

**THE YORK AND NORTH YORKSHIRE COMBINED AUTHORITY ORDER 2023**  
**REPORT UNDER SECTION 105B OF THE LOCAL DEMOCRACY, ECONOMIC**  
**DEVELOPMENT AND CONSTRUCTION ACT 2009**

**About this report**

Section 105B of the Local Democracy, Economic Development and Construction Act 2009 (“the 2009 Act”), inserted by section 7 of the Cities and Local Government Devolution Act 2016, sets out the procedure for making orders under section 105A of the 2009 Act which makes provision for a combined authority to exercise functions exercised by a public authority. Section 105B(9) provides that at the same time as laying a draft of a statutory instrument containing an order under section 105A before Parliament, the Secretary of State must lay before Parliament a report explaining the effect of the order and why the Secretary of State considers it appropriate to make the order.

This report accompanies The York and North Yorkshire Combined Authority Order 2023 (“the Order”) which is to be made, subject to Parliament’s approval, under provisions within the 2009 Act, including section 105A.

**1. Description of the Combined Authority**

- 1.1. The York and North Yorkshire Combined Authority (“YNYCA”) is to be established by this Order. The Combined Authority’s area comprises the local government areas of the City of York, and North Yorkshire, and the councils for these areas are to be constituent councils of the Combined Authority.
- 1.2. A Devolution Deal – an agreement with Government to establish a Mayor and devolve a range of powers and functions to a mayoral combined authority – was agreed between the councils of York and North Yorkshire and Government on 1 August 2022. This includes the conferral of a number of local authority and public authority functions on to the new YNYCA.
- 1.3. This Order establishes the position of elected Mayor for York and North Yorkshire, who will also take on the functions of a Police, Fire and Crime Commissioner (PFCC); the separate office of the North Yorkshire PFCC is to be abolished. It provides that the first election to this position will take place on 2 May 2024 and subsequent elections will take place on the ordinary day of election in every fourth year thereafter. It also provides that the Mayor will take office on the fourth day after the election for the return of the Mayor. For 2024 as this day is a bank holiday the Mayor will take office, and powers will be conferred, on the day after, 7 May 2024.
- 1.4. The provisions in this Order confer on the YNYCA functions agreed in the Devolution Deal and make appropriate constitutional arrangements. Some functions are specified to be exercisable by the Mayor personally (“the mayoral functions”) and others by the YNYCA collectively (“the non-mayoral functions”). The non-mayoral YNYCA functions will come into force the day after the day on which the Order is made. Both

PFCC and non-PFCC mayoral functions will come into force on 7 May 2024, the day on which the Mayor takes office.

1.5. Prior to the Secretary of State seeking Parliamentary approval to this Order, the City of York and North Yorkshire councils prepared a governance review and scheme which contained its proposals for the Order; the councils undertook a public consultation on the proposals contained in the scheme and submitted a summary of consultation responses to the Secretary of State. The Secretary of State has had regard to the councils' governance review, scheme, consultation and summary of responses to the consultation when deciding to seek Parliamentary approval to the Order. The City of York Council and North Yorkshire Council have both consented to the making of this Order.

## **2. Conferral on YNYCA of public authority functions under section 105A of the 2009 Act (Other public authority functions)**

2.1. Section 105A(1)(a) of the 2009 Act (other public authority functions) empowers the Secretary of State by order to make provision for a function of a public authority that is exercisable in relation to a combined authority's area to be a function of the combined authority.

2.2. Section 105A(1)(b) of the 2009 Act further provides that the Secretary of State may by order make provision for conferring on a combined authority in relation to its area a function corresponding to a function that a public authority has in relation to another area.

2.3. Section 105A(2)(a) of the 2009 Act provides that an order may include further provision about the exercise of the function, including provision for the function to be exercisable by the public authority or combined authority subject to conditions or limitations specified in the order.

2.4. Section 105A(3) of the 2009 Act provides that the provision for the exercise of the function that may be included in an order under section 105A(1)(a) may include, in particular, provision for the function to be exercisable by the combined authority concurrently with the public authority.

