



Department for
Communities and
Local Government

Proposal to use a Legislative Reform Order to give local authorities greater flexibility in forming a combined authority or economic prosperity board

Consultation



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December 2014

ISBN: 978-1-4098-4404-4

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Chapter 1 – Summary of proposals and introduction

Summary of proposals

Topic of this consultation:	<p>This consultation paper is issued on behalf of the Secretary of State for Communities and Local Government and sets out the Government's proposals for amending provisions within Part 6 of the Local Democracy, Economic Development and Construction Act 2009 (relating to combined authorities and economic prosperity boards). It proposes that the changes to legislation are made through a Legislative Reform Order under the Legislative and Regulatory Reform Act 2006.</p> <p>Under the Legislative and Regulatory Reform Act 2006, the Government must consult on the use of a Legislative Reform Order to make changes to primary legislation. Subject to the results of this consultation, the Government plans to make the order which makes these amendments as soon as is practicable.</p>
Scope of this consultation:	<p>The aim of this consultation is to set out the proposed legislative changes to the Local Democracy, Economic Development and Construction Act 2009, and to seek views on whether the intended legislative changes meet the criteria for being made through a Legislative Reform Order.</p> <p>The Government has conducted a consultation on the policy proposals underpinning the legislative changes proposed, and is now consulting on the use of a Legislative Reform Order to effect the desired changes, as well as on the draft Order itself.</p>
Geographical Scope:	<p>The Local Democracy, Economic Development and Construction Act 2009 applies to England and Wales, however, part 6 applies to England only.</p>
Impact Assessment:	<p>No impact assessment is necessary because there is no impact on business, and because the proposed changes reduce the burdens for local authorities.</p>

Basic Information

To:	This is a public consultation. The Government is consulting: principal local authorities; combined authorities; the Local Government Association; local enterprise partnerships; the Confederation of British Industry; and the Institute of Directors.
Body/Bodies responsible for the consultation:	The Democracy team in the Local Government Policy directorate of the Department for Communities and Local Government has launched this consultation, and will be responsible for taking forward any legislative reform order that may emerge as a result of it.
Duration:	This consultation will close at 5pm on Monday 26 January 2015.
Enquiries:	If you have any queries relating to this consultation, please email collaborate@communities.gsi.gov.uk or Helen.Bamford@communities.gsi.gov.uk
How to respond:	<p>To respond to this consultation please reply either by email to collaborate@communities.gsi.gov.uk</p> <p>Or by post to: Helen Bamford 2nd Floor Fry Building 2, Marsham Street London SW1P 4DF</p>
Additional ways to become involved and accessibility:	Responses can be sent via post or via email. If you require a copy of this consultation in any other format, please contact collaborate@communities.gsi.gov.uk
After the consultation:	The responses to this consultation will be analysed, and depending on the outcome of the consultation, it is the Government's intention to seek Parliament's approval to the Legislative Reform Order as soon as is practicable.
Compliance with the Code of Practice on Consultation:	<p>This consultation is being conducted in accordance with the terms as set out in Section 13 of the Legislative and Regulatory Reform Act 2006 which specifies that a statutory consultation must be undertaken where such an Order is being made under the powers in that Act, and the terms of the Government's consultation principles</p> <p>http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance.</p>

Background

Previous engagement:	<p>The proposed legislative changes are intended to reduce burdens that are currently present in the Local Democracy, Economic Development and Construction Act 2009. These proposals follow from the Government’s commitment in response to Lord Heseltine’s Review, to ensure that local authorities place growth at the heart of all they do and making the legislation relating to combined authorities “fit for purpose”.</p> <p>This consultation follows an earlier consultation (undertaken in April – June 2014) on five proposed changes to the provisions in the 2009 Act.</p> <p>The legislative changes proposed in this consultation document are intended to ensure that local authorities are able to collaborate across their functional economic areas, to maximise economic development and regeneration in their areas.</p>
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Why we are consulting

1. The Government is proposing to seek Parliament’s approval to make amendments to Part 6 of the Local Democracy, Economic Development and Construction Act 2009 (the 2009 Act), relating to combined authorities and economic prosperity boards, through a Legislative Reform Order. The Government considers that the proposed amendments would reduce inflexibilities and burdens that are currently in the 2009 Act. The 2009 Act requires a number of geographical and procedural conditions to be met in order for a combined authority or economic prosperity board to be established. These conditions prohibit local authorities in some areas from forming combined authorities, which may present unnecessary barriers to local authorities collaborating across a functional economic area in order to promote economic growth.
2. This consultation invites views on the proposed changes to the legislation and on the draft Legislative Reform Order, a copy of which is at Annex A. The Government is also inviting views on its explanation of how the proposed changes meet the conditions necessary for use of a Legislative Reform Order.
3. These proposals have been developed by taking into account the responses received during the policy consultation that took place in April to June 2014. This document therefore also forms the Government’s response to that consultation. In that consultation, the Government proposed five legislative changes that it considered would improve the ability of the legislation to give effect to its policy of locally led growth, which were to:
 - a. enable councils with non-contiguous boundaries or which form a “doughnut” shape to join or form combined authorities or economic prosperity boards across a functional economic area;

