

This is a copy of the Protocol agreed by Kirklees on 16 March 2021 and by West Yorkshire Combined Authority on 22 April 2021

# Protocol for the Exercise of Concurrent Functions and Associated Statutory Consents

This Protocol is dated 2021

## Parties

1. **WEST YORKSHIRE COMBINED AUTHORITY** of Wellington House, 40-50 Wellington Street, Leeds, LS1 2DE (“Combined Authority”).
2. **CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL** of City Hall, Centenary Square, Bradford, West Yorkshire BD1 1HY.
3. **BOROUGH COUNCIL OF CALDERDALE**, of the Town Hall, Crossley Street, Halifax, West Yorkshire, HX1 1UJ.
4. **THE COUNCIL OF THE BOROUGH OF KIRKLEES**, of the Town Hall, Ramsden Street, Huddersfield, West Yorkshire, HD1 2TA.
5. **LEEDS CITY COUNCIL** of Civic Hall, Calverley Street, Leeds, LS1 1UR.
6. **THE COUNCIL OF THE CITY OF WAKEFIELD**, Town Hall, Wood Street, Wakefield, West Yorkshire, WF1 2HQ.

Each a **party** together the **parties**, and the parties (2) to (6) above collectively the “**Constituent Councils**” of the Combined Authority.

## 1 Background and Introduction

1.1 The West Yorkshire Combined Authority (Election of Mayor and Functions) Order 2021 SI 2021/112 made on 29 January 2021 (“2021 Order”) provides for:

- the election of a mayor for the area of the Combined Authority (“Mayor”) from May 2021,
- the Mayor to exercise the functions of a Police and Crime Commissioner, and
- the following functions to be conferred on the Combined Authority:
  - adult education functions of the Secretary of State (to be exercised instead of or concurrently with the Secretary of State),
  - functions of Homes England relating to housing and regeneration (to be exercised concurrently with Homes England),
  - functions relating to grants to bus operators,
  - functions in relation to the designation of a Mayoral Development Area (MDA) and establishing a Mayoral Development Corporation (to be exercised by the Mayor)

- functions in relation to Business Rates Supplements (to be exercised by the Mayor),
- functions of the Constituent Councils to be exercised concurrently by the Combined Authority relating to
  - education, skills and training,
  - housing, regeneration and planning, and
  - transport (including in relation to highways, traffic orders, traffic signs, pedestrian crossings, street works, permit schemes and bus lane contraventions).

### **Concurrent Functions**

1.2 Appendix A to this protocol sets out each function (that is, power or duty) of the Combined Authority (including a function exercisable by the Mayor) conferred by the 2021 Order which is exercisable concurrently with the Constituent Councils (a “**Concurrent Function**”).

1.3 Under the 2021 Order, there is

- no transfer of any Concurrent Function to the Combined Authority from any Constituent Council; each Constituent Council may continue to exercise any Concurrent Function in relation to its area,
- no requirement for the joint exercise of any Concurrent Function by the Combined Authority with Constituent Councils – that is, that they are not required to act together, and
- no requirement for a Constituent Council to involve, consult or seek the consent of the Combined Authority in relation to the exercise of any Concurrent Function by a Constituent Council.

1.4 That is, each Constituent Council may continue to exercise any Concurrent Function within their area, and in the exercise of any Concurrent Function no Constituent Council is subject to any restriction or condition imposed by the 2021 Order.

### **Statutory Consents**

1.5 The 2021 Order provides that the Combined Authority’s exercise of specified functions is subject to a consent provision, (“**Statutory Consent**”), to safeguard the Constituent Councils’ role in local decision-making and delivery. These are detailed in Appendix A to this protocol.

### **Aim of this Protocol**

1.6 The aim of this protocol is to promote:

- **co-operation** and **collaboration** between the Combined Authority and the Constituent Councils in a spirit of partnership,
- **transparency** of roles and processes to engender mutual trust and confidence, and
- the **best use of resources** through co-ordination and reducing duplication between the parties.

