

## Executive Board – 11 February 2025

<b>Subject:</b>	East Midlands Combined County Authority (EMCCA) – approval of draft Adult Educations Functions Regulations 2025
<b>Corporate Director(s)/Director(s):</b>	Nicki Jenkins, Corporate Director of Growth and City Development
<b>Executive Member(s):</b>	Councillor Neghat Khan, Leader of the Council
<b>Report author and contact details:</b>	Beth Brown, Director of Legal and Governance
<b>Other colleagues who have provided input:</b>	
<b>Subject to call-in:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Key Decision:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Criteria for Key Decision:</b>	
<b>(a)</b>	<input type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £750,000 or more taking account of the overall impact of the decision
<b>and/or</b>	
<b>(b)</b>	Significant impact on communities living or working in two or more wards in the City <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Type of expenditure:</b>	<input type="checkbox"/> Revenue <input type="checkbox"/> Capital If Capital, provide the date considered by Capital Board Date:
<b>Total value of the decision:</b>	Nil
<b>Section 151 Officer expenditure approval</b>	Has the spend been approved by the Section 151 Officer? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/a Spend Control Board approval reference number:
<b>Commissioner Consideration</b>	Has this report been shared with the Commissioners' Office? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Any comments the Commissioners wish to provide are listed below.
<b>Wards affected:</b>	All
<b>Date of consultation with Executive Member(s):</b>	30 January 2025
<b>Relevant Council Plan Key Outcome:</b>	
Clean, Green and Connected Communities	<input type="checkbox"/>
Keeping Nottingham Working	<input checked="" type="checkbox"/>
Carbon Neutral by 2028	<input type="checkbox"/>
Safer Nottingham	<input type="checkbox"/>
Child-Friendly Nottingham	<input type="checkbox"/>
Living Well in Our Communities	<input checked="" type="checkbox"/>
Keeping Nottingham Moving	<input type="checkbox"/>
Improve the City Centre	<input type="checkbox"/>
Better Housing	<input type="checkbox"/>
Serving People Well	<input type="checkbox"/>
<b>Summary of issues (including benefits to citizens/service users):</b>	
<p>To seek consent to making the East Midlands Combined County Authority (Adult Education Functions) Regulations 2025 (the Draft Regulations) that will confer an additional funding power to EMCCA to enable it to fund new, high-quality technical qualifications from August 2025.</p> <p>The Department for Education (DfE) have advised that in order to meet required Parliamentary timeframes, the consent of the EMCCA and the four Constituent Councils needs to be provided by the middle of February 2025.</p> <p>At the time of publication of this report clearance had not been received from DfE for the draft text of the Draft Regulations to be included as an appendix to this report. However, civil servants</p>	

from DfE have shared the draft text with Monitoring/Deputy Monitoring Officers of each of the Constituent Councils and of the EMCCA.

This report provides information relating to the content of the Draft Regulations so the meeting is aware of what they are providing consent for. The EMCCA will take a report to their Board Meeting on 10 February 2025 and other Constituent Councils are also seeking approval of the principles contained within the Draft Regulations which are set out in this report. Approval of any technical changes to the Regulations will be delegated to the Chief Executive in consultation with the Leader of the Council, subject to agreement with the Managing Director\Chief Executives of each of the 4 Constituent Councils and the Mayor of the EMCCA

**Does this report contain any information that is exempt from publication? No**

**Recommendation(s):**

- 1** The Executive consents to the proposed content of the East Midlands Combined County Authority (Adult Education Functions) Regulations 2025 as described in the report to include the conferral of the powers contained within S.100(1B) of the Apprenticeship, Skills, Children and Learning Act 2009; and
- 2** Delegates to the Chief Executive authority to approve any additional technical amendments, which the Managing Director and Chief Executives of the other three Constituent Councils and the Mayor of EMCCA also agree to. This delegation is to be exercised in consultation with the Leader of the Council and in light of further legal advice from the Director of Legal and Governance.

**1. Reasons for recommendations**

The Regulations are to be made under section 19 of the Levelling Up and Regeneration Act 2023, which requires the agreement of the EMCCA and each of its Constituent Councils to any elements which were not included within their original Proposal to create EMCCA. By approving the Draft Regulations in early 2025, it will enable the Regulations to complete its Parliamentary passage in time to enable the EMCCA to fund new, high-quality technical qualifications from the start of August 2025, in time for the new academic year.

The delegation to the Chief Executive is necessary for the reasons given above and in case of any further technical amendments which may be required between this point in time and when the final version has been through the parliamentary counsel process and is laid before Parliament. This is consistent with the delegation which was given to the Chief Executives\Managing Director in connection with previous EMCCA Regulations.