2.5. Section 114 of the 2009 Act empowers the Secretary of State by order to make incidental, consequential, transitional or supplementary provision for the purposes of, or in consequence of, an order under Part 6 of that Act or for giving full effect to such an order.

2.6. Section 117(5) of the 2009 Act provides that an order under Part 6 of the 2009 Act may include provision amending, applying (with or without modifications), dis-applying, repealing or revoking any enactment whenever passed or made. These powers have been used to modify the effect of the relevant provisions in the Housing and Regeneration Act 2008 and the Localism Act 2011 for the purpose of conferring the relevant public authority functions on the combined authority using section 105A powers.

### **3. Consultation**

- 3.1. The City of York and North Yorkshire councils undertook a consultation on the proposals reflected in their scheme and associated governance review for eight weeks between 21 October and 16 December 2022. The consultation was led by each council in relation to their local authority area, supported by the York and North Yorkshire Local Enterprise Partnership (LEP).
- 3.2. The communications plan to promote the consultation, developed in partnership between the councils and LEP included: a dedicated website including access to key documents and FAQs; 35 face to face engagement events across the region, engagement in public places and at business events; print, radio and digital advertising, and use of social media channels; and direct communication with key stakeholders encouraging response to the consultation. Following this, a summary of the consultation responses compiled by the councils in York and North Yorkshire was submitted to the Secretary of State in March 2023. A report on the consultation outcomes prepared by the councils in York and North Yorkshire has also been made publicly available<sup>1</sup>.
- 3.3. The Secretary of State has had regard to that summary of consultation responses when deciding the provisions to include in the Order. In accordance with requirements at section 110 of the 2009 Act, the Secretary of State has also reviewed the consultation, and is of the view that no further consultation is necessary. The Secretary of State is satisfied that the consultation was sufficient in terms of its length (eight weeks); the mechanisms used (including online, stakeholder submissions and engagement sessions); the promotional activity (including media engagement and social media platforms with hard copies of the consultation available on request); and the summary, which included robust analysis.

### **4. Effect of the order; considerations informing the Secretary of State's decision**

#### **4.1. *Power to pay grant***

- 4.1.1. The Government committed in the Devolution Deal to giving the Mayor for York and North Yorkshire the responsibility for a devolved and consolidated integrated local transport budget for the area of York and North Yorkshire, consisting initially of the local highways maintenance funding (pothole and highways maintenance block funding) and integrated transport block. These will be paid to YNYCA supported by agreements between the Government and YNYCA; and decisions will be made by the Mayor. It also committed to consider the making of relevant regulations to facilitate the transfer of bus functions and funding through the Bus Service Operator Grant to the Mayor.

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<sup>1</sup> <https://democracy.york.gov.uk/documents/s165431/Annex%201%20-%202240%20YNY%20Potential%20Devolution%20Deal%20Consultation%20Outputs%20Collated%20Report%20V2.pdf>

- 4.1.2. The City of York and North Yorkshire councils set out in their scheme a proposal for the YNYCA to be able to exercise the functions of a Minister of the Crown contained in Section 31 of the Local Government Act 2003, which it would intend to use to pay grants to the constituent councils for exercising highway functions. The constituent councils requested these functions to be exercisable by the Mayor, concurrently with a Minister of the Crown. They have also requested that the Combined Authority be granted powers under section 154 of the Transport Act 2000 to make grants to bus operators.
- 4.1.3. The York and North Yorkshire devolution deal agreed on 1 August 2022 stated that the deal will bring new powers to improve and better integrate local transport, including the ability to introduce bus franchising, control of appropriate local transport functions e.g., local transport plans, and control of a Key Route Network. The proposed deal will give the Mayor and YNYCA responsibilities for investment in transport infrastructure and services, including public transport. This will help develop an effective and efficient transport system for the long term and provide greater certainty over future funding for transport improvements. The consultation asked participants whether they support or opposed the proposal to devolve significant transport responsibilities and functions to the Mayor and YNYCA as set out in the scheme. Of the 1,538 who responded to this question, the majority (61%) supported or strongly supported the proposal, while just under a quarter (24%) opposed or strongly opposed the proposal. Key themes from supportive comments made reference to:
- the current transport system not working;
  - the proposals providing an opportunity to rethink and refresh the approach being taken;
  - a local focus on transport solutions being seen as more effective at meeting local need; and
  - new powers being seen as essential in achieving net zero goals.
- 4.1.4. There were 269 participants that provided comments indicating they opposed the new transport powers included in the proposal. Comments received in disagreement with the transport proposals included:
- concern that bus franchising does not work;
  - the scale of the Mayoral Combined Authority is too big to reflect the diversity of North Yorkshire; and
  - the available funding in the proposals was not sufficient to address the required changes to make the new transport powers effective.
- 4.1.5. Having had regard to the governance review, scheme and the summary of consultation responses provided by the councils, the Secretary of State considers that the conferral of the function of the Secretary of State to pay grants to local authorities and the power to make grants to bus operators will lead to an improvement in the exercise of these statutory functions, and hence is appropriate.

