the area of a county council.

(5) If an order under section 89 provides for members of an EPB to be appointed otherwise than from among the elected members of its constituent councils, the order must provide for those members to be non-voting members.

(6) The voting members of an EPB may resolve that provision made in accordance with subsection (5) is not to apply in the case of the EPB.

## **91 Exercise of local authority functions**

(1) The Secretary of State may by order provide for a function of a local authority that is exercisable in relation to an area all or part of which is within an EPB's area to be exercisable by the EPB in relation to the EPB's area .

(2) The Secretary of State may make an order under this section only if the Secretary of State considers that the function can appropriately be exercised by the EPB.

(3) An order under this section may make provision for the function to be exercisable by the EPB either generally or subject to such conditions or limitations as may be specified in the order.

(4) An order under this section may make provision--

- (a) for the function to be exercisable by the EPB instead of by the local authority, or
- (b) for the function to be exercisable by the EPB concurrently with the local authority.

(5) An EPB must perform the functions that are exercisable by the EPB by virtue of this section with a view to promoting the economic development and regeneration of its area .

(6) In this section "local authority" means--

- (a) a county council, or
- (b) a district council.

## **92 Funding**

(1) The Secretary of State may by order make provision--

- (a) for the costs of an EPB to be met by its constituent councils, and
- (b) about the basis on which the amount payable by each constituent council is to be determined.

(2) For the purposes of this section--

- (a) a county council is a constituent council of an EPB if the area of the county council, or part of that area, is within the EPB's area;
- (b) a district council is a constituent council of an EPB if the area of the district council is within the EPB's area.

### **93 Accounts**

- (1) Each EPB must keep a fund to be known as the general fund.
- (2) All receipts of the EPB must be carried to that fund.
- (3) All liabilities falling to be discharged by the EPB must be discharged out of that fund.
- (4) Accounts must be kept of--
  - (a) receipts carried to the general fund, and
  - (b) payments made out of the general fund.

### **94 Change of name**

- (1) An EPB may change its name by a resolution in accordance with this section.
- (2) The resolution must be considered at a meeting of the EPB that is specially convened for the purpose.
- (3) Particulars of the resolution must have been included in the notice of the meeting.
- (4) The resolution must be passed at the meeting by not less than two-thirds of the members of the EPB who vote on it.
- (5) An EPB that changes its name under this section must--
  - (a) send notice of the change to the Secretary of State, and
  - (b) publish the notice in such manner as the Secretary of State may direct.
- (6) A change of name under this section does not affect the rights or obligations of the EPB or any other person, or render defective any legal proceedings.
- (7) Any legal proceedings may be commenced or continued as if there had been no change of name.

### ***Changes to and dissolution of an EPB's area***

### **95 Changes to boundaries of an EPB's area**

- (1) The Secretary of State may by order change the boundaries of an EPB's area by--
  - (a) adding a local government area to an existing area of an EPB, or
  - (b) removing a local government area from an existing area of an EPB.
- (2) An order may be made under this section only if--
  - (a) the area to be created by the order—
    - (i) meets conditions A to D in section 88, or
    - (ii) meets conditions A and D in section 88 and, in the opinion of the Secretary of State, meets condition F in that section, and

- (b) each council to whom this section applies consents to the making of the order.
- (3) This section applies to--
  - (a) a county council whose area, or part of whose area, is to be added to or removed from the existing area of the EPB;
  - (b) a district council whose area is to be added to or removed from the existing area of the EPB.

## **96 Dissolution of an EPB's area**

- (1) The Secretary of State may by order--
  - (a) dissolve an EPB's area, and
  - (b) abolish the EPB for the area.
- (2) An order may be made under this section only if a majority of the councils to whom this section applies consent to the making of the order.
- (3) This section applies to--
  - (a) a county council whose area, or part of whose area, is within the EPB's area;
  - (b) a unitary district council whose area is within the EPB's area.

### ***Requirements in connection with orders about EPBs***

## **97 Review by authorities: new EPB**

- (1) Any two or more of the authorities to whom this section applies may undertake a review of the effectiveness and efficiency of arrangements to promote economic development and regeneration within the area covered by the review ("the review area").
- (2) This section applies to--
  - (a) a county council in England;
  - (b) a district council in England.
- (3) Where the review is being undertaken by a county council, the review area must include--
  - (a) the areas of one or more district councils that are within the area of the county council, or
  - (b) if there are no such areas, the area of the county council.
- (4) Where the review is being undertaken by a district council, the review area must include the area of the district council.
- (5) The review area may also include the area of any county council or district council in England not undertaking the review.