**2. Background (including outcomes of consultation)**

- 2.1** Members will recall that at its meeting on 7 December 2023, Full Council agreed to the creation of the EMCCA with the Council as a Constituent Member and consented to the making of the “The East Midlands Combined

County Authority Regulations 2023” (the EMCCA Regulations), which later established EMCCA in February 2024. The creation of the EMCCA was made under powers introduced by the Levelling Up and Regeneration Act 2023 (the LURA). Whilst the Proposal prepared by the 4 Constituent Councils and submitted to the Secretary of State included Adult Education functions, these were not included in the EMCCA Regulations and it was recognised at the time they would be devolved by a subsequent specific statutory instrument.

2.2 Since that time, officers from the newly created EMCCA have been working with officials from the DfE on meeting the criteria for readiness for the transfer of Adult Education powers and functions. That work has been completed and it is proposed the Draft Regulations devolve the following powers and functions to EMCCA together with a number of incidental, consequential and supplementary powers and an additional function (set out in paragraph 2.3) to enable EMCCA to fund adult education matters within the EMCCA area:

- A) Apprenticeship, Skills, Children and Learning Act 2009 s.86 – education and training for persons aged 19 and over and other subject to adult detention
- B) Apprenticeship, Skills, Children and Learning Act 2009 s.87 – learning aims for persons aged 19 or over – provision of facilities
- C) Apprenticeship, Skills, Children and Learning Act 2009 s.88 – Learning aims for persons aged 19 or over – payment of tuition fees
- D) Apprenticeship, Skills, Children and Learning Act 2009 s.90 – encouragement of education and training for persons aged 19 or over and others subject to adult detention
- E) Apprenticeship, Skills, Children and Learning Act 2009 s.100(1) – provision of financial resources

A to C are to be exercisable solely by the Combined County Authority and D and E are to be exercisable concurrently by the Combined County Authority and DfE Secretary of State.

2.3 The DfE currently transfers statutory adult education functions to Combined Authorities via statutory instrument (once devolution deals are agreed) so they can decide, at a local level, which qualifications they wish to fund to support skills development in their areas. The Draft Regulations will amend existing legislation for Combined Authorities to add a further funding power, specifically transferring Section 100(1B) of the Apprenticeships, Skills and Children Act 2009 (the 2009 Act), to enable them to fund new, high-quality technical qualifications alongside other qualifications already available to them. These powers will come into effect from the start of August 2025, in time for the new academic year. Specifically the additional power to be transferred is:

**Core powers/duties to be transferred from the SoS to the Combined Authorities** (A) Apprenticeships, Skills, Children and Learning Act 2009 s100(1B)- provision of financial resources:

This is a general funding power that allows the Secretary of State to secure financial resources to approved technical education qualifications or steps towards occupational competency.

- 2.4 The transferred functions are necessary to ensure that adult learners in the EMCCA area have access to the same high-quality technical qualifications as those in other devolved, and non-devolved areas.
- 2.5 This funding power will not be applicable for adults aged under 25 who are in receipt of an EHC Plan, as they will continue to be funded from the 16 to 19 budget, nor will it apply to adults in detention, as they are funded by the Ministry of Justice.

### Providing Consent

- 2.6 Government will be making a decision to progress the Draft Regulations in the near future and in order to ensure swift progress of the necessary parliamentary process the necessary consents have been requested at the earliest opportunity.
- 2.7 DfE have made clear that in order to meet required Parliamentary timeframes, the consent of EMCCA and the four Constituent Councils will need to be provided by the middle of February 2025. As a result, members are being asked to approve the principles contained within the draft Regulations as explained in this report and to specifically consent to the inclusion of the additional power in section 100 (1B) Apprenticeships, Skills, Children and Learning Act 2009. In addition, it is proposed to delegate authority to the Chief Executive of the Council to consent to any technical changes to the wording of the Regulations subject to the agreement of the Chief Executives of each of the 4 Constituent Councils and the Mayor of EMCCA.
- 2.8 It is important to note that it is possible that the content of the draft Regulations may be subject to change between now and when the final version is to be laid before Parliament. The delegation to the Chief Executive will enable any such technical changes to be addressed and to avoid any delay in the final version of the Regulations being laid.
- 2.9 A statutory consultation was undertaken at the time of the Proposal to create the EMCCA and the powers within the draft Regulations are in line with the expectations set out in the Proposal approved by Council and submitted to Government. The exception to this is the Regulations do not include all the powers listed in the Proposal submitted to the Secretary of State, but does include the additional power under s.100(1B) of the 2009 Act, as a result, the Government has undertaken a consultation exercise and any responses will be considered when the Secretary of State makes a final decision.  
[Consultation: Transfer of funding powers for new technical qualifications](#)
- 2.10 The additional power effectively extends those already included within the Proposal for EMCCA under S.100 of the 2009 Act and is intended to support the Government's ambition to raise the quality of post-16 education by offering high quality qualifications to occupational standards to ensure they deliver the skills that employers need. This additional funding power relates to resourcing newly reformed Level 2 and Level 3 technical qualifications to enable them to be funded from the Adult Skills Fund from the 2025/26 academic year. As a

result, the approval of consent to this aspect of the proposed Regulations is recommended.

