



Report of : The Chief Executive

Report to : Executive Board

Date : 17 March 2021

Subject : Governance arrangements for Devolution (Protocol for Concurrent Functions and Associated Statutory Consents)

Are specific electoral wards affected? If yes, name(s) of ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has consultation been carried out?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will the decision be open for call-in?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary

1. Main issues

- 1.1 Following the announcement of a deal for devolution in West Yorkshire in March 2020, the region has undertaken a statutory review of the constitutional arrangements and functions for the electoral area, submitted a Scheme to the Secretary of State, undertaken a consultation, and in January 2021, the order for a West Yorkshire Combined Authority, to include provision for an elected mayor, was made.
- 1.2 Planning for a Mayoral Combined Authority in West Yorkshire is underway including attention to those governance arrangements which will sit behind the order.
- 1.3 Included in the planning is provision for a Protocol for the Exercise of Concurrent Functions and Associated Statutory Consents, between the Constituent Councils and the Mayoral Combined Authority. The Mayoral Combined Authority has a number of Concurrent Functions which are exercisable concurrently with the Constituent Councils. The draft Protocol will set out these functions (including those exercisable by the Mayor) and detail those which are subject to a consent provision, that is, where the Mayoral Combined Authority must seek the consent of the affected Constituent Council(s) before exercising that function.

- 1.4 This report provides Executive Board with a draft of the Protocol for their consideration and approval. The Protocol aims to promote the co-operation and collaboration between the Combined Authority and the Constituent Councils, in a spirit of partnership; transparency of roles and processes to engender mutual trust and confidence; and the best use of resources through co-ordination and reducing duplication between the parties. It also aims to safeguard the Constituent Councils' roles in local decision making and delivery.

2. Best Council Plan implications (see the [latest version of the Best Council Plan](#))

- The Council continues to move towards achieving its long term objective of securing a good devolution deal for Leeds and the wider region.
- The devolution deal process has resulted in an order for a West Yorkshire Mayoral Combined Authority.
- A West Yorkshire Mayoral Combined Authority will play a central role in enhancing the council's ability to respond, working in partnership with others, to the three key pillars which underpin the Best Council Plan, namely inclusive growth, health and wellbeing and climate emergency.
- It is also envisaged that the new authority will provide the region with additional levers as part of efforts to achieve an inclusive economic recovery following the COVID-19 pandemic.

3. Resource implications

- The devolution deal contained significant levels of new funding for West Yorkshire, including a £38m per year, 30 year, Gainshare Agreement.

Recommendations

- a) Executive Board is asked to consider and approve the draft Protocol for Concurrent Functions and Associated Statutory Consents attached as Appendix 1 to this report, and agree that the Chief Executive sign it on behalf of the Council.
- b) Delegate authority to the Chief Executive, in consultation with the Leader, to agree any subsequent changes to the Protocol.

1. Purpose of this report

- 1.1 This report presents to Executive Board a draft Protocol for Concurrent Functions and Associated Statutory Consents, for consideration and seeks approval that it be adopted.

2. Background information

- 2.1 The West Yorkshire "minded-to" Devolution Deal was announced as part of the Budget in March 2020. In accordance with the "minded to" process, including consultation, consent to an Order for a Mayoral Combined Authority was given in November 2020. The draft order was laid before Parliament on the 17 December

2020, and the West Yorkshire Combined Authority (Election of Mayor and Functions) Order 2021, SI 2021 No 112, was made on the 29 January 2021.

2.2 The order can be found here

<https://www.legislation.gov.uk/uksi/2021/112/contents/made>.

2.3 The Order provides for,

- i. the election of a mayor for the area of the Combined Authority from May 2021,
- ii. the Mayor to exercise the functions of a Police and Crime Commissioner, from that date, and
- iii. the following functions to be conferred on the Combined Authority:
 - adult education functions of the Secretary of State (to be exercised instead of or concurrently with the Secretary of State),
 - functions of Homes England relating to housing and regeneration (to be exercised concurrently with Homes England),
 - functions relating to grants to bus operators,
 - functions in relation to the designation of a Mayoral Development Area (MDA) and establishing a Mayoral Development Corporation (to be exercised by the Mayor)
 - functions in relation to Business Rates Supplements (to be exercised by the Mayor),
 - functions of the Constituent Councils to be exercised concurrently by the Combined Authority relating to
 - o education, skills and training,
 - o housing, regeneration and planning, and
 - o transport (including in relation to highways, traffic orders, traffic signs, pedestrian crossings, street works, permit schemes and bus lane contraventions).