- 1.7 The Combined Authority and Constituent Councils have agreed to follow this protocol when exercising any Concurrent Function, and in relation to any Statutory Consent.
- 1.8 The Combined Authority is committed to on-going engagement with Constituent Councils about all aspects of its work. This includes engagement about how the Combined Authority exercises its functions. Any timescales set out in this protocol therefore should be regarded as a minimum; there should be additional lead-in time in relation to the development of any projects or schemes involving the possible exercise of any Concurrent Function.

### **Miscellaneous**

- 1.9 For some Concurrent Functions, (as indicated in Appendix A), the 2021 Order provides that a Constituent Council's duty to exercise the Concurrent Function is met when the Combined Authority carries it out. This means that provided the Combined Authority performs the duty, the Constituent Councils will not be in breach of their statutory duty if they do not do so.
- 1.10 The 2021 Order provides for a Statutory Consent in relation to some functions of the Combined Authority which are to be exercised by the Mayor, (as indicated in Appendix A), including the power to acquire land for housing development under section 17(3) of the Housing Act 1985, which is a Concurrent Function. It is intended this protocol shall extend to the Mayor once they are in office in relation to the exercise of these functions.
- 1.11 Where the Combined Authority and any relevant Constituent Council reasonably consider that the nature and scale of the exercise of any Concurrent Function is of a complex, sensitive or significant nature, then the Combined Authority and Constituent Council may agree a **bespoke protocol** to govern the way the Combined Authority exercises that Concurrent Function<sup>1</sup>.
- 1.12 This protocol does not itself constitute an arrangement for the discharge of functions made in accordance with section 101 of the Local Government Act 1972 and/or the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012. Any such arrangement may be made by separate agreement between relevant parties.
- 1.13 This protocol does not address the **scrutiny** of the Combined Authority in relation to how it exercises any Concurrent Function, which will be subject to separate arrangements.

## **2 Concurrent Functions – Underlying Principles**

- 2.1 This protocol sets out how the Combined Authority and each Constituent Council intend to **work together** to secure that Concurrent Functions are exercised in the best interests of the inhabitants of their areas and for their

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<sup>1</sup> The Combined Authority will send a copy of any bespoke protocol to any Constituent Council which is not a party to it, for information.

mutual benefit, although the Combined Authority and each Constituent Council acknowledge that, by law, a Concurrent Function may be exercised by the Combined Authority or a Constituent Council acting alone (subject to any Statutory Consent requirement).

- 2.2 The Combined Authority will **consult** Constituent Councils about the exercise of any Concurrent Function in accordance with paragraph 3 below.
- 2.3 The Combined Authority will exercise any Concurrent Function **reasonably** and after **taking all relevant factors or considerations into account**, including how any Constituent Council is exercising or proposes to exercise the Concurrent Function and the potential effect of a decision on any Constituent Council. In exercising any Concurrent Function, the Combined Authority will comply with the public sector equality duty under section 149 of the Equality Act 2010<sup>2</sup>.
- 2.4 The Combined Authority will so far as reasonably practicable exercise any Concurrent Function in such a way as to be **compatible** with and **complementary to** the exercise of the Concurrent Function by any Constituent Council.
- 2.5 Subject to each party complying with requirements relating to data protection and the law of confidentiality, the Combined Authority and each Constituent Council agree to **share any information** as reasonably requested by any other party, to facilitate their exercise or proposed exercise of any Concurrent Function.
- 2.6 The parties will consult with each other before **approving, varying or revoking any strategy or plan** which is likely to determine or significantly affect how any Concurrent Function is exercised by the Combined Authority.
- 2.7 The Combined Authority will so far as reasonably practicable seek to develop and agree with each Constituent Council a common and consistent approach to any **monitoring arrangements** relating to any Concurrent Function exercised by the Combined Authority.
- 2.8 The Combined Authority will so far as reasonably practicable seek to develop and share **best practice** with each Constituent Council in relation to the exercise of any Concurrent Function exercised by the Combined Authority.

