



Department for  
Communities and  
Local Government

# Proposal to amend legislation relating to combined authorities and economic prosperity boards

Consultation

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# Chapter 1- The Consultation

## Why we are consulting

1. In its White Paper response to the Heseltine review<sup>1</sup>, the Government set out a “view of a future where local authorities put economic development at the heart of all they do; collaborating, including with private sector partners across a functional economic area.<sup>2</sup>” Such collaboration by councils is an important priority for Government.
2. In its guidance around Growth Deals, the Government has recognised that councils establishing combined authorities under the Local Democracy, Economic Development, and Construction Act 2009 (“the Act”) can be an effective way of collaborating over a functional economic area. Through a combined authority councils across the functional economic area can streamline and integrate their joint working on economic development and transport, increasing the transparency and accountability of their joint decision taking. Similarly, establishing under the Act an economic prosperity board, which has responsibility for economic development but not transport, can also be an effective, transparent, and accountable means of collaboration.
3. Accordingly, as the Government has explained to Parliament in the recent debates on the Orders providing for the establishment of four combined authorities<sup>3</sup> in April 2014, where the local choice is for collaboration through a combined authority, and if the Secretary of State considers that the statutory conditions have been met, he will invite Parliament to approve the necessary Order for the establishment of the proposed combined authority. The same approach applies for economic prosperity boards. In short, the opportunity to establish a combined authority or economic prosperity board is an important element of the Government’s policies for growth.

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<sup>1</sup> Government’s response to the Heseltine Review, HM Treasury  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/221902/PU1465\\_Govt\\_response\\_to\\_Heseltine\\_review.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/221902/PU1465_Govt_response_to_Heseltine_review.pdf)

<sup>2</sup> Chapter 2.42, page 47, Government’s Response to the Heseltine Review

<sup>3</sup> These are combined authorities in the four areas of Durham, Northumberland, and Tyne and Wear; Greater Merseyside; South Yorkshire; and West Yorkshire.

**The statutory conditions set out in the Local Democracy, Economic Development and Construction Act 2009 (the Act)**

**The Secretary of State must consider whether establishing a combined authority or economic prosperity board 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.

**Only c) and d) apply to the establishment of an economic prosperity board.**

**Further requirements of the Act**

**The 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.**

4. However, the existing legislation does not enable the policy as described above to be brought fully into effect. There are circumstances where councils in a functional economic area might wish to collaborate through the mechanism of a combined authority or economic prosperity board, and which would meet the statutory tests, but where the legislation would not allow this to happen. For example where some of the councils in a functional economic area have established a combined authority and another such council wishes to collaborate with them and wants to do so by joining the combined authority, if this latter council does not have a contiguous boundary with at least one of the councils in the combined authority it cannot, under the provisions of the Act, join the combined authority even though the statutory tests above would be met. Accordingly, the Government committed in its response to the Heseltine review to seek at the next available opportunity, the legislative provision necessary to ensure that the legislation is capable of giving full effect to the Government's policies on combined authorities and economic prosperity boards.
5. This consultation paper invites comment on certain proposed changes to the primary legislation regarding combined authorities and economic prosperity boards, changes which the Government believes would fulfil its commitment to amend legislation as described above. The paper also invites views as to whether any further changes are necessary to deliver this aim.
6. These proposed changes to the legislation are as follows:
  - a. To allow councils with non-contiguous boundaries to join or form combined authorities or economic prosperity boards.

- b. To allow county councils to become a member of a combined authority or economic prosperity board with respect to part of its area, that area being the same area as that of those district councils that wish to join or form an economic prosperity board or combined authority.
- c. To allow combined authorities and economic prosperity boards to exercise their functions on a patchwork basis across their area.
- d. To simplify the process for amending the functions, changing the boundaries or dissolving a combined authority.
- e. To require combined authorities and economic prosperity boards to have one or more overview and scrutiny committees constituted with a membership reflecting the political balance of the councils concerned.

## Who are we consulting?

7. We are consulting the following groups of people:
  - a. The Local Government Association
  - b. All existing combined authorities
  - c. All principal Local Authorities
  - d. All Local Enterprise Partnerships
  - e. The Confederation of British Industry
  - f. The Institute of Directors

This paper is also available at <https://www.gov.uk/government/consultations/proposals-to-amend-legislation-relating-to-combined-authorities-and-economic-prosperity-boards> and we welcome the views of any individual who wishes to comment.