## **98 Preparation and publication of scheme: new EPB**

- (1) This section applies where two or more of the authorities that have undertaken a review under section 97 conclude that the establishment of an EPB for an area would be likely to improve--
  - (a) the exercise of statutory functions relating to economic development and regeneration in the area, and
  - (b) economic conditions in the area.

(2) The authorities may prepare and publish a scheme for the establishment of an EPB for the area ("the scheme area").

(3) Subject as follows, the scheme area--

(a) must consist of or include the whole or any part of the review area,

(b) may include one or more other local government areas, and

(c) either---

(i) meets conditions A to C in section 88, or

(ii) meets condition A in section 88 and, in the opinion of the authorities that have undertaken the review, meets condition F in that section.

(4) The scheme area may not include a local government area unless each appropriate authority for that area--

(a) participates in the preparation of the scheme, or

(b) consents to its inclusion in the scheme area.

(5) For this purpose--

(a) a county council is an appropriate authority for a local government area that is or forms part of the area of that county council;

(b) a district council is an appropriate authority for a local government area that is the area of that district council.

## **99 Requirements in connection with establishment of EPB**

(1) The Secretary of State may make an order establishing an EPB for an area only if, having regard to a scheme prepared and published under section 98, the Secretary of State considers that to do so is likely to improve--

(a) the exercise of statutory functions relating to economic development and regeneration in the area, and

(b) economic conditions in the area.

(2) Before making the order, the Secretary of State must consult--

(a) each appropriate authority, and

(b) such other persons (if any) as the Secretary of State considers appropriate.

(3) For the purposes of this section--

(a) a county council is an appropriate authority if the area of the county council, or part of that area, is within the area for which the EPB is to be established;

(b) a district council is an appropriate authority if the area of the district council is within the area for which the EPB is to be established.

(4) In making the order, the Secretary of State must have regard to the need--

(a) to reflect the identities and interests of local communities, and

(b) to secure effective and convenient local government.

(5) In deciding whether to make an order in a case within section 88(1)(b), the Secretary of State must have regard to the likely effect of the creation of the proposed EPB on economic development or regeneration in each local government area that is next to any part of the proposed EPB area.

## **100 Review by authorities: existing EPB**

- (1) Any one or more of the authorities to whom this section applies may undertake, in relation to an existing EPB, a review of--
  - (a) a matter in relation to which an order may be made under section 95 or 96;
  - (b) a matter concerning the EPB that the EPB has power to determine.
- (2) This section applies to--
  - (a) an EPB;
  - (b) a county council whose area, or part of whose area, is within an area of an EPB or could be within a proposed area of an EPB;
  - (c) a district council whose area is within an area of an EPB or could be within a proposed area of an EPB.
- (3)
- (4) The review must relate to one or more areas of an EPB or proposed areas of an EPB.
- (5) In this section and section 101 a "proposed area of an EPB" means an area of an EPB that may be created by an order under section 95 (changes to boundaries of an EPB's area). Heretofore

## **101 Preparation and publication of scheme: existing EPB**

- (1) This section applies where one or more of the authorities that have undertaken a review under section 100 conclude that the exercise of the power to make an order under section 95 or 96 would be likely to improve--
  - (a) the exercise of statutory functions relating to economic development and regeneration in an area of an EPB or a proposed area of an EPB, or
  - (b) economic conditions in such an area.
- (2) The authorities may prepare and publish a scheme relating to the power in question.
- (3) The reference in subsection (1) to an area of an EPB includes an area that would cease to be an area of an EPB if an order were made in relation to that area under section 96 (dissolution of an EPB's area).