- b. enable a county council to become a member of a combined authority or economic prosperity board with respect to a defined part of its area;
 - c. enable a combined authority or economic prosperity board to deliver different services in different parts of its area;
 - d. simplify the administrative processes required to make certain changes to an existing combined authority or economic prosperity board; and
 - e. clarify scrutiny arrangements in combined authorities and economic prosperity boards.
4. We received sixty one responses to the consultation:
- a. 45 from councils, councillors and councils' representative bodies;
 - b. 5 from combined authorities;
 - c. 7 from local enterprise partnerships and business;
 - d. 2 from individual members of the public; and
 - e. 1 from a Member of Parliament; and
 - f. 1 from a think tank.
5. Having considered these responses, the Government is of the view that some of the proposed changes to the 2009 Act could be achieved via a Legislative Reform Order, a form of secondary legislation that can be used to amend primary legislation for the purpose of removing burdens or deregulation.
6. This consultation document sets out how the Government considers that changes described in paragraphs 3a-d above meet the conditions necessary for a Legislative Reform Order to be possible, and the legal provision to effect these changes. The document is intended to fulfil the Secretary of State's statutory duty to consult on proposals before laying a draft Legislative Reform Order, in accordance with the provisions of section 13 of the Legislative and Regulatory Reform Act 2006.
7. Information on Legislative Reform Orders can be found at: <http://www.parliament.uk/business/committees/committees-archive/regulatory-reform-committee/regulatory-reform-orders/>. Further information on the consultation principles can be found at <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>. Views are invited on all aspects of the consultation paper.
8. The Government considers that the fifth proposal in the previous consultation - which relates to overview and scrutiny arrangements - does not meet the conditions required and there cannot be made with the use of a Legislative Reform Order. However the Government believes that there is a strong case for this proposal, and intends to implement it through appropriate secondary legislation under the 2009 Act and the Local Transport Act 2008.

Who we are consulting

9. We are consulting the following groups or people:
- a. The Local Government Association
 - b. All existing combined authorities
 - c. All principal local authorities in England
 - d. All local enterprise partnerships
 - e. The Confederation of British Industry

f. The Institute of Directors

We also welcome the views of any individual who wish to contribute.

10. The paper will be sent to the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords.

How to respond

11. Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. The Department for Communities and Local Government invites your response by 5pm on 26 January 2015 by email to collaborate@communities.gsi.gov.uk or to:

Helen Bamford
Department for Communities and Local Government
2nd Floor, Fry Building
2 Marsham Street
London
SW1P 4DF

12. Please title your response 'Response to consultation on proposal to amend legislation relating to combined authorities and economic prosperity boards'

Confidentiality and data protection

13. Any responses to this consultation may be made public. If you do not want all or part of your response or name made public, please state this clearly in the response. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.
14. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2000, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
15. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. The Department will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Non-disclosure of responses

16. Section 14(3) of the 2006 Act provides what should happen when someone responding to the consultation exercise on a proposed Legislative Reform Order requests that their response should not be disclosed.
17. The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

Information about Third Parties

18. If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclose. This applies whether or not you ask for your representation not to be disclosed.
19. The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of Legislative Reform Orders.

Chapter 2 – Background - the current legislation

The Local Democracy, Economic Development and Construction Act 2009

20. Part 6 of the Local Democracy, Economic Development and Construction Act 2009 (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 that wish to, to drive their own area's growth through asking the Government 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. There is no requirement for councils to set up such bodies. The Government recognises that combined authorities and economic prosperity boards will not be appropriate everywhere especially in two-tier areas with only shire county and district councils. 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.

Establishing a combined authority or economic prosperity board

21. The 2009 Act requires that local authorities that wish to establish a combined authority or economic prosperity board must undertake a review of their governance arrangements. The governance review for a proposed combined authority should consider how the options 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 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, as economic prosperity boards do not have transport functions.
22. 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 - see box 1.