### **3 Concurrent Functions: Consultation with Constituent Councils**

- 3.1 The Combined Authority will consult the Constituent Councils about any proposal by the Combined Authority to exercise any Concurrent Function, except where the Constituent Councils have agreed that no consultation is required.

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<sup>2</sup> That is, will have due regard to those matters specified in S149 Equality Act 2010.

- 3.2 The Managing Director will also notify the relevant Chief Executive (or their nominee) of any proposal to exercise a Concurrent Function which would require a Key Decision by the Combined Authority as soon as practicable, and in any event before any Key Decision notice is published by the Combined Authority in relation to exercising the Concurrent Function, and unless the Chief Executive (or their nominee) agrees that no consultation is required, the Combined Authority will then proceed to consult the relevant Constituent Council in the manner set out in 3.3 and 3.4 below about such proposal.
- 3.3 The Managing Director will consult the Chief Executive (or their nominee) of any relevant Constituent Council as soon as reasonably practicable about the proposed exercise of any Concurrent Function, including the commencement date/projected timescales and the manner in which it is to be exercised.
- 3.4 Such consultation must be fair and carried out with adequate notice for responses which must be conscientiously considered by the Combined Authority with a view to reaching agreement on the exercise of the Concurrent Function.

#### **4 Statutory Consents: Procedure**

- 4.1 The 2021 Order provides for any **Statutory Consent to be given at a meeting of the Combined Authority**<sup>3</sup>. The request for any consent will therefore be set out in a report to be considered at a meeting of a Combined Authority, and any consent will be duly recorded in the minutes of the meeting.
- 4.2 The Combined Authority will seek any Statutory Consent **in a timely way**. To facilitate this, and to promote transparency, a notice of the request for Statutory Consent (Statutory Consent Request Notice) should be published on the Combined Authority's Forward Plan at least 28 clear days before the Combined Authority meeting at which it is sought, subject to this requirement being waived in exceptional circumstances by any relevant Chief Executive.
- 4.3 To further facilitate the appropriate and timely briefing by the Chief Executive (or their nominee) of the member of the Combined Authority who may provide a Statutory Consent, the Combined Authority's Managing Director will **notify the Chief Executive** of each relevant Constituent Council (or their nominee) as soon as reasonably practicable of any proposal to seek a Statutory Consent, and at the latest when the Statutory Consent Request Notice is published. The Combined Authority will provide the Chief Executive with details about the proposed exercise of the function, including the commencement date/projected timescales and the manner in which it is to be exercised.
- 4.4 In relation to any transport-related function in respect of which a Statutory Consent is required, the Combined Authority agrees that this is subject to the

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<sup>3</sup> See further the Combined Authority's Procedure Standing Orders

Combined Authority and the Constituent Councils agreeing a **Key Route Network** in respect of which the function is to be exercised.

## 5 Dispute Resolution

- 5.1 The Combined Authority and the Constituent Councils will act at all times in a constructive spirit of mutual cooperation and partnership to resolve disagreements.
- 5.2 Any dispute between the Combined Authority and any Constituent Council about the exercise of a Concurrent Function (whether before or after its exercise) will be referred to the Managing Director of the Combined Authority and the Chief Executive of the relevant Constituent Council with a view to resolution.
- 5.3 In default of successful resolution between the parties, any dispute will be referred to the Mayor of the Combined Authority and the Leader of any relevant Constituent Council for resolution, provided always that notwithstanding any recommendations made, any Statutory Consent of any Constituent Council will continue to be required in their absolute discretion.

## 6 Review

- 6.1 The Combined Authority and the Constituent Councils agree to review this protocol **annually** and before any additional concurrent functions which may be conferred on the Combined Authority in future by any other Order are exercisable by the Combined Authority.
- 6.2 The Combined Authority and the Constituent Councils may revise this protocol from time to time, provided such **revisions** are **agreed in writing** by the Managing Director of the Combined Authority and the Chief Executive of each Constituent Council.

## 7 Signature

Signed for and on behalf of the West Yorkshire Combined Authority

Name .....