## **101A Application in respect of change to constitution, functions or funding: existing EPB**

- (1) Any one or more of the authorities to whom this section applies may, in relation to an existing EPB, apply to the Secretary of State in respect of one or more EPB matters.
- (2) This section applies to—
  - (a) the EPB;
  - (b) a county council whose area, or part of whose area, is within the area of the EPB;
  - (c) a district council whose area is within the area of the EPB.
- (3) For the purposes of this section an "EPB matter" is—
  - (a) a matter in relation to which an order may be made under any of sections 89, 91 and 92; and
  - (b) a matter concerning the EPB that the EPB has power to determine.
- (4) An application to the Secretary of State under subsection (1) must—
  - (a) be made in writing;

(b) specify how the exercise of the power to make an order under any one or more of sections 89, 91 and 92 would be likely to improve—

(i) the exercise of statutory functions relating to economic development and regeneration in the area of the EPB, or

(ii) economic conditions in the area of the EPB.

(5) An application may be made under this section only if every authority to whom this section applies consents to the making of the application.

## **102 Requirements in connection with changes to existing EPB arrangements**

(1) The Secretary of State may make an order under any of sections 89, 91, 92, 95 and 96 in relation to an existing EPB only if, having regard to a scheme prepared and published under section 101, or an application made under section 101A (as the case may be), the Secretary of State considers that the making of the order is likely to improve --

(a) the exercise of statutory functions relating to economic development and regeneration in the area or areas to which the order relates, or

(b) economic conditions in that area or those areas.

(2) Before making the order, the Secretary of State must consult--

(a) such of the authorities mentioned in section 100(2) or section 101A(2) (as the case may be), and

(b) such other persons (if any),

as the Secretary of State considers appropriate.

(3) In making the order, the Secretary of State must have regard to the need--

(a) to reflect the identities and interests of local communities, and

(b) to secure effective and convenient local government.

(4) In deciding whether to make an order under section 95 in a case within section 95(2)(a)(ii), the Secretary of State must have regard to the likely effect of the change to the EPB's area on economic development or regeneration in each local government area that is next to any part of the proposed EPB area.

### ***Combined authorities and their areas***

## **103 Combined authorities and their areas**

(1) The Secretary of State may by order establish as a body corporate a combined authority for an area that—

(a) meets each of conditions A to E , or

(b) meets conditions A, D and E and, in the opinion of the Secretary of State, meets condition F.

(2) Condition A is that the area consists of the whole of two or more local government areas in England.

(3) Condition B is that no part of the area is separated from the rest of it by one or more local government areas that are not within the area.

(4) Condition C is that there is no local government area that is surrounded by local government areas that are within the area but that is not itself within the area.

(5) Condition D is that no part of the area forms part of--

(a) the area of another combined authority,

(b) the area of an EPB, or

- (c) an integrated transport area.
- (6) Condition E is that each local government area that forms part of the area was included in a scheme prepared and published under section 109.
- (6A) Condition F is that the area is one in which the councils that would (for the purposes of section 85 of the Local Transport Act 2008 as applied by section 104(2) of this Act) be constituent councils of the proposed combined authority can collaborate effectively in the exercise of statutory functions relating to economic development, regeneration and transport, for the purpose of promoting economic growth and administrative efficiency in the area.
- (7) An order under this section must specify the name by which the combined authority is to be known.

#### **104 Constitution and functions: transport**

- (1) The Secretary of State may by order make in relation to a combined authority any provision that may be made in relation to an Integrated Transport Authority (an "ITA") under the following provisions of the Local Transport Act 2008 (c 26)--
  - (a) section 84 (constitutional arrangements);
  - (b) section 86 (delegation of functions of the Secretary of State);
  - (c) section 87 (delegation of local authority functions);
  - (d) section 88 (conferral of a power to direct).
- (2) Section 85 of that Act (provision about membership of an ITA) applies to--
  - (a) an order under subsection (1)(a) of this section, and
  - (b) the combined authority to whom that order applies,
 as it applies to an order under section 84 of that Act and the ITA to whom that order applies.
- (2A) An order under subsection (1)(c) may include provision for a function exercisable by a local authority in relation to an area all or part of which is comprised in the combined authority's area to be exercisable by the combined authority in relation to the combined authority's area.
- (3) The following provisions of that Act apply in relation to a combined authority on whom functions of a kind described in section 88 of that Act are conferred as they apply in relation to an ITA on whom such functions are conferred--
  - (a) section 88(10) (provisions about directions);
  - (b) section 89(2) and (3) (power to remedy contravention of direction).
- (4) Section 97 of that Act (change of name of ITA) applies to a combined authority as it applies to an ITA.
- (5) The Secretary of State may by order transfer functions of an ITA to a combined authority.
- (6) An order under subsection (5) may only be made in relation to functions exercisable by the ITA in relation to an area that becomes, or becomes part of, the combined authority's area by virtue of an order under this Part.
- (7) The Secretary of State may by order provide for any function that is conferred or imposed on a Passenger Transport Executive by any enactment (whenever passed or made) to be exercisable by a combined authority or the executive body of a combined authority in relation to the combined authority's area.
- (8) An order under subsection (7) may make provision for any function that--
  - (a) is conferred or imposed on an ITA by any enactment (whenever passed or made), and
  - (b) relates to the functions of a Passenger Transport Executive,