Box 1: the geographical conditions that combined authorities and economic prosperity boards are required to meet

- **Condition A - the area consists of the whole of two or more local government areas in England.**
- **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.**
- **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.**
- **Condition D - no part of the area forms part of –
 (a) the area of a/an other economic prosperity board, or
 (b) the area of a/an other combined authority
And in the case of combined authorities:
 (c) an integrated transport area**
- **Condition E - each local government area that forms part of the area was included in a scheme prepared and published under section 98 (in the case of 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

23. Where local authorities have conducted a governance review and conclude that the establishment of a combined authority or economic prosperity board would be likely to meet the statutory tests (that is, improve the matters set out in Box 2), the councils 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 government bodies 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. No council should be compelled to join such a body – it must be genuinely voluntary and locally-led.
24. After the councils have undertaken and published a governance review and scheme, the Secretary of State will consider whether to invite Parliament to approve 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. The Secretary of State must also consider whether the establishment of the proposed

combined authority or economic prosperity board would be likely to improve the matters in Box 2.

Box 2: The statutory and other tests required by the 2009 Act

The statutory tests

These are the matters that the:

- (1) councils concerned must conclude are met before publishing a scheme for a combined authority or economic prosperity board; and
- (2) Secretary of State must consider are met before asking Parliament to approve the establishment of the combined authority or economic prosperity board

A. Combined authority

The establishment of the combined authority 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.

B. Economic Prosperity Board

The establishment of the economic prosperity board 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

Further requirements of the 2009 Act

The 2009 Act also requires the Secretary of State to have regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government.

25. If the Secretary of State considers that these matters are likely to be improved (that is that the statutory tests are met), and having regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government, he can invite Parliament to approve a draft order establishing the combined authority or economic prosperity board. Before it can be made and the new body established, the order must be laid before and approved by a resolution of each House of Parliament.

26. Whilst the Government will, as statute requires, consider any proposal local authorities make for a combined authority or economic prosperity board, it has adopted a localist policy to which it will have regard. This policy is that where the councils 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.

27. The 2009 Act also provides that changes can be made to an existing combined authority or economic prosperity board, using the same process as outlined in paragraphs 22-26 above. For example, a council could leave or join a combined authority or economic prosperity board, or there could be a change in the functions or constitution. It is the policy of the Government to allow for any council to leave such a body, should they wish at a point in the future.

The Legislative and Regulatory Reform Act 2006

28. The Legislative and Regulatory Reform Act 2006 (the 2006 Act) enables amendments to primary legislation to be made through a Legislative Reform Order (a form of secondary legislation) if certain conditions are met.

29. 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, with a burden defined as:

- a. A financial cost;
- b. An administrative inconvenience;
- c. An obstacle to efficiency, productivity or profitability; or
- d. A sanction, criminal or otherwise, which affects the carry on of any lawful activity.

30. Furthermore, 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 - see Box 3.

Box 3: preconditions required for a Legislative Reform Order to be used

- 1. There are no non-legislative alternatives that will achieve the intended outcome of the provision;**
- 2. The effect of the provision is proportionate to the policy objective;**
- 3. The provisions strikes a fair balance between the public interest and the interests of any person adversely affected by it;**
- 4. The provision does no remove any necessary protection;**
- 5. The provision does not prevent anyone from continuing to exercise and right or freedom which they might reasonably expect to continue to exercise; and**
- 6. The provision is not constitutionally significant.**

Chapter 3 – Proposed changes to the Local Democracy, Economic Development and Construction Act 2009

31. The Government considers that there are three key areas within the 2009 Act which present unnecessary burdens to local authorities wishing to establish a combined authority or economic prosperity board. This chapter sets out the proposed amendments to the 2009 Act that the Government intends to make through a Legislative Reform Order, which will have the impact of reducing these burdens. We recognise that not all areas will wish to establish a combined authority or economic prosperity board; councils can collaborate and work together effectively without doing so. But these proposed legislative changes are designed to provide greater flexibility for local authorities that do wish to collaborate across their functional economic areas through these formal mechanisms.
32. This chapter also sets out why the Government is of the view that these burdens are considered to fall under the definitions in Section 1(3)(b) and (c) of the 2006 Act – that is - *‘(b) an obstacle to efficiency, productivity or profitability’* and *‘(c) an administrative inconvenience’* and therefore why these proposed amendments are suitable to be made through a Legislative Reform Order, if the statutory preconditions for such an Order are met (see Chapter 4).

Proposal 1: To use a Legislative Reform Order to enable councils with non-contiguous boundaries to join or form a combined authority or economic prosperity board

33. Box 1 in paragraph 23 sets out the geographical conditions that a proposed combined authority or economic prosperity board area must meet to be eligible to form an economic prosperity board and combined authority, as specified in Sections 88 and 103 respectively of the 2009 Act.
34. Conditions B and C prevent local authority areas that do not all share boundaries or that would result in a “doughnut” shape from forming an economic prosperity board or combined authority.
- 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.
 - 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.