## How to respond

8. Your response must be received by 24<sup>th</sup> June 2014. It can be sent by email to [collaborate@communities.gsi.gov.uk](mailto:collaborate@communities.gsi.gov.uk) or in writing to:

Mariam Razak  
Department for Communities and Local Government  
Zone 3/J1 Eland House  
Bressenden Place  
London, SW1E 5DU

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

## Confidentiality and data protection

9. 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.

10. 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.
11. 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.

# Chapter 2

## Proposals relating to combined authority and economic prosperity board legislation

12. This chapter looks at five situations likely to arise when the Government's policies on combined authorities and economic prosperity boards are being pursued, but for which the existing provisions of the Act do not, or do not adequately, cater. The chapter considers proposed changes to the provisions of the Act on combined authorities and economic prosperity boards – that is to Part 6 of the Act – so that the legislation would adequately provide for these situations. Views are invited on these proposed changes, all requiring one or more amendments to Part 6 of the Act. Views are also invited on whether any other changes to the existing legislative provisions would be necessary in order for Part 6 of the Act to provide for the Government's policies on combined authorities and economic prosperity boards to be fully given effect. Finally, views are invited on a proposal to specify further the overview and scrutiny arrangements that combined authorities should follow.

### **Proposal 1 - To enable councils with non-contiguous boundaries to form or join combined authorities or economic prosperity boards.**

13. This change would enable local authorities that are in the same functional economic area but which do not have contiguous boundaries, to form or join a combined authority or economic prosperity board. This change would remove a significant barrier to collaboration across a functional economic area – the area over which the local economy and its key markets operate – and which will not necessarily align with administrative boundaries. It would be important to ensure that that no council is forced into joining a combined authority or economic prosperity board. Equally, it would be important that there are safeguards against adverse effects from the establishment of the combined authority or economic prosperity board which may fall on councils which are not members of the combined authority or economic prosperity board, either by choice or because they are not in the functional economic area.

14. The Act currently requires that no part of the combined authority or economic prosperity board area is separated from the rest of it by one or more local government areas that are not within the area. Practically, this has the effect of requiring that the local authorities that make up the combined authority or economic prosperity board area have contiguous boundaries. The legislation also requires that there is no local government area that is surrounded by local government areas that are within the area, but that is not itself within the area (that is, forming a doughnut shape).

15. By removing these requirements local authorities would be able to collaborate and partner across their functional economic areas, and build their own collaborative structures to increase efficiency and enable growth and productivity to be maximised in their area. However, the Government recognises the potential this gives to increase the adverse impacts on other areas not within the combined authority or economic prosperity board which we consider would need to be mitigated and safeguarded.



**Question 1: Do you agree with proposal 1?**

**a) What benefits, if any, do you see from making the change?**

**b) What risks, if any, do you see from the change and how can these be mitigated?**

**Proposal 2 - To 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**

16. This change would enable a county council in a two-tier area to become a member of a combined authority or economic prosperity board in relation to a defined part of its area. The defined part of the county council would be the same area as that of the district councils that also wish to be members of the combined authority or economic prosperity board. This would reduce barriers to the formation of combined authorities and economic prosperity boards by allowing a county council to become a member of a combined authority or economic prosperity board with respect to part of its area, without requiring that each of the district authorities within the county area are members.

17. In its White Paper response to the Heseltine review, the Government set out that it envisages a future in which combined authorities and economic prosperity boards can be formed across functional economic areas or a Local Enterprise Partnership area. However, as many Local Enterprise Partnerships and functional economic areas do not align with county boundaries, the Act prevents this vision from becoming a reality, and as such, can be a barrier to effective collaboration. By removing this barrier, a county will be able to become a member of a combined authority or economic prosperity board for a part of its area, creating opportunities for greater collaboration and increased economic development.

18. Where councils come forward with a proposal for a combined authority or economic prosperity board for their area that consists of a part of a county council's area, it will be important for the areas concerned to demonstrate how this will impact upon the remaining area of the county council, and how the remaining area would operate the functions efficiently and effectively. This would inform the Secretary of State's consideration of the extent to which effective and convenient government is secured, as required by the Act.