to be exercisable by a combined authority in relation to the combined authority's area.

### **105 Constitution and functions: economic development and regeneration**

(1) The Secretary of State may by order make in relation to a combined authority any provision that may be made in relation to an EPB under section 91 (exercise of local authority functions).

(2) Subsection (5) of section 91 (duty to perform functions with a view to promoting economic development and regeneration) applies to the exercise of functions by a combined authority by virtue of subsection (1) of this section as it applies to the exercise of functions by an EPB by virtue of that section.

(3) The Secretary of State may by order make in relation to a combined authority any provision that may be made in relation to an EPB under section 92 (funding).

(4) An order under subsection (3) may make such provision only in relation to the costs of a combined authority that are reasonably attributable to the exercise of its functions relating to economic development and regeneration.

### **106 Changes to boundaries of a combined authority's area**

(1) The Secretary of State may by order change the boundaries of a combined authority's area by--

- (a) adding a local government area to an existing area of a combined authority, or
- (b) removing a local government area from an existing area of a combined authority.

(2) An order may be made under this section only if—

- (a) the area to be created by the order –
  - (i) meets conditions A to D in section 103, or,
  - (ii) meets condition A and D in section 103, and, in the opinion of the Secretary of State, meets condition F in that section, and
- (b) each council to whom this subsection applies consents to the making of the order.

(3) Subsection (2) applies to--

- (a) a county council whose area, or part of whose area, is to be added to or removed from the existing area of the combined authority;
- (b) a district council whose area is to be added to or removed from the existing area of the combined authority.

(4) Where by virtue of an order an area ceases to be part of the area of a combined authority, the order--

- (a) must make provision for designating an authority to be a local transport authority for the area for the purposes of section 108(4) of the Transport Act 2000 (c 38), and
- (b) may transfer functions to that authority from the combined authority that was formerly the local transport authority.

(5) Provision made by virtue of subsection (4) may designate different authorities for different parts of the area.

- (6) The reference in subsection (4)(a) to an authority does not include an ITA.
- (7) Subsection (4) does not apply if the area becomes part of the integrated transport area of an ITA by virtue of an order under section 78 or 90 of the Local Transport Act 2008 (c 26).

### **107 Dissolution of a combined authority's area**

- (1) The Secretary of State may by order--
  - (a) dissolve a combined authority's area, and
  - (b) abolish the combined authority for that area.
- (2) An order may be made under this section only if a majority of the councils to whom this subsection applies consent to the making of the order.
- (3) Subsection (2) applies to--
  - (a) a county council whose area, or part of whose area, is within the combined authority's area;
  - (b) a unitary district council whose area is within the combined authority's area.
- (4) The order--
  - (a) must make provision for designating an authority to be a local transport authority for the area that was previously the combined authority's area for the purposes of section 108(4) of the Transport Act 2000 (c 38), and
  - (b) may transfer functions to that authority from the combined authority that was formerly the local transport authority.
- (5) Provision made by virtue of subsection (4) may designate different authorities for different parts of the area.
- (6) The reference in subsection (4)(a) to an authority does not include an ITA.
- (7) Subsection (4) does not apply to a territory or part of a territory that becomes the integrated transport area or part of the integrated transport area of an ITA by virtue of an order under section 78 or 90 of the Local Transport Act 2008.