Why is this a burden?

35. In areas in which the functional economic area comprises local authorities that are not all coterminous, or that is doughnut shaped, the necessity to meet these conditions can be considered an obstacle to efficiency, productivity or profitability, as well as an administrative inconvenience. By excluding local authorities that are geographically separate from their functional economic partners from participating in these collaborative arrangements, the current legislation prevents some areas from realising the efficiency, productivity and profitability benefits that can come from collaborating in a combined authority or economic prosperity board.
36. The Government's previous consultation included a proposal to enable local authorities within the same functional economic area to form or join combined authorities or economic prosperity boards even if they do not all share a boundary or where there would be a "doughnut" shaped body, where doing so would enable effective collaboration to support economic growth.
37. Of the sixty one respondents to the consultation, fifty commented on this proposal, of which forty or 80% agreed. The key concerns cited were that making this change to the legislation could: increase the risk of adverse impacts on neighbouring areas; mean that bodies are formed across areas which are not functional economic areas; and complicate service delivery and lead to confusion about roles.

The proposed changes to the 2009 Act

38. The Government proposes to proceed with amendments to the 2009 Act which would enable local authorities that do not have contiguous boundaries to form combined authorities and economic prosperity boards in certain circumstances. This would enable local authorities that are in the same functional economic area and for whom collaboration would aid economic growth and administrative efficiency to establish combined authorities and economic prosperity boards.
39. However, the Government recognises the concerns expressed that combined authorities and economic prosperity boards should not be established across a geography which does not make the operation of the functions more effective, nor that by establishing such a body should have a materially detrimental impact on areas outside the combined authority or economic prosperity board.
40. The Government therefore proposes to put in place safeguards where the proposed combined authority or economic prosperity board does not meet conditions B and C. The draft Legislative Reform Order, attached at Annex A, does this through retaining all of the existing geographical conditions A to E in Box 1 but giving an alternative set of conditions for areas which would not meet conditions B and C. In this cases, the proposed combined authority or economic prosperity board would be required to satisfy conditions A, D and E in Box 1, and must also meet a new condition F which has three intended safeguards, that:
- a. in the opinion of the councils concerned (at the governance review stage) 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 the creation of the combined authority or economic prosperity board on surrounding areas.
41. All of the other conditions and tests would continue to need to be met, for example, the statutory and other tests in Box 2.
42. The Government considers that the new conditions in paragraphs 41a and 41b above would ensure that the geographical area of the proposed combined authority or economic prosperity board is a functional economic area or an area over which collaboration is practical, convenient and in the interest of improving efficiency and economic conditions. In preparing the governance review and scheme, the local authorities would need to be of the opinion that the area across which they are proposing to form a combined authority or economic prosperity board would meet these criteria. The Secretary of State will need to be of the same opinion - that the area across which they are proposing to form a combined authority or economic prosperity board would be an appropriate functional economic area over which collaboration is practical, convenient and in the interest of improving efficiency and economic conditions - before a combined authority or economic prosperity board could be established.
43. The Government considers that the new condition in paragraph 41c above provides mitigation against the increased risk that a combined authority or economic prosperity board which does not meet conditions B and C may have an adverse effect on other areas not within the combined authority.
44. The Government considered that removing the requirement to comply with conditions B and C in all circumstances and permitting non-contiguous local authorities to form combined authorities or economic prosperity boards would remove burdens and obstacles to collaboration; and that the introduction of condition F and the need to consider adverse impacts would provide safeguards and protect the interests of persons that could be adversely affected.
45. The amendments to give effect to proposal 1 are in articles 3, 5, 6, 7, 11(4), 12, 14, 15, 16 and 20(4) of the draft Legislative Reform Order. The draft Legislative Reform Order defines the following:
- *Condition F is that the area is one in which local authorities 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."*
 - Adverse effects on surrounding areas:
 - *In deciding whether to make an order in a case within section 88 (1)(b)], the Secretary of State must consider whether the creation of the proposed [Economic Prosperity Board] EPB would be likely to adversely affect economic development or regeneration in] a local authority area that is next to any part of the proposed [Economic Prosperity Board] EPB area."*

- *In deciding whether to make an order in a case within section 103 (1)(b), the Secretary of State must consider whether the creation of the proposed combined authority would be likely to adversely affect economic development, regeneration or transport in a local authority area that is next to any part of the proposed combined authority area.*

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?

Question 2: do you agree that the proposed safeguards are necessary and sufficient? Why?

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

46. The Government consulted on proposals to enable a county council in a two tier area to become a member of a combined authority with respect to a defined part of its area, where that area coincides with one or more districts that are also within the area of the combined authority; and to enable a combined authority to undertake different functions in different parts of its area.

