

**Manchester City Council
Report for Resolution**

Report to: Executive – 29 June 2016

Subject: Consent to the Greater Manchester Combined Authority Orders

Report of: City Solicitor

Summary

The purpose of this report is to update the Executive on the current legal and governance arrangements for GMCA following the implementation of the Cities and Local Government Act in March 2016 and to agree delegated authority to enable the next stages of devolution to be implemented

Recommendations

The Executive is requested to:

1. Note that the Cities and Local Government Act is now in place and note the next steps required for implementation of the Greater Manchester devolution deals.
 2. Delegate authority to the Chief Executive in consultation with the Leader of the Council to consent to the terms of all Orders required to implement the current devolution deals.
-

Wards Affected: N/A

Contact Officers:

Name: Sir Howard Bernstein
Position: Chief Executive
Telephone: 0161 234 3201
E-mail: h.bernstein@manchester.gov.uk

Name: Liz Treacy
Position: City Solicitor
Telephone: 0161 234 3087
E-mail: l.treacy@manchester.gov.uk

Background Documents:

Report to GMCA 19 December 2014
Report to GMCA 31 July 2015
Report to GMCA/AGMA September 2015

Report to Executive
Report to GMCA

March 2016
18 March 2016

1. IMPLEMENTING DEVOLUTION

- 1.1 There has been considerable progress on the Cities and Local Government Devolution Act since the last report to the Executive in March 2016 as the Act has now been passed and came into force on 28 March 2016.
- 1.2 An initial Order was passed through Parliament in March to establish the office of Mayor with PCC functions, to remove the requirement for the 2016 election of the Police and Crime Commissioner and to make arrangements for the election of a GM Mayor in May 2017.
- 1.3 Work is now underway to progress the Parliamentary process to ensure that all other Orders and regulatory amendments are in place to ensure that the GM devolution settlement (consisting of the Devolution Agreements signed in November 2014, July 2015 and November 2015, along with the Health and Social Care MoU signed in February 2015) can be implemented in full. It should be noted that the introduction of franchised bus services will be introduced by a separate Buses Bill, which has been announced in the Queen's speech on 18th May 2016.
- 1.4 As set out in the previous report the Act is enabling legislation, therefore conferring the specific CA and Mayoral powers will be subject to Orders, all of which will require the consent of all of the districts as well as GMCA. The Act also provides the legislative framework to address other issues, particularly in relation to the detail of governance such as the delegation of functions and role of committees. Whilst such issues have not been an explicit part of the various devolution agreements, the GMCA orders will address such issues to ensure the efficient and effective operation of Greater Manchester governance arrangements.
- 1.5 Orders and regulatory amendments relating to constitutional or electoral issues will have to be in place by November 2016. Whilst it would be preferable to have all other Orders and regulatory changes in place at the same time, they will need to be in place by February 2017 at the latest to allow sufficient time for Mayoral candidates to be fully aware of the powers of the elected Mayor and to prepare a manifesto.
- 1.6 The changes required to implement the devolution agreements are being dealt with in two phases:

Phase 1 will deal with most issues *other* than those relating to Fire and Rescue services. Order(s) will need to be laid by July 2016 and implemented by November 2016.

Phase 2 will address issues relating to Fire and Rescue services. This will enable GMCA members to give further consideration to the requirements arising from the transfer of GMFRA responsibilities to the elected Mayor. As part of Phase 2 GMCA members will also consider whether they wish to pursue the transfer of GMWDA responsibilities to the GMCA and will review Overview and Scrutiny arrangements in relation to GMCA and mayoral

functions. Order(s) will need to be laid by September 2016 and implemented by February 2017. All issues to be dealt with in Phase 2 will need to be resolved by June 2016 to enable sufficient time for the drafting of detailed proposals.

1.7 There is likely to be a separate order in relation to policing.

2. FUNCTIONS TO BE CONFERRED ON GMCA

2.1 Before the enactment of the 2016 Act the functions which could be conferred on the GMCA by order were limited to transport functions mainly inherited from the former GM ITA and functions of the constituent councils relating to economic development and regeneration which could either be exercised instead of by, or concurrently with, the constituent councils.