## ***Requirements in connection with orders about combined authorities***

### **108 Review by authorities: new combined authority**

- (1) Any two or more of the authorities to whom this section applies may undertake a review of--
  - (a) the effectiveness and efficiency of transport within the area covered by the review ("the review area"), and
  - (b) the effectiveness and efficiency of arrangements to promote economic development and regeneration within the review area.
- (2) This section applies to--
  - (a) a county council in England;
  - (b) a district council in England;
  - (c) an EPB;
  - (d) an ITA.
- (3) Where the review is being undertaken by a county council, the review area must include--
  - (a) the areas of one or more district councils that are within the area of the county council, or
  - (b) if there are no such areas, the area of the county council.
- (4) Where the review is being undertaken by a district council, the review area must include the area of the district council.
- (5) Where the review is being undertaken by an EPB, the review area must include one or more local government areas within the EPB's area.
- (6) Where the review is being undertaken by an ITA, the review area must include one or more local government areas within the ITA's integrated transport area.
- (7) The review area may also include the area of any county council or district council in England that does not constitute or fall within the area of an authority undertaking the review.

### **109 Preparation and publication of scheme: new combined authority**

- (1) This section applies where two or more of the authorities that have undertaken a review under section 108 conclude that the establishment of a combined authority for an area would be likely to improve--
  - (a) the exercise of statutory functions relating to transport in the area,
  - (b) the effectiveness and efficiency of transport in the area,
  - (c) the exercise of statutory functions relating to economic development and regeneration in the area, and
  - (d) economic conditions in the area.
- (2) The authorities may prepare and publish a scheme for the establishment of a combined authority for the area ("the scheme area").
- (3) Subject as follows, the scheme area--
  - (a) must consist of or include the whole or any part of the review area,
  - (b) may include one or more other local government areas, and
  - (c) either—

- (i) meets conditions A to C in section 103, or
- (ii) meets condition A in section 103 and, in the opinion of the authorities that have undertaken the review, meets condition F in that section.

(4) The scheme area may not include a local government area unless each appropriate authority for that area--

- (a) participates in the preparation of the scheme, or
- (b) consents to its inclusion in the scheme area.

(5) For this purpose--

- (a) a county council is an appropriate authority for a local government area that is or forms part of the area of that county council;
- (b) a district council is an appropriate authority for a local government area that is the area of that district council.

### **110 Requirements in connection with establishment of combined authority**

(1) The Secretary of State may make an order establishing a combined authority for an area only if, having regard to a scheme prepared and published under section 109, the Secretary of State considers that to do so is likely to improve--

- (a) the exercise of statutory functions relating to transport in the area,
- (b) the effectiveness and efficiency of transport in the area,
- (c) the exercise of statutory functions relating to economic development and regeneration in the area, and
- (d) economic conditions in the area.

(2) Before making the order, the Secretary of State must consult--

- (a) each appropriate authority, and
- (b) such other persons (if any) as the Secretary of State considers appropriate.

(3) For the purposes of this section--

- (a) a county council is an appropriate authority if the area of the county council, or part of that area, is within the area for which the combined authority is to be established;
- (b) a district council is an appropriate authority if the area of the district council is within the area for which the combined authority is to be established;
- (c) an EPB is an appropriate authority if the EPB's area, or part of its area, is within the area for which the combined authority is to be established;
- (d) an ITA is an appropriate authority if the ITA's integrated transport area, or part of that area, is within the area for which the combined authority is to be established.

(4) In making the order, the Secretary of State must have regard to the need--

- (a) to reflect the identities and interests of local communities, and
- (b) to secure effective and convenient local government.

(5) In deciding whether to make an order in a case within section 103(1)(b), the Secretary of State must have regard to the likely effect of the creation of the proposed combined authority on economic development, regeneration or transport in each local government area that is next to any part of the proposed combined authority area.

### **111 Review by authorities: existing combined authority**

(1) Any one or more of the authorities to whom this section applies may undertake, in relation to an existing combined authority, a review of —

(a) a matter in relation to which an order may be made under section 106 or 107;

(b) in relation to the combined authority or any executive body of the combined authority, where that body exists at the time of the review, a matter concerning the combined authority or the executive body that the combined authority has power to determine.

(2) This section applies to--

(a) a combined authority;

(b) a county council whose area, or part of whose area, is within an area of a combined authority or could be within a proposed area of a combined authority;

(c) a district council whose area is within an area of a combined authority or could be within a proposed area of a combined authority.

(3)

(4) The review must relate to one or more areas of a combined authority or proposed areas of a combined authority.