Why is this a burden?

47. The purpose would be to give flexibility in relation to the county council’s functions in situations where some, but not all, district councils within a county council wished to be within a combined authority. For example, the county council’s functions could stay with the county, and not be transferred to the combined authority; or these could be transferred to the combined authority in relation to the areas of the districts within the body.

48. Fifty two respondents to the consultation commented on the proposal to enable a county council in a two tier area to become a member of a combined authority with respect to a defined part of its area, of which 41 (or 79%) supported it. Fifty two respondents also commented on the related proposal to enable a combined authority to undertake different functions in different parts of the area, of which 37 or 71% supported the approach. Local authorities were less supportive of these proposal than other respondents – only two thirds (66%) of local authorities agreed, compared to 86% of other respondents.

49. The primary concerns voiced with respect to this proposed change were that this could potentially add confusion about the roles of different tiers of government; could lead to fragmentation of service delivery and lead to less effective, rather than more effective delivery of services; the resource impact on county councils that would be members of more than one combined authority; and the concern that some areas might be more likely to be overlooked.

The proposed changes to the 2009 Act

50. The 2009 Act enables a district council's area to be included within a combined authority if both the district council and county council agree. However, if only part of a county council's area is to be included in the combined authority, the county council is prevented from delegating any functions to the combined authority by Section 104 of the 2009 Act, which applies Section 87 of the Local Transport Act 2008 to combined authorities. In practice this means that a county council cannot be within a combined authority's area for only part of its area.
51. The Government recognises that combined authorities will not be appropriate everywhere especially in two-tier areas with only shire county and district councils. This proposed change would provide greater flexibility to enable part but not all of a county council's area to join a combined authority's area (where the area is the same as the areas of the district councils which are within the combined authority) and enable the county council to delegate its powers to or share its powers with the combined authority for those districts within the area of the combined authority. We expect counties and districts to work together and agree the approach but the proposed amendment would give greater flexibility where only some of the districts within the county wish to be within the combined authority and this is agreed between the county and districts concerned. The amendments to give effect to proposal 2 are in article 13 of the draft Legislative Reform Order and make amendments to sections 104 of the 2009 Act.

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?

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

52. The provisions in the 2009 Act require that, if a combined authority or economic prosperity board wishes to make changes to its constitution or functions, funding arrangements, or boundaries (including dissolution of its area), it must undertake the same process as required when forming a new combined authority or economic prosperity board (outlined at paragraphs 22 to 24 above). The combined authority, economic prosperity board or councils concerned must undertake a governance review and publish a scheme which sets out the proposed changes. The Secretary of State would need to consider whether the proposed changes would meet the statutory and other tests in the 2009 Act (see Box 2), and have regard to the impact on communities and the need to secure effective and convenient local government. Should the Secretary of State consider it appropriate to proceed, the Government would need to undertake a consultation on the proposed changes, before laying an Order for Parliamentary approval.

Why is this a burden?

53. The current legislative requirements can be considered a burden on local authorities as they place a resource-intensive administrative burden, irrespective of whether the proposed change is minor or significant. Requiring the authorities concerned to undertake a governance review and publish a scheme means that in practice, they need to undertake a local consultation. For minor changes, such as a different funding arrangement, membership or voting rights, the need for a locally organised consultation ahead of a Government consultation could be considered to be both an administrative inconvenience and an obstacle to efficiency, productivity or profitability.
54. The previous consultation sought views on a proposal to simplify these arrangements when making changes to existing combined authorities and economic prosperity boards. There were 52 responses to this proposal, of which 41 or 79% were in favour. The primary concerns voiced were that oversimplification of the arrangements could reduce the robustness of the scrutiny and the safeguards needed for more significant proposed changes, such as a change of the area or dissolution of the body.

The proposed changes to the 2009 Act

55. In the light of the previous consultation the Government has developed its proposals and proposes to simplify arrangements only when making less significant changes to existing combined authorities or economic prosperity boards.
56. The draft Legislative Reform Order seeks to amend the 2009 Act to remove the 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. The burden will be reduced simply to require all councils concerned to consent to proposed changes before an application to make the changes is made to the Secretary of State. The Secretary of State's duty to undertake a statutory consultation will remain, and local authorities concerned will be required to bring this to the attention of stakeholders and individuals locally. The need for Parliamentary approval to the Order will be retained.
57. The Government now proposes to retain the existing legislative requirements for combined authorities and economic prosperity boards that wish to change its area – through a local authority joining or leaving - or the dissolution of the combined authority or economic prosperity board. For such changes it will still be necessary for the combined authority, economic prosperity board or councils concerned to undertake a governance review and publish a scheme. The Government considers that this strikes a reasonable balance between reducing administrative burdens while retaining safeguards and protections.
58. The provisions which give effect to these changes are in articles 8, 9 10, 11, 17, 18, 19, and 20 of the draft Legislative Reform Order. These:
- a. amend Sections 100 and 111 of the 2009 Act to remove the requirement that a combined authority must undertake a review if it wishes to make a change to the constitution and functions of a combined authority in relation to transport, economic development and regeneration.