2.4 The Order confers concurrent powers on the Mayoral Combined Authority ('MCA'). These are powers which the Constituent Councils also hold and which the MCA could exercise independently, and provides for certain decisions (termed statutory consents in the Protocol) to be made by the MCA only with the express consent of a Constituent Council.

2.5 Under the 2021 Order, there is,

- no transfer of any Concurrent Function to the MCA from any Constituent Council; each Constituent Council may continue to exercise any Concurrent Function in relation to its area,
- no requirement for the joint exercise of any Concurrent Function by the MCA with Constituent Councils – that is, that they are not required to act together, and

- no requirement for a Constituent Council to involve, consult or seek the consent of the MCA in relation to the exercise of any Concurrent Function by a Constituent Council.

2.6 Attached to this report at Appendix 2 is a table of the Concurrent Functions.

2.7 Included in this table are details of the relevant consent provisions.

3 Main issues

3.1 Protocol for Concurrent Functions and Associated Statutory Consents

The draft Protocol for Concurrent Functions is not intended to be a legally binding document, it cannot override the Order, but it aims to provide a co-operative and collaborative relationship between the MCA and the Constituent Councils; and set out the process for when the MCA is seeking to exercise a Concurrent Function, whether statutory consent is required or not.

3.2 The draft Protocol, has been carefully drafted and considered by legal officers of the MCA and the Constituent Councils, and received input from respective members and officers, including the leaders and chief executives. Each of the Constituent Councils will seek approval upon its adoption through their respective executive decision making arrangements at meetings in March 2021.

3.3 The draft Protocol records the aim of the partners to co-operate and collaborate in the best interests of residents of the region, to have transparency and make best use of resources, and reduce duplication. It also records the ongoing commitment of the MCA to engagement with the Constituent Councils.

3.4 Concurrent Functions

In respect of the Concurrent Functions the draft Protocol provides a number of underlying principles for how the MCA and the Constituent Councils intend to work together, and how they will consult with each other before approving, varying or revoking any strategy or plan.

3.5 The MCA will consult the Constituent Councils about any proposal by the MCA to exercise any Concurrent Function, except where the Constituent Councils have agreed that no consultation is required.

3.6 The Managing Director of the MCA will also notify the relevant Chief Executive (or their nominee) of any proposal to exercise a Concurrent Function which would require a Key Decision by the MCA as soon as practicable, and in any event before any Key Decision notice is published by the MCA, unless agreement has been reached that no consultation is required.

3.7 Statutory Consents

In respect of the requirement for Statutory Consent, the draft Protocol sets out that these requests will be sought in a report to be considered at a meeting of the MCA,

and any consent will be recorded in the minutes of the meeting. The MCA will seek any consent in a timely way and notice should be published on the MCA's forward plan at least 28 clear days before the meeting of the MCA.

- 3.8. In addition, the Managing Director of the MCA will also notify the Chief Executive (or their nominee) of the relevant Constituent Council, whose consent is required.
- 3.9. Where any transport related function in respect of which a Statutory Consent is required, a Key Route Network is yet to be agreed.
- 3.10 The draft Protocol does not address the scrutiny of the MCA in relation to how it exercises any Concurrent Function, this will be the subject of separate arrangements, which are also currently under consideration by the Combined Authority's Scrutiny Working Group. The proposals arising out of this group are likely to be finalised for consideration at the Combined Authority meeting in March 2021.
- 3.11 Subject to the approval of Executive Board to the adoption of this Protocol for Concurrent Functions, consideration will then need to be given to what internal arrangements will be put into place to sit behind the Protocol and the notification process, and provide for any consultation and or decision making, to ensure that the Council can respond effectively to any notice given by the MCA that they are proposing to exercise a concurrent function.
- 3.12 Once proposals for internal arrangements have been formulated, these will be brought back to Executive Board for further consideration and approval.