(5) In this section and section 112 a "proposed area of a combined authority" means an area of a combined authority that may be created by an order under section 106 (changes to boundaries of a combined authority's area).

## **112 Preparation and publication of scheme: existing combined authority**

(1) This section applies where one or more of the authorities that have undertaken a review under section 111 conclude that the exercise of the power to make an order under section 106 or 107 would be likely to improve--

(a) the exercise of statutory functions relating to transport in an area of a combined authority or a proposed area of a combined authority,

(b) the effectiveness and efficiency of transport in such an area,

(c) the exercise of statutory functions relating to economic development and regeneration in such an area, or

(d) economic conditions in such an area.

(2) The authorities may prepare and publish a scheme relating to the exercise of the power in question.

(3) The reference in subsection (1) to an area of a combined authority includes an area that would cease to be an area of a combined authority if an order were made in relation to that area under section 107 (dissolution of a combined authority's area).

## **112A Application for change to constitution, functions or funding: existing combined authority**

(1) Any one or more of the authorities to whom this section applies may, in relation to an existing combined authority, apply to the Secretary of State in respect of one or more combined matters.

(2) This section applies to—

(a) the combined authority;

(b) a county council whose area, or part of whose area, is within the area of the combined authority;

- (c) a district council whose area is within the area of the combined authority.
- (3) For the purposes of this section a “combined matter” is—
  - (a) a matter in relation to which an order may be made under section 104 or 105;
  - (b) in relation to the combined authority or any executive body of the combined authority, where that body exists at the time of the review, a matter concerning the combined authority or the executive body that the combined authority has power to determine.
- (4) Any application to the Secretary of State made under subsection (1) must—
  - (a) be made in writing;
  - (b) specify how the exercise of the power to make an order under section 104 or 105 would be likely to improve—
    - (i) the exercise of statutory functions relating to transport in the area of the combined authority,
    - (ii) the effectiveness and efficiency of transport in that area,
    - (iii) the exercise of statutory functions relating to economic development and regeneration in that area, or
    - (iv) economic conditions in that area.
- (5) An application may be made under this section only if every authority to whom this section applies consents to the making of the application.

### **113 Requirements in connection with changes to existing combined arrangements**

- (1) The Secretary of State may make an order under any of sections 104 to 107 in relation to an existing combined authority only if, having regard to a scheme prepared and published under section 112, or an application made under section 112A (as the case may be), the Secretary of State considers that the making of the order is likely to improve--
  - (a) the exercise of statutory functions relating to transport in the area or areas to which the order relates,
  - (b) the effectiveness and efficiency of transport in that area or those areas,
  - (c) the exercise of statutory functions relating to economic development and regeneration in that area or those areas, or
  - (d) economic conditions in that area or those areas.
- (2) Before making the order, the Secretary of State must consult--
  - (a) such of the authorities mentioned in section 111(2) or section 112A(2) (as the case may be), and
  - (b) such other persons (if any),
 as the Secretary of State considers appropriate.
- (3) In making the order, the Secretary of State must have regard to the need--
  - (a) to reflect the identities and interests of local communities, and
  - (b) to secure effective and convenient local government.
- (4) In deciding whether to make an order under section 106 in a case within section 106(2)(a)(ii), the Secretary of State must have regard to the likely effect of the change to the combined authority’s area on economic development, regeneration or transport in each local government area that is next to any part of the proposed combined authority area.

## ***General powers of EPBs and combined authorities***

### **113A General power of EPB or combined authority**

- (1) An EPB or combined authority may do--
  - (a) anything it considers appropriate for the purposes of the carrying-out of any of its functions (its "functional purposes"),
  - (b) anything it considers appropriate for purposes incidental to its functional purposes,
  - (c) anything it considers appropriate for purposes indirectly incidental to its functional purposes through any number of removes,
  - (d) anything it considers to be connected with--
    - (i) any of its functions, or
    - (ii) anything it may do under paragraph (a), (b) or (c), and
  - (e) for a commercial purpose anything which it may do under any of paragraphs (a) to (d) otherwise than for a commercial purpose.
- (2) Where subsection (1) confers power on an EPB or combined authority to do something, it confers power (subject to section 113B) to do it anywhere in the United Kingdom or elsewhere.
- (3) Power conferred on an EPB or combined authority by subsection (1) is in addition to, and is not limited by, its other powers.