4.1.6. Part 7 of this Order confers onto the Combined Authority a power, to be exercisable by the Mayor, to pay grants to constituent councils, using the powers under section 31 of the Local Government Act 2003, mirroring powers held by Ministers. It also confers onto the Combined Authority a power, to be exercisable by the Mayor, to exercise the functions under section 154(1) of the Transport Act 2000 that the Secretary of State has in relation to England – to pay grants to bus service operators, for eligible bus services operating within the YNYCA area.

4.1.7. For the purposes of this Order, the power is being conferred to allow the Mayor to be able to pay funds to the constituent councils for functions for which they are the highways authority, and this is exercisable with consideration given to the conditions which are contained within the Order, these being:

- the Mayor must have regard to the desirability of ensuring that the council has sufficient funds to facilitate the effective discharge of those functions; and
- the Mayor must take into account any other sources of funding available to the council for expenditure incurred or to be incurred in relation to the exercise of its highways functions.

#### 4.2. *Housing and planning*

4.2.1. Chapter 1 of the Housing and Regeneration Act 2008 (“the 2008 Act”) establishes the Homes and Communities Agency (HCA)<sup>2</sup>, and provides that the HCA will operate across England, with a view to meeting the needs of people in England, by:

- improving the supply and quality of housing;
- securing the regeneration or development of land or infrastructure;
- supporting in other ways the creation, regeneration, or development of communities or their continued well-being; and
- contributing to the achievement of sustainable development and good design.

4.2.2. Chapter 2 of the 2008 Act gives the HCA powers:

- to provide housing or other land;
- for regeneration;
- for the development or effective use of land; and
- in relation to infrastructure.

4.2.3. The Government committed in the Devolution Deal that the YNYCA would have broad powers to acquire and dispose of land to build houses, commercial space and infrastructure, for growth and regeneration. They will be able to invest to deliver housing for the area. Some of these would be mayoral powers.

4.2.4. The governance review and scheme proposed that the YNYCA should be granted devolution of the objectives and functions of Homes England under section 2(1) of the Housing and Regeneration Act 2008 (to be exercised only in respect of the Combined Authority area) and that specified powers contained in the 2008 Act would be conferred. These functions would be non-mayoral with the exception of the specific

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<sup>2</sup> On 11 January 2018 the HCA’s non-regulation arm adopted its new trading name, Homes England.

Homes England compulsory purchase powers in section 9 of the 2008 Act which would be exercisable by the Mayor with the consent of the lead member(s) for the constituent councils whose area includes the area(s) of land to be compulsorily acquired. This also applies to the exercise of the function in section 17 of the Housing Act 1985 (insofar as that function is exercised for the compulsory purchase of land).

4.2.5. The proposals to confer certain functions of the HCA to the YNYCA were supported by the majority of respondents in the consultation, receiving 850 responses in support out of 1,524 responses to the relevant question (406 opposed). Supportive comments referred to:

- the proposals for brownfield development and hope that the new mayoral powers will result in improved social housing conditions;
- support based on the need for affordable and adequate housing;
- the linked issue of regulating the second/holiday home market and an expectation of mayoral powers being used for this.

4.2.6. Of the 295 respondents who provided comments indicating their opposition to the housing and regeneration proposals, issues raised included:

- environmental and climate change mitigation concerns and infrastructure damage;
- being unconvinced of the need for a Mayor or Mayoral Combined Authority; and
- concerns over the potential erosion of democratic accountability.