Date.....

Signed for and on behalf of the City of Bradford Metropolitan District Council

Name .....

Date.....

Signed for and on behalf of the Borough Council of Calderdale

Name .....

Date.....

Signed for and on behalf of the Council of the Borough of Kirklees

Name .....

Date.....

Signed for and on behalf of Leeds City Council

Name.....

Date.....

Signed for and on behalf of the Council of the City of Wakefield

Name .....

Date .....

**Appendix**

Concurrent Functions and Statutory Consents requirements

## Appendix A: Functions of the Combined Authority conferred by the West Yorkshire Combined Authority (Election of Mayor and Functions) Order 2021

### Non- Mayoral functions

Note: Questions relating to the Non-Mayoral functions conferred by the 2021 Order (that is, those which are not solely exercisable by the Mayor), cannot be carried without the Mayor's vote in favour of the question.

Function	Legislation	Order Reference	Concurrent with Constituent Councils	Relevant CA member(s) to consent
<b>Education, Skills and Training Functions</b>				
<b>Power</b> to give a notice to the governing body of an FE institution requiring them to provide specified individuals 16-19 with appropriate education	Section 51A Further and Higher Education Act 1992	Article 5(2)(a)	Y*	N
<b>Duty</b> to promote <b>high standards</b> and fulfilment of potential in exercising relevant <b>education and training</b> functions	Section 13A Education Act 1996	Article 5(2)(b)	Y*	N
<b>Power</b> to secure <b>work experience</b> / <b>Duty</b> to encourage participation in <b>work experience</b> / encourage employers to participate in providing	Section 560A Education Act 1996	Article 5(2)(c)	Y*	N
<b>Duty</b> to exercise functions so as to <b>promote participation</b> by persons under section 2	Section 10 Education and Skills Act 2008	Article 5(2)(d)	Y*	N

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\* Any requirement for a Constituent Council to exercise this function may be fulfilled by the exercise of that function by the Combined Authority.

Function	Legislation	Order Reference	Concurrent with Constituent Councils	Relevant CA member(s) to consent
<b>Duty</b> to identify people in their area who are failing to fulfil their duty under section 2 to participate in education or training.	Section 12 Education and Skills Act 2008	Article 5(2)(e)	Y*	N
<b>Duty</b> to provide services enabling, encouraging and assisting <b>young people and relevant young adults</b> to participate in education and training.	Section 68 Education and Skills Act 2008	Article 5(2)(f)	Y*	N
<b>Power</b> to provide services enabling, encouraging or <b>assisting young people and relevant young adults to participate</b> in education and training.	Section 70 Education and Skills Act 2008	Article 5(2)(g)	Y*	N
<b>Power</b> to provide <b>support</b> given to young people conditional on specified action (e.g. learning support agreement).	Section 71 Education and Skills Act 2008	Article 5(2)(h)	Y*	N
<b>Duty</b> - this places further requirements on arrangements made by a children's services authority in England under section 10 of the Children Act 2004 (which requires authorities to co-operate with each other).	Section 85 Education and Skills Act 2008	Article 5(2)(i)	Y*	N
<b>Housing, Regeneration and Planning Functions</b>				
<b>Power to compulsorily acquire</b> land development/planning	Section 226 Town and Country Planning Act 1990	Article 11(1)(a)	Y	Requires the consent of each member of the Combined Authority whose area contains

\* Any requirement for a Constituent Council to exercise this function may be fulfilled by the exercise of that function by the Combined Authority.

