

DEVOLUTION

BRIEFING NOTE ON HIGHWAY FUNDING AND TRANSPORT FUNCTIONS

Discussion has been ongoing with HM Government (HMG) concerning two areas where HMG have indicated the proposed draft Order will not reflect the Scheme.

The Issues

Highway Funding

Under the Scheme highway funding is the responsibility of the Combined Authority, not of the Mayor. In every year where the government has allocated the funding to a highway authority (HA) it is passported by the CA to that HA. Where it is not allocated to a HA the CA must ensure it is allocated in such proportions as shall reflect the statutory duties and policy and contractual commitments of each highway authority. In other words the whole funding is allocated although the proportions may need determining. The approval of those spending plans by the CA is made a decision requiring unanimous approval within the CA – i.e any HA has a veto.

HMG's position is that the Order will

- Confer decisions on allocation of highway funding on the Mayor, not the CA
- Require the mayor to have regard in some way to the highway authorities' functions and previous allocations in deciding how to allocate highway funding but not to passport the funding to the HAs.
- Bring the decision of the mayor within the 2/3 veto requiring all 3 highway authorities. They are also prepared to consider strengthening the veto although the detail of this is not currently clear.

The requirement to have regard to the matters referred to in the second bullet point give rise to the potential for a judicial review by the HAs of the mayor's decision if that decision could be characterised as irrational by reference to the terms of the obligation.

Otherwise the only limit on the mayor's discretion would be the exercise of a veto within the CA itself

Transport Functions

HMG are insisting that the Order will confer on the CA, for exercise by the mayor, functions under Parts 4 and 5 of the Transport Act 1985 and Part 2 of the Transport Act 2000. These are essentially as follows

- Production of a Local Transport Plan
- Quality Partnership Schemes
- Quality Contracts Schemes
- Duty to provide local bus information
- Securing provision of passenger transport services
- Service subsidies
- Travel concession schemes
- Grants for facilities and services

These are local authority functions and so this proposal would see a significant conferring of local authority functions on the mayor. It has up to now been a principle for Greater Lincolnshire that devolution does not lead to functions flowing upwards from the local authorities.

The Scheme allocates the Integrated Transport Block to the Mayor and requires him or her to allocate it having regard to the statutory obligations and policy and contractual commitments of the Constituent Councils. It does not transfer local authority functions.

If local authority functions were to transfer they could be conferred in one of two main ways

- For the mayor to have the function instead of the local authorities (i.e complete transfer)
- Concurrent exercise – i.e the mayor could exercise the functions but so could the local authorities.

It is not clear how HMG intends the functions will transfer or what the arrangements will be between the local authorities and the CA after it happens. If the functions pass to the CA to exercise instead of the local authorities there will probably be TUPE transfers of staff as well as issues about IT systems and data.

The Scheme and the Order

The Secretary of State has never been required to follow the Scheme when drafting the Order. He can therefore propose an Order that does not reflect the Scheme or the Governance Review that preceded it. He is, though, subject to certain legal limitations as follows:-

- He has to consider that the making of the Order would be likely to improve the exercise of statutory functions in the area or areas to which it relates
- He must have regard to the Scheme
- He must have regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government.
- He must obtain the consent of the Constituent Councils to those elements of the Order that require consent.

There is nothing in the principle of passing the highway funding to the mayor or the transfer of transport functions which would prevent the Secretary of State complying with the first three bullet points.

Therefore if the Secretary of State determines that he will make an Order containing those provisions the only recourse of the constituent councils is to withhold their consent. If consent is withheld to any element of the Scheme that requires consent, the Secretary of State will not be able to make an Order containing the relevant element.