- b. insert, as an alternative, Section 101A and 112A to require a considerably less burdensome administrative task – that local authorities that wish to make changes to the constitution, functions or funding must make an application directly to the Secretary of State, to which each of the councils that make up the combined authority area must consent.

Question 4: do you agree that replacing 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?

Chapter 4 – How the proposed legislative changes meet the preconditions for use of a Legislative Reform Order

59. This Chapter describes how the Government considers that the three proposed changes to the 2009 Act in Chapter 3 meet the statutory preconditions required to be met in order for a Legislative Reform Order to be used to make amendments to primary legislation, which are set out in Box 3 in paragraph 31. The three proposed changes are to:

- a. enable councils with non-contiguous boundaries to join or form a combined authority or economic prosperity board
- b. enable a county council to delegate transport functions to a combined authority for part of the county council's area; and
- c. simplify the administrative processes involved in making less significant changes to an existing combined authority or economic prosperity board

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

60. 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

61. 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 Government's intention in proposing these legislative changes is to give effect to its policy of localism, supporting councils to come forward with a proposal for the establishment of a combined authority or economic prosperity board across their functional economic area. The Government considers that the proposed legislative changes are proportionate to the policy aim, as they remove 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.

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

62. The proposed legislative changes provide greater flexibility for local authorities to request that a combined authority or economic prosperity is established. The Secretary of State's existing duties to a) consider that 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 Government considers that the combination of these ensures that the public interest interests of persons adversely affected are taken into account.
63. Additionally, the set of amendments under proposal 1 – which enable councils 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 what impact the creation of the proposed combined authority or economic prosperity board would have on the authorities neighbouring the proposed combined authority or economic prosperity board. The Government considers that these measures, together with the continued need for Parliament to approve the Orders, provide sufficient protection of the interests of any persons adversely affected.

Precondition 4: The provision does not remove any necessary protection

64. The Government 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 for 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.

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

65. The Government 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 councils to enter into such partnerships. The Government has also stated that as a matter of policy that councils can also leave such partnerships, if they wish in the future.

Precondition 6: The provision is not constitutionally significant

66. The Government 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.

Question 5. Do you agree that the proposed changes meet the preconditions for use of a Legislative Reform Order as set out above, in particular:

- **Do you have views regarding the expected benefits of the proposals as identified in Chapter 3 of this consultation?**
- **Is there any empirical evidence that you are aware of that supports the need for these reforms?, please provide details**
- **Are there any non-legislative means that would satisfactorily remedy the difficulty which the proposals intend to address?**
- **Are the proposals put proportionate to the policy objective?**
- **Do the proposals taken as a whole strike a fair balance between the public interest and any person adversely affected by it?**
- **Do the proposals remove any necessary protection?**
- **Do the proposals prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise? If so, please provide details.**

Chapter 5 – Other proposed changes to the legislation relating to combined authorities and economic prosperity boards

67. This Chapter considers other proposals to combined authorities' and economic prosperity boards' legislation either proposed by the Government in the earlier consultation or suggested by respondents to the consultation.

Proposal to legislate to require combined authorities and economic prosperity boards to establish overview and scrutiny committees

68. The fifth proposal in the earlier consultation was to legislate to require combined authorities and economic prosperity boards to establish at least one overview and scrutiny committee which follow good practice, that is the Chairman not being a member of the majority party, having membership which reflects the political representation of the councils involved, and with regards to its functions.

69. Fifty two respondents to the consultation commented on this proposal, of whom 30 (58%) agreed that some of these requirements should be placed in legislation. Few respondents objected to the proposed requirement for combined authorities and economic prosperity boards to have overview and scrutiny committees that follow the good practice in terms of chair, political balance of members, and functions. However, many felt that legislation was not necessary to achieve this, and legislating requirements around political balance of members or political persuasion of the Chairman could lead to unintended consequences.

The proposal

70. The Government considers that requiring combined authorities and economic prosperity boards to establish one or more overview and scrutiny committee as is an important mechanism for holding to account the decision making members. However, the Government has considered the concerns which were voiced during the consultation and refined proposal. The Government also considers that it is not possible to make such requirements through a Legislative Reform Order as the proposals do not remove legislative burdens.