4.2.7. Having had regard to the governance review, scheme and the summary of consultation responses, the Secretary of State considers that conferral on the YNYCA of functions corresponding to the land acquisition and disposal functions of the HCA, to be exercised concurrently with Homes England, will lead to an improvement in the exercise of these statutory functions by enabling the YNYCA to improve the supply and quality of housing, secure the regeneration or development of land and infrastructure and support the creation, regeneration and development of communities and their well-being, and hence is appropriate.

4.2.8. Part 3 of this Order provides that the public authority functions of the HCA in sections 5 to 12 and section 19 of the 2008 Act, including powers of land acquisition and disposal, are conferred on the YNYCA. The compulsory purchase powers are to be exercised by the Mayor, with the consent of the Lead Member of the Combined Authority appointed by the constituent council(s) for the area(s) of land to be compulsorily acquired and the Secretary of State. All HCA powers are to be exercised to improve the supply and quality of housing, to secure regeneration or development of land or infrastructure, and to support the creation, regeneration or development of communities in the area.

#### 4.3. *Mayoral Development Corporations (MDCs)*

4.3.1. The Devolution Deal includes that the Mayor will have the power to designate a mayoral development area and to create mayoral development corporations, which will support delivery on strategic sites in York and North Yorkshire.

- 4.3.2. The deal also set out that this power could be exercised only with the consent of the Combined Authority member(s) appointed by the constituent council(s) who represent the area in which the development corporation is to be established, and the consent of the National Park Authority, if relevant.
- 4.3.3. Part 8, Chapter 2 of the Localism Act 2011 (“the 2011 Act”) provides the Mayor of London with powers to designate mayoral development areas leading to the creation of MDCs. These include powers in relation to:
- the designation of mayoral development areas;
  - the exclusion of land from mayoral development areas;
  - the transfer of property etc to mayoral development corporations;
  - the functions in relation to Town and Country Planning;
  - the removal or restriction of planning functions;
  - discretionary relief from non-domestic rates;
  - reviews;
  - the transfers of property, rights and liabilities;
  - dissolution: final steps;
  - guidance by the Mayor; and
  - directions by the Mayor.
- 4.3.4. Schedule 21 to the 2011 Act provides the Mayor of London with functions in relation to mayoral development corporations, including:
- to provide for the membership of mayoral development corporations;
  - for the terms of appointment of members;
  - for staff;
  - for remuneration of members and staff;
  - for committees of mayoral development corporations; and
  - for proceedings and meetings.
- 4.3.5. The City of York and North Yorkshire councils’ consultation addressed MDCs within the overall housing and planning proposal for the York and North Yorkshire area. There were no significant comments of approval or opposition in relation to mayoral development corporations in the consultation. North York Moors National Park Authority supported the powers on the basis that their statutory planning and place making powers were protected; the requirement for National Park Authorities to give consent to mayoral development areas within their boundaries was seen as important.
- 4.3.6. Having had regard to the governance review, scheme and the summary of consultation responses, the Secretary of State considers that it is appropriate to confer functions corresponding to Part 8 of the 2011 Localism Act on the YNYCA to be exercisable by the Mayor, with the consents from the York and North Yorkshire Combined Authority lead member(s) and the North York Moors National Park and the Yorkshire Dales National Park as outlined above; this is contained in Part 4 of this Order. The Secretary of State considers that conferring these functions is appropriate because, together with

other powers of the YNYCA, they will enable the Mayor and Combined Authority to drive development and regeneration across the area.

#### 4.4. *Conclusion*

4.4.1. For the reasons set out above, the Secretary of State considers it appropriate to confer the functions on the YNYCA for power to pay grants for transport purposes, on housing and planning, and mayoral development corporations.

#### **5. Material considered by the Secretary of State**

- Governance Review submitted by the City of York and North Yorkshire councils;
- Scheme submitted by the City of York and North Yorkshire councils;
- Summary of consultation responses and outputs report submitted by the City of York and North Yorkshire councils; and
- Online stakeholder responses and stakeholder letters submitted by the City of York and North Yorkshire councils.