### **113B Boundaries of power under section 113A**

- (1) Section 113A(1) does not enable an EPB or combined authority to do--
  - (a) anything which it is unable to do by virtue of a pre-commencement limitation, or
  - (b) anything which it is unable to do by virtue of a post-commencement limitation which is expressed to apply--
    - (i) to its power under section 113A(1),
    - (ii) to all of its powers, or
    - (iii) to all of its powers but with exceptions that do not include its power under section 113A(1).
- (2) If exercise of a pre-commencement power of an EPB or combined authority is subject to restrictions, those restrictions apply also to exercise of the power conferred on it by section 113A(1) so far as that power is overlapped by the pre-commencement power.
- (3) Section 113A(1) does not authorise an EPB or combined authority to borrow money.
- (4) Section 113A(1)(a) to (d) do not authorise an EPB or combined authority to charge a person for anything done by it otherwise than for a commercial purpose (but see section 93 of the Local Government Act 2003 (power of EPBs, combined authorities and other best value authorities to charge for discretionary services)).
- (5) Section 113A(1)(e) does not authorise an EPB or combined authority to do things for a commercial purpose in relation to a person if a statutory provision requires it to do those things in relation to the person.
- (6) Where under section 113A(1)(e) an EPB or combined authority does things for a commercial purpose, it must do them through--
  - (a) a company within the meaning given by section 1(1) of the Companies Act 2006, or

(b) a society registered or deemed to be registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969.

(7) In this section--

"post-commencement limitation" means a prohibition, restriction or other limitation imposed by a statutory provision that--

(a) is contained in an Act passed after the end of the Session in which the Localism Act 2011 is passed, or

(b) is contained in an instrument made under an Act and comes into force on or after the commencement of section 13(1) of that Act;

"pre-commencement limitation" means a prohibition, restriction or other limitation imposed by a statutory provision that--

(a) is contained in an Act passed no later than the end of the Session in which the Localism Act 2011 is passed, or

(b) is contained in an instrument made under an Act and comes into force before the commencement of section 13(1) of that Act;

"pre-commencement power" means power conferred by a statutory provision that--

(a) is contained in an Act passed no later than the end of the Session in which the Localism Act 2011 is passed, or

(b) is contained in an instrument made under an Act and comes into force before the commencement of section 13(1) of that Act;

"statutory provision" means a provision of an Act or of an instrument made under an Act.

### **113C Power to make provision supplemental to section 113A**

(1) The Secretary of State may by order make provision preventing EPBs or combined authorities from doing under section 113A(1) anything which is specified, or is of a description specified, in the order.

(2) The Secretary of State may by order provide for the exercise by EPBs or combined authorities of power conferred by section 113A(1) to be subject to conditions, whether generally or in relation to doing anything specified, or of a description specified, in the order.

(3) The power under subsection (1) or (2) may be exercised in relation to--

(a) all EPBs,

(b) all combined authorities,

(c) particular EPBs,

(d) particular combined authorities,

(e) particular descriptions of EPBs, or

(f) particular descriptions of combined authorities.

(4) Before making an order under subsection (1) or (2) the Secretary of State must consult--

(a) such representatives of EPBs or combined authorities,

(b) such representatives of local government, and

(c) such other persons (if any),

as the Secretary of State considers appropriate.

(5) Subsection (4) does not apply to an order under subsection (1) or (2) which is made only for the purpose of amending an earlier such order--

(a) so as to extend the earlier order, or any provision of the earlier order, to a particular EPB or combined authority or to EPBs or combined authorities of a particular description, or

(b) so that the earlier order, or any provision of the earlier order, ceases to apply to a particular EPB or combined authority or to EPBs or combined authorities of a particular description.

(6) Power to make an order under this section includes--

(a) power to make different provision for different cases, circumstances or areas, and

(b) power to make incidental, supplementary, consequential, transitional or transitory provision or savings.

### ***Supplementary***

#### **114 Incidental etc provision**

(1) The Secretary of State may by order make incidental, consequential, transitional or supplementary provision for the purposes of, or in consequence of, an order under this Part or for giving full effect to such an order.

(2) An order under this section may include provision amending, applying (with or without modifications), disapplying, repealing or revoking any enactment, whenever passed or made.

(3) The provision that may be included by virtue of subsection (2) includes provision applying, with modifications, or disapplying any enactment amended by Schedule 6.