2.2 The amendments made by the 2016 Act now enable an order to confer on GMCA:

- any function of a constituent council (not limited to transport economic development or regeneration);
- any function of a public authority (including that of a Minister of the Crown or government department) which is exercisable in relation to Greater Manchester; and
- any functions corresponding to a function that a public authority has in relation to another area (e.g. a functions of the Mayor of London or GLA).

The order may provide that functions in (b) above may be exercised instead of by, or concurrently or jointly with the public authority, or jointly with the public authority, but with the public authority being able to exercise the function alone.

2.3 In order for the CA to acquire the additional powers that will enable it to implement the devolution agreements it must go through the statutory process set out in the Act. This includes a review of its governance, the publication of a Scheme setting out the powers requested and a public consultation exercise. This process was set in train in March for Phase 1 and will take place in the summer for Phase 2.

2.4 The CA has reviewed its operation and functions on the principle that devolution is not about taking away powers from constituent councils, but about drawing down powers from central government or government agencies or alternatively drawing into Greater Manchester powers which are exercisable in London. Therefore, where the published Scheme for Phase 1 proposed that there should be conferred on GMCA functions of constituent councils (mainly in the area of skills and training) these will only be exercisable concurrently with the constituent council and will be subject to agreed protocols.

2.5 The powers to be conferred on the GMCA/Mayor now that the Cities and Local Government Devolution Act has been passed were summarised in a report to

the CA in March and that table is set out below, along with a summary of how those powers will improve the ability of the GMCA to exercise its statutory functions. The March report also set out the draft Scheme and arrangements for consultation for Phase 1. A report, review and scheme on the Phase 2 proposals will be considered by the CA on 30th June.

- 2.6 It should be noted that not all aspects of Greater Manchester's devolution settlement require legislative change to implement. For example, work is already underway to scale up work to address complex dependency and the GM Housing Investment Fund was launched in July 2015. The powers outlined below are those that require legislative or regulatory change before they can be exercised by the GMCA or Mayor.

POWER	RATIONALE
Planning, Housing and Regeneration	
<p>Mayoral strategic planning powers including:</p> <p>the power to create a statutory spatial framework for Greater Manchester;</p> <p>Compulsory Purchase Powers in line with those held by the HCA;</p> <p>the power to establish Mayoral Development Corporations;</p> <p>the introduction of a Mayoral Community Infrastructure Levy.</p> <p>Other Housing and Regeneration powers including Housing and Communities Agency (HCA) powers to be exercised concurrently with the HCA</p>	<p>The GM Spatial Framework will enable an informed, integrated approach to be taken to spatial planning across the city region, based on a clear understanding of the role of our places and the connections between them. It will ensure that Greater Manchester is able to meet current and emerging occupier demand to support a market-facing strategy for housing and employment growth.</p> <p>The additional Mayoral planning powers will enable the Mayor and the Combined Authority to drive development and regeneration across the area. Such strategic mayoral planning powers will only be exercised with the consent of the local planning authority(ies) concerned.</p>
<p>Incidental powers relating to the GM Land Commission to enable the SoS to make schemes transferring to GMCA land held by other public bodies (with their consent) in the same way land can be transferred to the HCA or GLA.</p>	<p>To oversee the efficient utilisation of the public sector estate to support growth and public service reform ambitions. In relation to surplus assets the Land Commission will identify barriers to disposal and develop solutions to address those barriers to help GM to meet its goal to deliver over 10,000 new homes per annum.</p>
Bus franchising	
<p>The transfer of additional supporting transport powers to the GMCA, including:</p>	<p>The transfer of such powers would provide GMCA with an early opportunity to engage on a formal basis with</p>