Function	Legislation	Order Reference	Concurrent with Constituent Councils	Relevant CA member(s) to consent
				any part of the land, or substitute members acting in place of those members.
<b>Power to acquire land by agreement</b>	Section 227 Town and Country Planning Act 1990	Article 11(1)(b)	Y	
<b>Power to appropriate land</b>	Section 229 Town and Country Planning Act 1990	Article 11(1)(c)	Y	
<b>Power to acquire land for exchange</b>	Section 230(1)a Town and Country Planning Act 1990	Article 11(1)(d)	Y	
<b>Power to appropriate land held for planning purposes</b>	Section 232 Town and Country Planning Act 1990	Article 11(1)(e)	Y	
<b>Power to dispose of land held for planning purposes</b>	Section 233 Town and Country Planning Act 1990	Article 11(1)(f)	Y	
<b>Power to develop land held for planning purposes</b>	Section 235 Town and Country Planning Act 1990	Article 11(1)(g)	Y	
<b>Power to extinguish rights over land</b>	Section 236 Town and Country Planning Act 1990	Article 11(1)(h)	Y	
<b>Power to use and develop consecrated land</b>	Section 238 Town and Country Planning Act 1990	Article 11(1)(i)	Y	
<b>Power to use and develop burial grounds</b>	Section 239 Town and Country Planning Act 1990	Article 11(1)(j)	Y	
<b>Power to use and develop open spaces</b>	Section 241 Town and Country Planning Act 1990	Article 11(1)(k)	Y	

Function	Legislation	Order Reference	Concurrent with Constituent Councils	Relevant CA member(s) to consent
<b>Power</b> to acquire land for <b>housing development</b>	Section 17 Housing Act 1985 except for <i>S17(3) (compulsory purchase) which is a Mayoral function (see below)</i>	Article 11(1)(l)	Y	Requires the consent of each member of the Combined Authority whose area contains any part of the land, or substitute members acting in place of those members.
<b>Duty</b> to <b>secure buildings</b> where land acquired under section 17	Section 18 Housing Act 1985	Article 11(10)(m)	Y	
<b>Transport-related functions</b>				
<b>Power</b> to be an authority to whom functions may be delegated by SoS/HE or agreements entered into re construct, improve or maintain <b>trunk roads</b> .  <i>(Enabling power of SoS/HE)</i>	Section 6 Highways Act 1980	Article 19(1)	Applies to LAs as local highway authorities	Requires the consent of each member of the Combined Authority appointed by a constituent council.
<b>Power</b> to be an authority who may be <b>party to agreement</b> on highway construction, improvement, maintenance etc.	Section 8 Highways Act 1980	Article 19(2)	Applies to LAs as local highway authorities	
<b>Power</b> to make a <b>traffic order</b> re routes for heavy commercial vehicles	Road Traffic Regulation Act 1984  Section 1 And 2(4)	Article 20(1)(a)  Article 20(1)(b)	Y	Requires the consent of each member of the Combined Authority appointed by a constituent council
<b>Power</b> to make an <b>experimental traffic order</b>	Road Traffic Regulation Act 1984  Section 9	Article 20(1)(c)	Y	Requires the consent of each member of the Combined Authority appointed by a constituent council

Function	Legislation	Order Reference	Concurrent with Constituent Councils	Relevant CA member(s) to consent
<b>Power</b> to place <b>Pedestrian crossings</b>	Road Traffic Regulation Act 1984  Section 23	Article 21(1)(a)	Y	Requires the consent of each member of the Combined Authority appointed by a constituent council.
<b>Power</b> to place <b>traffic signs</b> <i>(Power of SoS to direct local authority traffic)</i>	Road Traffic Regulation Act 1984  Section 65	Article 21(1)(b)	Y	Requires the consent of each member of the Combined Authority appointed by a constituent council.
<b>Duty</b> to <b>notify of works</b> likely to affect apparatus in street	Section 83 New Roads and Street Works Act 1991	Article 22(1)(a)	Y	Requires the consent of each member of the Combined Authority appointed by a constituent council.
<b>Duty</b> to <b>take measures</b> where apparatus affected by major works	Section 84 New Roads and Street Works Act 1991	Article 22(1)(a)	Y	Requires the consent of each member of the Combined Authority appointed by a constituent council.
<b>Sharing of costs of necessary measures</b>	Section 85 New Roads and Street Works Act 1991	Article 22(1)(a)	Y	Requires the consent of each member of the Combined Authority appointed by a constituent council.
<b>Sharing the costs of diversionary works</b> between Combined Authority and undertakers	Street Works (Sharing of Costs of Works) (England) Regulations 2000	Article 22(1)(b)	Y	Requires the consent of each member of the Combined Authority appointed by a constituent council.
<b>Preparation</b> of Permit schemes	Section 33 Traffic Management Act 2004	Article 23(1)(a)	Y	Requires the consent of each member of the Combined Authority