(4) An order under this section may not include provision amending or disapplying sections 15 to 17 of, and Schedule 1 to, the Local Government and Housing Act 1989 (c 42) (political balance on local authority committees etc).

#### **115 Transfer of property, rights and liabilities**

(1) The Secretary of State may by order make provision for the transfer of property, rights and liabilities for the purposes of, or in consequence of, an order under this Part or for giving full effect to such an order.

(2) Property, rights and liabilities may be transferred by--

(a) the order,

(b) a scheme made by the Secretary of State under the order, or

(c) a scheme required to be made under the order by a person other than the Secretary of State.

(3) A transfer by virtue of this section may have effect--

(a) whether or not the property, rights and liabilities would otherwise be capable of being transferred;

(b) without any instrument or formality being required.

(4) The rights and liabilities which may be transferred by virtue of this section include rights and liabilities in relation to a contract of employment.

(5) The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) apply to the transfer by virtue of this section (whether or not the transfer is a relevant transfer for the purposes of those regulations).

(6) An order under this section or a scheme made under it may define the property, rights and liabilities to be transferred by specifying or describing them.

(7) Provision for the transfer of property, rights and liabilities made by virtue of this section may include provision--

(a) for the creation or imposition by the Secretary of State of new rights or liabilities in respect of anything transferred;

(b) for the shared ownership or use of any property or facilities;

(c) for the management or custody of transferred property;

(d) for bodies to make agreements with respect to any property, income, rights, liabilities and expenses of, and any financial relations between, the parties to the agreement.

(8) Provision for the transfer of property, rights and liabilities made by virtue of this section may include provision--

(a) for the continuing effect of things done by the transferor in relation to anything transferred;

(b) for the continuation of things (including legal proceedings) in the process of being done, by or on behalf of or in relation to the transferor in relation to anything transferred;

(c) for references to the transferor in any agreement (whether written or not), instrument or other document in relation to anything transferred to be treated (so far as necessary for the purposes of or in consequence of the transfer) as references to the transferee.

## **116 Consequential amendments**

(1) The Secretary of State may by order make such provision as the Secretary of State considers appropriate in consequence of any provision made by this Part.

(2) The power conferred in subsection (1) includes power to amend, repeal or revoke provision contained in an enactment passed or made before the day on which this Act is passed.

## **117 Orders**

(1) Orders under this Part must be made by statutory instrument.

(2) An order to which subsection (2A) applies may not be made unless a draft of the statutory instrument containing the order (whether alone or with other provisions) has been laid before, and approved by a resolution of, each House of Parliament.

(2A) This subsection applies to an order under this Part other than--

(a) an order under section 113C(1) that is made only for the purpose mentioned in section 113C(5)(b),

(b) an order under section 113C(2) that is made only for that purpose or for imposing conditions on the doing of things for a commercial purpose, or

(c) an order under section 116 that amends or revokes provision contained in an instrument subject to annulment by resolution of either House of Parliament.

(3) A statutory instrument that--

(a) contains an order under this Part, and

(b) is not subject to any requirement that a draft of the instrument be laid before, and approved by a resolution of, each House of Parliament,

is subject to annulment by resolution of either House of Parliament.

(4) If a draft of an order under this Part would, apart from this subsection, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

### **118 Guidance**

(1) The Secretary of State may give guidance about anything that could be done by an authority to whom this section applies under or by virtue of this Part.

(2) An authority to whom this section applies must have regard to any guidance given under this section in exercising any function conferred or imposed by or by virtue of this Part.

(3) Any guidance under this section must be given in writing and may be varied or revoked by further guidance in writing.

(4) Any such guidance may make different provision for different cases and different provision for different areas.

(5) This section applies to--

(a) a county council;

(b) a district council;

(c) an EPB;

(d) an ITA;

(e) a combined authority.

### **119 Amendments relating to EPBs and combined authorities**

Schedule 6 (amendments relating to EPBs and combined authorities) is part of this Part.

### **120 Interpretation**

In this Part--

"combined authority" means an authority established under section 103(1);

"EPB" has the meaning given by section 88(1);

"ITA" has the meaning given by section 104(1);

"local government area" has the meaning given by section 88(7);

"unitary district council" has the meaning given by section 90(4).