4 Corporate considerations

4.1 Consultation and engagement

- 4.1.1 A public consultation of the Scheme for the Mayoral Combined Authority was open to members of the public, businesses and other stakeholders. The consultation exercise was co-ordinated by the combined authority alongside each council in their own local authority area.
- 4.1.2 In addition the council promoted the consultation and co-ordinated its own regional activity, including email correspondence to Leeds Citizens' Panel, key partners and businesses in the city, items in the Climate Emergency and Connecting Leeds newsletters, and via staff network groups, mailing lists, chief executive's updates and via InSite. The council also undertook targeted work to strengthen engagement with underrepresented groups.

4.2 Equality and diversity / cohesion and integration

- 4.2.1 An Equality Impact Assessment was undertaken for implementation of the deal, which was approved by Executive Board and endorsed by Full Council in November 2020.

- 4.2.2 There are no direct implications for equality and diversity arising from this report. It concerns the process by which the Mayoral Combined Authority will exercise concurrent functions and seek consents from Constituent Councils.

4.3 Council policies and the Best Council Plan

- 4.3.1 Securing a devolution deal for Leeds and the wider region has been a significant priority for the council for a number of years, as set out in the current and previous versions of the Best Council Plan.
- 4.3.2 Once implemented the powers, funding and freedoms to be devolved from Government to the region, as part of the deal that has been agreed, will enhance the council's ability to meet many of its Best Council Plan objectives, including the strong economy, compassionate city vision.
- 4.3.3 Devolution continues to be a highly complex and dynamic policy agenda with a number of potential short, medium and long term implications for citizens, communities and businesses in Leeds. It continues to be highly challenging as the council works through these over the coming weeks and months in advance of the first mayoral election scheduled to take place in May 2021.

Climate Emergency

- 4.3.4 Yorkshire's commitment to becoming a net zero carbon economy by 2038, with significant progress by 2030. Locally, the council remains committed to achieving net zero carbon emissions by 2030, as set out in the March 2019 climate emergency declaration.
- 4.3.5 There are, however, no immediate climate emergency implications arising as a direct result of this report.

4.4 Resources, procurement and value for money

- 4.4.1 The 'minded to' Devolution Deal included a number of flagship funding arrangements including £38m per year for 30 years into the West Yorkshire Investment Fund, £317m from the Transforming Cities Fund and control over the £63m annual Adult Education budget.
- 4.4.2 There are no staffing implications arising directly from this report. The establishment of the mayoral combined authority will have staffing implications, primarily for WYCA, in terms of additional resources to deliver the ambition of the Deal and these will be considered separately as required. There remains a possibility that at a later stage there may be some limited staffing implications for the council.
- 4.4.3 Discussions between councils and the Combined Authority regarding future partnership arrangements and ways of working are ongoing, and any future changes would be subject to discussion and engagement with members in the normal way. This report reflects such ongoing work.

4.5 Legal implications, access to information, and call-in

4.5.1 S101(5) Local Government Act 1972 provides that two or more local authorities (defined to include a Combined Authority) may discharge any of their functions jointly and may arrange for the discharge of those functions by an officer of one of the authorities.

4.5.2 This report is subject to call-in.

4.6 Risk management

4.6.1 The council maintains a risk regarding devolution on the corporate risk register. This takes account of the need to secure a good deal and the opportunities this presents for the city. The risk ensures that any deal to be considered is in the best interests of the people of Leeds.

4.6.2 This risk will remain under review as the deal implementation process moves forward to provide assurance that any new or emerging opportunities are effectively assessed and acted upon.

5 Conclusions

5.1 The Protocol for Concurrent Functions sets out how the Combined Authority and each Constituent Council intend to work together to ensure that the Concurrent Functions are exercised in the best interests of their citizens and for their mutual benefit. The Protocol has been drafted with input from the Combined Authority and the Constituent Councils, and from Members and Officers.

5.2 The Protocol is not a legally binding document, but it is a piece in a jigsaw of operation, management and oversight, and is a means of promoting strong relationships between the parties and providing a transparency of process.

6 Recommendations

a) Executive Board is asked to consider and approve the draft Protocol for Concurrent Functions and Associated Statutory Consents attached as Appendix 1 to this report, and agree that the Chief Executive sign it on behalf of the Council.

b) Delegate authority to the Chief Executive, in consultation with the Leader, to agree any subsequent changes to the Protocol.

7 Background documents

7.1 None

8 Appendices

8.1 Appendix 1, Protocol for Concurrent Functions and Statutory Consents, officers' draft version 7

8.2 Appendix 2, Table of Concurrent Functions