71. The Government proposes to **lay an order which requires combined authorities and economic prosperity boards to establish one or more overview and scrutiny committee**, chaired by someone who is not a member of the majority political party. The overview and scrutiny committee would be able to influence future policy as well as hold to account the decision making forum for past decisions and would be required to have regard to any guidance issued. The Government believes it is vital that such bodies are accompanied by thorough and robust scrutiny given their members are not directly elected.

Other changes proposed by respondents to the consultation

72. The Government received suggestions for a number of further amendments to the legislation. The most common proposals were that the legislation should enable combined authorities and economic prosperity boards to undertake additional functions not related to transport or economic development such as waste management; enable a council to be a constituent (that is a full) member of more than one combined authority or economic prosperity board; and enable London Boroughs to form combined authorities or economic prosperity boards. Other proposals included allowing councils to set up combined authorities locally, without any role for Government and Parliament; enabling combined authorities to develop local funding mechanisms, and formally recognising the role of local enterprise partnerships.
73. The Government does not intend to make any of these suggested amendments through this Legislative Reform Order. The purpose of changing this legislation is to provide additional flexibility for councils in how they can collaborate through the mechanism of establishing a combined authority or economic prosperity board, not to expand on the functions of a combined authority by taking powers from councils, nor creating an additional tier of unelected (regional) government. Combined authorities should have a tightly focused strategic remit, and the Government would resist 'function creep' and centralisation of power from councils to such higher bodies. Instead, localism should involve devolving power down to the lowest appropriate level.
74. Councils already have powers to create joint committees and pool functions, without asking for permission from central government. In London, in addition, there is already an upper-tier of local government in the form of the London Mayor and Assembly, as well as the cross-borough body of London Councils. The Government does not see the case for introducing another tier of governance. The Tri-Borough initiative in London is a practical example of how joint working can already take place.

Chapter 6 – Summary of questions and next steps

Summary of questions

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?

Question 2: do you agree that the proposed safeguards are necessary and sufficient? Why?

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?

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?

Question 5. Do you agree that the three proposed changes meet the preconditions for use of a Legislative Reform Order as set out above, in particular:

- Do you have views regarding the expected benefits of the proposals as identified in Chapter 3 of this consultation?
- Is there any empirical evidence that you are aware of that supports the need for these reforms?, please provide details
- Are there any non-legislative means that would satisfactorily remedy the difficulty which the proposals intend to address?
- Are the proposals put proportionate to the policy objective?
- Do the proposals taken as a whole strike a fair balance between the public interest and any person adversely affected by it?
- Do the proposals remove any necessary protection?
- Do the proposals prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise? If so, please provide details.

Next Steps

75. Depending on the outcome of this consultation, it is envisaged that three of the changes proposed in this document may be made via a Legislative Reform Order. If the Government decides to take this approach, it will lay the draft Legislative Reform Order before Parliament. The Order will be scrutinised by both Houses of Parliament – initially by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords.
76. When the Minister lays proposals before Parliament you are welcome to submit views to the Scrutiny Committees. In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence. The Committees may invite oral or written evidence to help its consideration. Written submission should be concise and focus on one or more of the preconditions that Legislative Reform Orders need to meet, as set out in section 3 of the Legislative Regulatory Reform Act 2006.
77. The Scrutiny Committees appointed to scrutinise Legislative Reform Orders can be contacted at:
- Regulatory Reform Committee
House of Commons
17 Millbank
London SW1P 3JA
Tel: 020 7219 2830
Mail to: regrefcom@parliament.uk
- Delegated Powers and Regulatory Reform Committee
House of Lords
London SW1A 0PW
Tel: 020 7219 3103
Mail to: DPRR@parliament.uk
- Copies of the Committees' reports are available on the Parliament website.
78. The secondary legislation for the overview and scrutiny committee will be made in due course.

2014 No. 0000

REGULATORY REFORM, ENGLAND

The Legislative Reform (Combined Authorities and Economic Prosperity Boards) (England) Order 2014

Made - - - - - ***

Laid before Parliament ***

Coming into force - - - ***

The Secretary of State for Communities and Local Government makes the following Order in exercise of the powers conferred by section 1 of the Legislative and Regulatory Reform Act 2006 (a).

For the purposes of section 3(1) of that Act, he considers, where relevant, that the conditions under section 3(2) are satisfied.

He has consulted in accordance with section 13(1) [and (2)] of that Act [(save to the extent covered by section 13(3) and (4) of that Act)].

He laid a draft Order and an explanatory document before Parliament in accordance with section 14(1) of that Act.

Pursuant to section 15 of that Act, the affirmative resolution procedure (within the meaning of Part 1 of that Act) applies in relation to the making of the Order.

