

Appendix – Differences to note between powers listed in proposal and the draft East Midlands Combined County Authority Regulations 2023

As set out in the main report, there are some differences between the powers listed as proposed to be transferred to either the EMCCA or the Mayor in the Proposal, and the powers as reflected in the Statutory Instrument. The changes are generally minor, although there are relatively numerous changes to the timing and sequencing of transport powers. These are listed below for clarity.

Transport

1. As a result of a change of position on some points by the DfT, there are a number of changes to the provisions in the powers table in relation to concurrency and consent. There is also a change in the specific powers identified in the Regulations in relation to the workplace parking levy:

a. Powers under Part 2 of the Transport Act 2000

The powers table specified that a number of powers within the 2000 Act would be concurrent and continuing whilst others would be concurrent within the transition period or the transition period and for an extended period to 2027. Under the Regulations, there have been the following changes¹ in respect of concurrency:

- S113C-123, 123A-123X, 124-134B, 142-143B and s152-162 (various provisions relating to bus services) are concurrent for the transition period where they were not to be concurrent under the powers table. This means that the Constituent Councils will be able to exercise these powers until such time as they are transferred to the EMCCA under the transition plan.
- S138A-138S (relating to enhanced partnership plans) are concurrent for the transition period only where they were proposed under the powers table to be concurrent for the duration of the transition period and for an extended period to 2027. This means that the Constituent Councils will have a more limited time during which they can exercise these powers prior to the transfer to the EMCCA.
- S163-177 (road user charging) are no longer concurrent and continuing. Instead, Chapters 2 and 3 of Part 3 (sections 178-200 relating to the workplace parking levy, general and supplementary powers) are concurrent and continuing. This is because powers under s163-177 (Chapter 1 of Part 3) are provided for directly in amendments made in the Act.

The powers table also specified powers that should only be exercised with consent. Specifically, it provided that for powers relating to local transport plans (sections 108, 109 and 112), consent of the Constituent Councils would be required until the end of the transition period. This has changed under the Regulations so that consent is not required but the exercise of powers under sections 108-113 require a unanimous vote during the transition period. In practice, this has the same implications as a consenting requirement.

Additionally, the powers table specified that powers under s163-190 (road user charging and workplace parking levy) would require consent under the act. As s163-177 are provided for under the Act directly, these are not subject to consenting arrangements. Importantly, the power for the EMCCA to make a charging scheme under s163(3)(bb) is a power to make it “jointly” with one or more local traffic authorities. As such, the EMCCA will not be able to make a charging scheme absent the agreement of the relevant Constituent Council.

¹ Note the following identified in the powers table which remain consistent:

- s134C-134G and 135 – 138 are concurrent and continuing, consistent with the powers table.
- S139 to 141A are concurrent for the transition period which is consistent with the powers table
- S145 to 150 has been replaced with 145A, 146, and 148 to 150 as concurrent and continuing. This is consistent with the powers table as s145 has been revoked.

b. Powers under Part 4 of the Transport Act 1985

The powers table specified that a number of powers under Part 4 of the 1985 Act would be concurrent and continuing or concurrent for the length of the transition period. Under the regulations, there have been the following changes² in respect of concurrency:

- Powers under s57-62 (passenger transport areas), 85-87 (provisions relating to the creation of passenger transport executives) will be concurrent for the duration of the transition period whilst they were not concurrent in the powers table. This means that the Constituent Councils will be able to exercise these powers until such time as they are transferred to the EMCCA under the transition plan.
- Powers under s80-83 and 84 (duties of passenger transport areas, provisions relating to bus stations, and compensation for loss of employment) will be concurrent for the duration of the transition period whilst they were proposed as concurrent and continuing within the powers table. This means that the Constituent Councils will have a limited time during which they can exercise these powers prior to the transfer to the EMCCA

c. Powers under Part 5 of the Transport Act 1985

The powers table specified that a number of powers under Part 5 of the 1985 Act would be concurrent and continuing or concurrent for the length of the transition period. Under the regulations, there have been the following changes³ in respect of concurrency

- Powers under sections 103-104 (relating to travel concessions) will be concurrent for the duration of the transition period whilst they were not concurrent in the powers table. This means that the Constituent Councils will be able to exercise these powers until such time as they are transferred to the EMCCA under the transition plan.
- Powers under sections 107-109 are identified as concurrent and continuing within the powers table and are not concurrent and continuing in the Regulations. This does not raise concerns as s107 and s109 (in England and Wales) have been repealed and s108 relates to grants for establishment of rural passenger services in Wales and Scotland which is not applicable either for the Constituent Councils or the EMCCA.

Other technical amendments

2. As a result of a change of position on some points by DLUHC there are a small number of technical changes from the provisions in the powers table.
3. The powers table specified that the consent of the local planning authority affected would be required to exercise by the EMCCA of any of the powers in sections 226, 227, 229, 230(1)(a), 232, 233, 236, 238, 239 and 241. In fact, LPA consent is only required to exercise of the compulsory purchase provision in section 226. The other provisions deal predominantly with other dealings in land (i.e. acquisition in the open market, disposal of land, development of land) rather than with planning functions and so it is not necessary for the LPA to consent to the other provisions.
4. The powers table indicated that it would be the EMCCA which had the compulsory purchase power in section 9(2) of the Housing and Regeneration Act 2008, but in fact this is prescribed in the Regulations as a mayoral power. The Regulations provide that as well as the LPA for the area being required to consent to exercise of the power by the Mayor, the Lead Member for the Constituent Council in whose area the compulsory purchase is to take place will also need to consent providing protection for the Constituent Councils. In addition, the EMCCA itself also retains (as referenced above) the compulsory purchase power under section 226 of the Town and Country Planning Act 1990.

² Note that S63-64, 65-71 and 72-79 are concurrent and continuing, consistent with the powers table

³ Note that s88-92, 93-101, 105,106 and 106A are concurrent and continuing, consistent with the powers table

5. Likewise, the compulsory purchase power in section 17(3) of the Housing Act 1985 are prescribed in the Regulations as Mayoral rather than EMCCA powers, with the same inbuilt safeguards.
6. In relation to public health, the power under section 6C of the NHS Act 2006 for the Secretary of State to make Regulations about health which apply to the EMCCA which was set out in the powers table is not applied to the EMCCA under the Regulations. This was following discussion with the Department for Health and Social Care and DLUHC where they explained that the Secretary of State could use equivalent provisions within the Levelling Up and Regeneration Act 2023 if necessary.
7. In addition, a number of powers which have been included in the East Midlands Combined County Authority Regulations 2023 were not specifically referenced in the powers table. These include the power under section 88 of the Local Government Act 1985 (the power to research and collect information), and section 31 of the Local Government Act 2003 (the power make a grant for any purpose) (which was included in the transport section, but in fact is a more general grant making power).