POWER	RATIONALE
<p>the transfer of responsibility from the Traffic Commissioner to the GMCA for the registration of bus services that operate wholly or mainly within GM, to support the management of franchised bus services once introduced;</p> <p>the transfer of responsibility from the Traffic Commissioner to the GMCA for functions in relation to traffic regulation conditions in so far as such conditions relate to GM;</p> <p>the joint exercise by the GMCA and Secretary of State for Transport of the function currently exercised by the SoS to make grants to bus operators in relation to services that operate wholly or mainly within GM.</p>	<p>operators of the current commercial bus network, prior to the new regime to be introduced by the forthcoming Buses Bill</p>
Highways	
<p>Delegated responsibility from the SoS or Highways England to the GMCA for the construction, improvement or maintenance of trunk roads and highways.</p>	<p>To ensure that management and investment is aligned to locally determined growth priorities to support the more effective and efficient operation of the network.</p>
Health	
<p>Devolution of health related local authority functions to the GMCA, including commissioner status, to be exercised concurrently with GM local authorities.</p>	<p>To enable the effective integration of health and social care provision across Greater Manchester, to deliver improved health and wellbeing outcomes to support and enhance GM's priority of reducing worklessness and supporting people back into employment and to ensure the financial sustainability of the health and social care system.</p>
Skills and Training	
<p>Conferral of local authority and central government training and skills functions to the Combined Authority, to be exercised concurrently with GM local authorities and the Secretary of State.</p>	<p>To provide the GMCA with the ability to reshape and restructure skills provision across Greater Manchester, aligning that provision with locally determined priorities to ensure that GM residents have the skills required to help businesses to grow, innovate and diversify.</p>
Culture	

POWER	RATIONALE
<p>Devolution of a functional power of culture to the Combined Authority, to be exercised concurrently with GM local authorities.</p>	<p>Such a power would enable the GMCA to administer a grants scheme/fund corresponding to the "Section 48" grants scheme currently administered by AGMA. A functional power of culture would make it clear that GMCA functions include the promotion of cultural events and entertainment within Greater Manchester.</p>
<p>Blue light services</p>	
<p>Transfer of responsibilities currently exercised by the Police and Crime Commissioner and the GM Fire & Rescue Authority to the elected Mayor. Policing functions will be the subject of a separate order and fire and rescue functions will be the subject of a review as part of phase 2.</p>	<p>To promote greater integration of blue light services, ensuring that services are delivered in a more effective and efficient way.</p>
<p>Finance</p>	
<p>Introduction of a Mayoral precept to support the discharge of mayoral functions and GMCA levy to support non-mayoral CA functions</p>	<p>GMCA functions in relation to economic development and regeneration are currently funded through a recharge to the constituent councils. A precept or a levy would offer greater transparency to GM residents in relation to the funding of Mayoral functions.</p>
<p>GMCA borrowing powers. The GMCA can currently only borrow in relation to transport functions but the devolution settlement makes provision for the GMCA to borrow against all functions, subject to the agreement of constituent councils.</p>	<p>Current restrictions prevent a CA from borrowing in respect of any non-transport functions which a CA may subsequently assume. In order for the CA to take forward any arrangements which require borrowing one of the constituent councils has to borrow in its own right which is unsatisfactory, administratively burdensome and inconvenient. The transfer of wider borrowing powers will ensure the more efficient discharge of GMCA functions.</p>
<p>Data sharing</p>	
<p>Where relevant and appropriate the GMCA will be considered a local authority to enable Government departments to share data with it.</p>	<p>The ability to share data across public agencies (whilst providing the public with confidence that the use of such data is set within a regulated regime) is critical to our work to integrate public services, including health and social care services.</p>