In accordance with section 17(2) of that Act, the draft has been approved by resolution of each House of Parliament after the expiry of the 40-day period referred to in that provision.

Citation, extent and commencement

1. This order—

- (a) may be cited as the Legislative Reform (Combined Authorities and Economic Prosperity Boards) Order 2014;
- (b) extends to England and Wales only; and
- (c) comes into force on the day after the day on which it is made.

Amendments to the Local Democracy, Economic Development and Construction Act 2009

2. The Local Democracy, Economic Development and Construction Act 2009 is amended as set out in the following articles.

3.—(1) Section 88 (EPBs and their areas) is amended as follows.

(2) In subsection (1), for “meets the following conditions” substitute—

“(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.”.

(3) After subsection (6) insert—

“(6A) Condition F is that the area is one in which local authorities 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.”

4. In section 91(1) (exercise of local authority functions), after “an area” insert “all or part of which is”.

5. In section 95(2) (changes to boundaries of an EPB’s area), for paragraph (a) substitute—

“(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”.

6. In section 98(3) (preparation and publication of a scheme: new EPB), for paragraph (c) substitute—

“(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.”.

7. In section 99 (requirements in connection with establishment of EPB), after subsection (4) insert—

“(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 a local authority area that is next to any part of the proposed EPB area.”.

8.—(1) Section 100 (review by authorities: existing EPB) is amended as follows.

(2) In subsection (1), for “one or more EPB matters” substitute—

“—

(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.”

(3) Omit subsection (3).

9.—(1) Section 101 (preparation and publication of scheme: existing EPB) is amended as follows.

(2) In subsection (1), for “any one or more of sections 89, 91, 92, 95 and 96” substitute “section 95 or 96”.

(3) In subsection (2), omit “or powers”.

10. After section 101 insert—

“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.”

11.—(1) Section 102 (Requirements in connection with changes to existing EPB arrangements) is amended as follows.

(2) In subsection (1), after “section 101” insert “, or an application submitted under section 101A (as the case may be).”.

(3) In subsection (2)(a), after the words “authorities mentioned in section 100(2)” insert “or section 101A(2) (as the case may be).”.

(4) After subsection (3) insert—

“(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 a local authority area that is next to any part of the proposed EPB area.”.

12.—(1) Section 103 (Combined authorities and their areas) is amended as follows—

(2) In subsection (1), for “meets the following conditions” substitute—

“—

- (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.”.

(3) After subsection (6) insert—

“(6A) Condition F is that the area is one in which local authorities 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.”.

13. In section 104 (constitution and functions: transport), after subsection (2) insert—

“(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.”.

14.—(1) In section 106 (Changes to boundaries of a combined authority's area), for subsection (2)(a) substitute—

“(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”.

15. In section 109 (preparation and publication of scheme: new combined authority), for subsection (3)(c) substitute—

“(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.”.

16. In section 110 (Requirements in connection with the establishment of combined authority) after subsection (4) insert—

“(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 a local authority area that is next to any part of the proposed combined authority area.”.

17.—(1) Section 111 (review by authorities: existing EPB) is amended as follows.

(2) In subsection (1), for “one or more EPB matters” substitute—

“—

- (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.”.

(3) Omit subsection (3).

18.—(1) Section 112 (preparation and publication of scheme: existing EPB) is amended as follows.

(2) In subsection (1), for “any one or more of sections 104 to 107” substitute “section 106 or 107”.

(3) In subsection (2), omit “or powers”.

19. After section 112 insert—

“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”.

20.—(1) Section 113 (Requirements in connection with changes to existing combined arrangements) is amended as follows.

(2) In subsection (1), after “section 112” insert “, or an application submitted under section 112A (as the case may be)”.

(3) In subsection (2)(a), after the words “authorities mentioned in section 111(2)” insert “or section 112A(2) (as the case may be)”.

(4) After subsection (3) insert—

“(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 a local authority area that is next to any part of the proposed combined authority area.”.

Signatory text

Address
Date

Name
Parliamentary Under Secretary of State
Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Order)

The Order is made under the provisions of the Legislative and Regulatory Reform Act 2006 (c. 51) to reduce and remove burdens on local authorities wishing to set up a combined authority or economic prosperity board. More specifically it reduces the following obstacles to efficiency, productivity or profitability and administrative inconveniences:

- the requirement for a combined authority or economic prosperity board to cover a contiguous area;
- the requirement that all district council areas within a county council area must be included in the area of the combined authority for the county council to be able to delegate its transport function to the combined authority; and
- by simplifying the process required for making changes to the constitution, functions and funding of existing combined authorities and economic prosperity boards.