### **3. Other options considered in making recommendations**

- 3.1 Members could decide not to consent to the matters contained within the Draft Regulations but this would mean that the Regulations are not passed and would be likely to prevent the EMCCA operating to its optimal extent for the benefit of the inhabitants of the Area. In particular it would mean that it could not use the Adult Skills Fund to fund the new technical qualifications from the 2025/26 academic year.
- 3.2 The recent government consultation referred to above also said that “*Without this transfer, there could be significant regional differences in access to these qualifications, which could undermine national policy and limit opportunities for adult learners in certain areas. If the powers are not delegated, Combined Authorities may not be able to fund these qualifications, or they could still be funded by central government. However, this could create a lack of cohesion in the local adult education offer, as these qualifications wouldn’t be part of the broader regional strategy.*”

### **4. Consideration of Risk**

- 4.1 Not consenting to the regulations would mean that the EMCCA cannot deliver against the agreed agenda which the Council has previously approved.

### **5. Best Value Considerations, including consideration of Make or Buy where appropriate**

Not Applicable

### **6. Commissioner comments**

- 6.1 Commissioners are content with the report.

### **7. Finance colleague comments (including implications and value for money/VAT)**

There are no further financial implications arising for the Council as a result of these changes beyond those already identified and set out in previous reports to Council.

### **8. Legal colleague comments**

The Regulations are required to enable EMCCA to undertake the range of adult education functions in line with the expectations of the original Proposal. No additional approvals are required for the majority of the powers being conferred as they were specifically referenced in the original Proposal. For the additional power under S.100(1B) of the 2009 Act to be conferred on EMCCA all four Constituent Councils and EMCCA must consent as required under s.19 and 20 of the LURA. Should one or more of the Constituent Councils not consent the Regulations would not be passed and EMCCA would have to operate without this power which Government has indicated is necessary to fund the new level 2 and level 3 technical qualifications.

## 9. Equality Impact Assessment (EIA)

9.1 Has the equality impact of the proposals in this report been assessed?

No

Yes

In coming to a decision, the Council should have regard to the Public Sector Equality Duty (PSED) under the Equality Act 2010. The PSED requires public authorities to have "due regard" to:

- The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010 (section 149(1a)).
- The need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (section 149(1b)). This involves having due regard to the need to:
  - remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic (section 149(3)(a));
  - or take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it (section 149(3)(b)); and
  - or encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low (section 149(3)(c)).

An Equalities impact assessment was carried out at the different stages of decision making in respect of the Proposal and consent to the making of the EMCCA Regulations. No additional impacts have been identified as a result of these additional powers being conferred and as the SI is an enabling piece of legislation and does not significantly change the Proposal it is not considered necessary to either amend the existing EIA or carry out further Equality Analysis.

## 10. Data Protection Impact Assessment (DPIA)

10.1 Has the data protection impact of the proposals in this report been assessed?

No

A DPIA is not required because this decision does not include any personal data.

Yes

## 11. Carbon Impact Assessment (CIA)

11.1 Has the carbon impact of the proposals in this report been assessed?

No

A CIA is not required because there are carbon implications relating to this decision as made by Nottingham City Council.

Yes

12. **List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)**

[Devolution Deal – draft proposal for an East Midlands Combined County Authority report](#) to Full Council 31 October 2022

[Devolution Deal – Consideration of Consultation Responses and submission of the East Midlands Combined County Authority Proposal to Government report](#) to Full Council 23 March 2023

[Consent to the East Midlands Combined County Authority Regulations 2023 report](#) to Full Council 7 December 2023

[Consent to the Combined Authorities \(Borrowing\) and East Midlands Combined County Authority \(Borrowing Functions\) \(Amendment\) Regulations 2024 report](#) to Full Council 30 September 2024

13. **Published documents referred to in this report**

Levelling Up the United Kingdom Policy Paper – [Levelling Up the United Kingdom - GOV.UK](#)

East Midlands Devolution Deal Policy Paper – [East Midlands devolution deal - GOV.UK](#)