POWER	RATIONALE
Constitutional and governance issues	
<p>The Mayor will have a functional power of competence so that s/he can carry out matters incidental to his/her main role.</p> <p>Legislation will make provision for the Mayor to appoint a political advisor and will set out the terms and conditions of such an appointment.</p> <p>The Mayor will be able to exercise functions jointly with other authorities in a joint committee.</p> <p>Whilst not powers to be devolved or transferred, the legislation to be drafted will also determine a number of constitutional and governance issues, including:</p> <p>mayoral and non-mayoral functions;</p> <p>voting rights and majorities;</p> <p>the role of the Deputy Mayor for policing to be limited to PCC functions;</p> <p>the role and responsibilities of statutory committees;</p> <p>the role and responsibilities of scrutiny and audit committees.</p>	<p>Such arrangements will ensure the effective operation of GM governance arrangements, including clear arrangements to ensure transparency and accountability.</p>
<p>Again, whilst not a power to be transferred legislative and regulatory change is required to determine Electoral Conduct rules, and clarification of requirements in respect of the Mayoral election.</p>	<p>To ensure that candidates and the electorate are clear on electoral arrangements.</p>

3. OVERVIEW AND SCRUTINY OF THE CA

3.1 The Act sets out the legislative framework for Scrutiny of combined authorities. It states that CAs must appoint one or more overview and scrutiny committees and that such committees have power to:

- Review or scrutinise decisions made, or other action taken, in connection with the discharge of any of the CA's functions;
- Make reports or recommendations to the authority about the discharge of any of its functions;

- Make reports or recommendations to the CA on matters that affect the area or the inhabitants of the area.

This will also include scrutiny of the Mayor's exercise of their functions.

- 3.2 When reviewing or scrutinising a decision that has been made but not implemented the overview and scrutiny committee can direct that a decision is not to be implemented whilst it is under review or scrutiny and it has the power to recommend that the decision be reconsidered. The O&S committee must obtain the consent of the CA to proposals about how it will exercise its powers of review and scrutiny on decisions made but not implemented and it must then publish those proposals.
- 3.3 The CA scrutiny committee and any sub committees may not contain any members of the CA. It may require members or officers of the CA to attend before it to answer questions and may invite other people to attend.
- 3.4 The Secretary of State may make further more specific provision by order about the membership, voting rights, and chair of the scrutiny committee; together with arrangements about how matters are referred to the committee, how they are responded to and about the publication of reports. The recently published Tees Valley CA order sets out some requirements that may indicate how the SoS will approach such matters. That Order states that the membership of the Overview and Scrutiny Committee must reflect as far as practicable the balance of political parties in the area; that each member has one vote with no casting vote; and that the CA appoints the chair (for the purposes of a Mayoral authority the chair must not be a member of the same political party as the Mayor). The Tees Valley order also goes on to state that where the committee makes a report or recommendation with respect to the discharge of the CA or Mayor's functions then they may publish the report and require the CA to consider it, respond to it, and publish the CA response. The CA has two months to comply with the committee's request for a response. It should be noted that this procedure is for matters about the CA or Mayoral functions and not about a review or scrutiny of a CA or Mayoral decision.

4. HEALTH AND SOCIAL CARE

- 4.1 The Greater Manchester Health and Social Care Partnership Board is now well established and continues to meet monthly. Its meetings are web cast and its reports are public. All local authorities are represented on the Board by their Leaders.

5. NEXT STEPS

- 5.1 As set out above the Phase 1 proposals were considered by the CA in March, subject to public consultation during April and May and draft Orders are now being prepared by government to be laid in Parliament in July.

- 5.2 Details of the Phase 2 proposals will be considered by GMCA on 30th June. They will then be subject to public consultation over July and early August with the intention that draft Orders will be introduced into Parliament in September.
- 5.3 All of the districts need to consent to the draft Orders for Phase 1 and Phase 2. At the time of this report the Authority does not have a draft of the Orders and delegated authority is therefore requested to enable consent to be provided by the Chief Executive in consultation with the Leader of the Council to the content of the Orders before they are laid in Parliament.

6. RECOMMENDATIONS

- 6.1 To note that the Cities and Local Government Act is now in place and note the next steps required for implementation of the Greater Manchester devolution deals.
- 6.2 To delegate authority to the Chief Executive in consultation with the Leader of the Council to consent to the terms of all Orders required to implement the current devolution deals.