Function	Legislation	Order Reference	Concurrent with Constituent Councils	Relevant CA member(s) to consent
				appointed by a constituent council.
<b>Implementing</b> Permit schemes	Section 33A Traffic Management Act 2004	Article 23(1)(b)	Y	Requires the consent of each member of the Combined Authority appointed by a constituent council.
Varying/ revoking permit schemes	Section 36 Traffic Management Act 2004	Article 23(1)(c)	Y	Requires the consent of each member of the Combined Authority appointed by a constituent council.
<b>Permit schemes</b>	Traffic Management Permit Scheme (England) Regs 2007	Article 23(2)	Y	Requires the consent of each member of the Combined Authority appointed by a constituent council.
	Part 3 of 2004 Act	Article 23(4)	Y	N
<b>Enforce bus lane contravention</b>	Bus Lane Contraventions (Penalty charges, Adjudication and Enforcement (England) Regulations 2005	Article 24(3)	Y	Requires the consent of each member of the Combined Authority appointed by a constituent council.
<b>Assessments of Economic Conditions</b>				
<b>Duty to prepare economic condition assessment</b>	Section 69 Local Democracy, Economic Development and Construction Act 2009	Article 25(1)	Y*	N

\* Any requirement for a Constituent Council to exercise this function may be fulfilled by the exercise of that function by the Combined Authority.

Function	Legislation	Order Reference	Concurrent with Constituent Councils	Relevant CA member(s) to consent
<b>Information Sharing</b>				
<b>Information sharing</b> (crime and disorder)	Section 17A Crime and Disorder Act 1998 <sup>4</sup>	Articles 26(1) and 26(2)	Y	N

## Mayoral Functions

Function	Legislation	Order Reference	Concurrent with LAs	Relevant CA member(s) to consent
<b>Housing, Regeneration and Planning functions</b>				
<b>Power to acquire land</b>	Section 9(2) Housing and Regeneration Act 2008	Article 27(2)(d)	N	Requires the consent of each member of the Combined Authority whose local government area contains any part of the land, <b>or substitute members</b> acting in place of those members.
<b>Power to acquire land for housing development</b>	Section 17(3) Housing Act 1985 - compulsory purchase	Article 27(6)	Y	Requires the consent of each member of the Combined Authority whose local government area contains any part of the land, <b>or substitute members</b> acting in place of those members.

<sup>4</sup> The Combined Authority is also a relevant authority for the purposes of Section 115 of the Crime and Disorder Act 1998 (disclosure of information).

**Mayoral Development Area (MDA) functions**

<b>MDA - designation</b>	Section 197 Localism Act 2011	Article 27(2)(a)	N	Requires consent of each member of the Combined Authority whose local government area contains any part of the area to be designated as a Mayoral development area, or substitute members acting in place of those members; <b>and the National Park authority</b> if the Combined Authority proposes to exercise the function in respect of the whole or any part of the area of the Peak District National Park.
<b>MDA - exclusion of land</b>	Section 199 Localism Act 2011	Article 27(2)(a)	N	Requires consent of each member of the Combined Authority whose local government area contains any part of the area to be excluded from a Mayoral development area; <b>or substitute members</b> acting in place of those members.
<b>Planning functions in relation to MDA</b>	Section 202 Localism Act 2011	Article 27(2)(a)	N	Requires consent of each member of the Combined Authority whose local government area contains any part of the area to be designated as a Mayoral development area, <b>or substitute members</b> acting in place of those members; <b>and the National Park authority</b> if the Combined

			<i>Authority proposes to exercise the function in respect of the whole or any part of the area of the Peak District National Park.</i>
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