**Question 2: Do you agree with proposal 2?**

**a) What benefits, if any, do you see from making the change?**

**b) What risks, if any, do you see from the change and how can these be mitigated?**

## Proposal 3 - To enable a combined authority or economic prosperity board to deliver different services in different parts of its area

19. This change to the Act would allow a combined authority or economic prosperity board to exercise different functions in different parts of its area. The current legislation requires a combined authority to deliver economic development, regeneration and transport functions across the whole of its area; and requires economic prosperity boards to exercise economic development and regeneration functions across the whole of its area.
20. In a two-tier area, responsibility for functions relating to transport, economic development and regeneration are split between the district councils and the county council. Under current legislation, a combined authority must hold the same responsibilities relating to transport, regeneration and economic development across the whole of its area, and cannot provide transport services for one district area, and not another. This change would remove this inflexibility, by allowing a combined authority to deliver its functions on a patchwork basis, so that if a district council chooses to join a combined authority but the county does not, the county could retain control of transport functions and any other functions held at county level, and the combined authority would only take over functions relating to economic development and regeneration which are held at district level. Similarly, where a county in a two-tier area wishes to join a combined authority or economic prosperity board, but one or more of the district councils that sit within its area do not, the combined authority would only assume responsibility for those transport, economic development and regeneration functions that are held at county level with respect to the district areas that do not wish to join.
21. This change would remove inflexibilities in the legislation which prevent councils from realising the benefits of a combined authority or economic prosperity board through increasing efficiency, productivity and profitability across their functional economic area or local enterprise partnership area.

### **Question 3: Do you agree with proposal 3?**

- a) **What benefits, if any, do you see from making the change?**
- b) **What risks, if any, do you see from the change and how can these be mitigated?**

## Proposal 4 - To simplify the administrative processes involved in making changes to an existing combined authority or economic prosperity board

22. We are also seeking views on the processes currently in place for making changes to an existing combined authority or economic prosperity board. Simplifying these processes could reduce the administrative inconvenience of some of the procedural

requirements involved in making changes to existing combined authority or economic prosperity board schemes.

23. Before a combined authority or economic prosperity board can be established, the Act requires councils to carry out a governance review, and if they find that that the formation of a combined authority or economic prosperity board would be likely to meet the statutory conditions as set out in the Act, prepare and subsequently publish a scheme. The Government undertakes a statutory consultation which informs the Secretary of State's consideration of whether the establishment of the combined authority or economic prosperity board would be likely to meet the statutory conditions set out in the Act (see page 5). A draft Order is then laid and Parliamentary approval is required before the Order can be made, establishing the combined authority or economic prosperity board. The same process is required before changes can be made to combined authority or economic prosperity board, for example, in order to amend the functions, change the boundaries of, or dissolve a combined authority or economic prosperity board.
24. Reducing and simplifying these procedures when modifying an existing combined authority or economic prosperity board could enable more rapid change, and as a result, more effective and convenient government, greater efficiency and economic growth.

**Question 4. Do you agree with proposal 4, and if so what procedural simplifications and changes would you wish to see?**

**a) What benefits do you see arising from such changes?**

**b) What risks, if any, do you see from such changes and how can these be mitigated?**

## **Proposal 5 – clarify scrutiny arrangements in combined authorities and economic prosperity boards**

25. Existing combined authorities and economic prosperity boards have one or more overview and scrutiny committees which are important mechanisms for holding members of a combined authority or economic prosperity board to account. Such overview and scrutiny committees, with members drawn from the constituent and non-constituent councils concerned, have an important role in scrutinising in an open and transparent way, decisions taken or to be taken by the combined authority or economic prosperity board, and considering wider issues of potential concern to the combined authority or economic prosperity board. The outputs of such a scrutiny committee are public reports and recommendations to the combined authority or economic prosperity board, to which the combined authority or economic prosperity board may have regard.
26. Following the establishment of four new combined authorities in April 2014, the Government wrote to the combined authorities setting out guidance on good practice with regards to overview and scrutiny committees. Such good practice recommends

that members of overview and scrutiny committees are drawn from both constituent and non-constituent member authorities, with the aim of achieving political balance across the councils involved and that preferably, the Chairman of an overview and scrutiny committee should not be a member of the majority political party represented in the body's decision making forum. It is also good practice that where the overview and scrutiny committees produce recommendations and reports, these are considered and taken into account by the combined authority or economic prosperity board's decision making forum, so that the committee is able to provide oversight and hold the body to account for past decisions, as well as take an active role in influencing its future policy.

27. Whilst current evidence suggests that existing combined authorities are following this good practice, the Government believes that it would reinforce the confidence all have in the effectiveness and accountability of combined authorities and economic prosperity boards, if the following of this good practice was guaranteed. Accordingly, the Government believes that for the combined authority and economic prosperity board legislation fully to give effect to current Government policies as described above, it should be amended to require that every combined authority or economic prosperity board has one or more overview and scrutiny committees, which would be constituted and operate in accordance with the good practice described above. The Government is proposing to change legislation to ensure this requirement will in future apply to every combined authority and economic prosperity board, including those already established.

**Question 5. Do you agree with this proposal to change legislation?**

## Other proposed changes

28. The aim of the proposed changes is to amend the Act so we can be confident that it will give full effect to the Government's localist policy described above. The proposed changes described in this chapter are those that the Government believes are necessary to achieve this. But we would welcome views on any other changes that may be necessary to give full effect to the Government's policies for combined authority and economic prosperity board.

**Question 6: Do you have any further changes that you would like to see made to combined authority and economic prosperity board legislation, in particular to ensure that current policy as described in this document can be given full effect? If yes, please explain what these are and why you think they are necessary.**

# Summary of questions

**Please answer each question below with respect to combined authorities and/or economic prosperity boards**

**Question 1:** Do you agree with the proposal to enable councils with non-contiguous boundaries to form or join a combined authority or economic prosperity board?

- a) What benefits, if any, do you see from making the change?
- b) What risks, if any, do you see from the change and how can these be mitigated?

**Question 2:** Do you agree with the proposal to 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?

- a) What benefits, if any, do you see from making the change?
- b) What risks, if any, do you see from the change and how can these be mitigated?

**Question 3:** Do you agree with the proposal to enable a combined authority or economic prosperity board to deliver services on a patchwork basis?

- a) What benefits, if any, do you see from making the change?
- b) What risks, if any, do you see from the change and how can these be mitigated?

**Question 4:** Do you agree with the proposal to simplify the administrative processes involved in making changes to an existing combined authority or economic prosperity board?

- a) What benefits, if any, do you see from making the change?
- b) What risks, if any, do you see from the change and how can these be mitigated?

**Question 5.** Do you agree with this proposal to change legislation?

**Question 6:** Do you have any further changes that you would like to see made to combined authority and economic prosperity board legislation, in particular to ensure that current policy as described in this document can be given full effect? If yes, please explain what these are and why you think they are necessary.

# Chapter 3

## Next Steps

29. Following consultation, the Government will consider whether, and if so how, to proceed with seeking to change to the Act. It currently envisages that it may be possible to effect some of the proposed changes through a Legislative Reform Order, subject to satisfactorily completing the procedural requirements and the approval of Parliament. In considering responses, consultees may wish to have regard to this.
30. A Legislative Reform Order is a statutory instrument which can, under the powers of the Legislative and Regulatory Reform Act 2006, amend primary legislation independently of a Parliamentary Bill. A Legislative Reform Order can be used to enact deregulatory provisions, as well as to reduce or remove any burdens to which any person is subject as a result of any legislation. In the context of the Legislative and Regulatory Reform Act 2006, a burden is defined as: a financial cost; an administrative inconvenience; an obstacle to efficiency, productivity or profitability; or a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.
31. If following this policy consultation the Government decides to seek a Legislative Reform Order to effect the changes to the Act, the first step will be a statutory consultation under the Legislative and Regulatory Reform Act 2006 on the proposed Order. Following and subject to that consultation, a draft Legislative Reform Order and explanatory documents would be laid before Parliament for scrutiny by each House through a Committee. Legislative Reform Orders need to be approved by both Houses of Parliament before they can be made. Legislative Reform Orders can take between six and eleven months, depending on the Parliamentary procedure, recess dates and other factors, from the point of the statutory consultation.