

Appendix 2 - Overview of the current draft statutory order

The following is a summary of the current draft of the statutory order. The order will be subject to further revision before it is finalised.

The order follows the content of the scheme which was agreed by the seven councils and published as part of the statutory consultation which took place from January to March 2023.

The content of the order reflects those arrangements which were set out in the scheme which need to have a legislative basis. Therefore, it does not include those arrangements which are referred to in the scheme and which do not need to be set out in legislation.

Part 1 – general

Article 1

This provides for the majority of the order to take effect on 7 May 2024 (ie when the mayor of the new MCA takes office), except that Part 3 (ie the provisions relating to the election of the new mayor – see below) takes effect the day after the order is made.

The article also provides that the 2014 and 2018 orders creating and amending NECA and creating NTCA are revoked from 7 May 2024.

Article 2

This defines a number of terms used throughout the order.

Part 2 – establishment

Articles 3 to 5

These articles abolish the existing CAs and the Joint Transport Committee, and establish the new combined authority which has the legal name of the North East Mayoral Combined Authority.

Article 6

This provides that the constitutional arrangements for NEMCA are set out in Schedule 1.

Part 2a – transfer of functions, property, rights, assets and liabilities and associated provision

Article 7

This provides for all property, rights, assets and liabilities of NECA and NTCA to transfer to NEMCA when it comes into existence.

Article 8

This provides that any functions which either NECA or NTCA have are transferred to NEMCA if they are not otherwise conferred on NEMCA by the order.

Article 9

This makes clear that the order coming into force does not affect the validity of any previous act of NECA, NTCA, the former Tyne and Wear Integrated Transport Authority or the county councils. It also makes clear that anything which is being done by either NECA or NTCA at the time the order comes into force is to be treated as being done by NEMCA and that NEMCA is to be substituted for NECA/NTCA in any instruments, contracts or legal proceedings.

Article 10

This provides that the staff of NECA and NTCA are to be treated as being subject to a TUPE transfer to NEMCA when it comes into existence.

Article 11

Similarly, this provides for NEMCA to be the scheme employer for pension purposes in place of NECA and NTCA and also to retain the pension liabilities for TWITA.

Part 3 – election of mayor

Articles 12 and 14

These remove the need to prepare for and hold an election for the NTCA mayor which would otherwise take place in May 2024 (and the need to hold a by-election if there were a vacancy in the position of the NTCA mayor before then).

Article 13

This creates the position of the new mayor who is to be referred to as the North East Mayor, with elections every four years from 2024.

Article 15

This makes amendments to electoral legislation to allow the election for the position of the Mayor before it and NEMCA have been established. It provides that the returning officer for that first election is to be the Sunderland returning officer.

Article 16

This allows the Mayor to appoint one person as a political adviser under the terms of the Local Government and Housing Act 1989. It replicates the provision which applies to NTCA and other mayoral combined authorities.

Part 4 – Transport

(NB: by virtue of NEMCA being a mayoral combined authority, this means that the Mayor will have powers under the Transport Act 2000 in relation to making, varying or revoking bus franchising schemes. Also, as set out later (see Part 8), the Mayor is responsible for NEMCA's Local Transport Plan.)

Article 17

This replicates the provision in the 2018 order and provides that Nexus (ie the T&W Passenger Transport Executive) is an executive body for NEMCA and is also to be treated as an officer of NEMCA which means it can operate across the NEMCA area.

Articles 18 and 19

Article 18 is similar to Article 8 above in that it provides that any transport functions which either NECA or NTCA have are transferred to NEMCA if they are not otherwise conferred on NEMCA by the order. Article 19 also make clear that any reference in legislation to an ITA (Integrated Transport Authority) or its area or the local transport functions of a county council are to be construed as applying to NEMCA.

Articles 20, 21, 22 and 24

These provide NEMCA with the following functions:

- (under sections 6 and 8 of the Highways Act 1980) to enter into agreements for the carrying out of highways works,

- (under sections 33, 33A and 36 of the Traffic management Act 2004) to operate permit schemes for the carrying out of specified works in specified streets;
- (under section 39 of the Road Traffic Act 1988) to promote road safety;
- (under the Bus Lane Contraventions etc Regulations 2005) to operate a bus lane contravention scheme

In each case, the exercise of any of the above functions is subject to the consent of those members of NEMCA appointed by the constituent councils directly affected.

Article 23

This provides NEMCA with the power to pay grants to bus service operators under section 154 of the Transport Act 2000.

Article 25

This provides that NEMCA shall issue 3 separate transport levies to (1) the Tyne and Wear councils, (2) Durham County Council and (3) Northumberland County Council.

Article 26

This provides the Mayor with the power to pay grants to the constituent councils under section 31 of the Highways Act 1980 for the exercise of transport functions.

Article 27

This extends to the county councils the duty which currently applies to the Tyne and Wear authorities (under section 113 of the Transport Act 2000) to implement NEMCA's Local Transport Plan.

Part 5 – Education, skills and training

Articles 28 to 32 provide NEMCA with the same statutory functions currently held by NTCA to allow it (NEMCA) to administer the Adult Education Budget across the whole of its area.

Part 6 – Housing, regeneration and planning

Articles 33 to 35

These provide NEMCA with a number of powers under the Housing and Regeneration Act 2008 which are held by Homes England. These include the power to provide housing, the power to acquire land and to acquire land compulsorily.

These articles also provide NEMCA with powers under the Town and Country Planning Act 1990 to acquire and appropriate land for planning and public purposes and also powers under the Housing Act 1985 to acquire land.

The above articles include compulsory purchase powers which are exercisable by the Mayor.

The exercise of these powers is subject to the consent of those members of NEMCA appointed by the constituent council(s) directly affected.

This set of functions is equivalent to those which were conferred on NTCA under the 2018 Order.

Articles 36 and 37

These articles provide the Mayor with the power to prepare a Spatial Development Strategy (which is based upon the power of the Mayor of London under the Greater London Authority Act 1999). However, as set out in Schedule 1 of the order, the Mayor will only be able to exercise this power if the members of NEMCA appointed by the constituent councils unanimously agree. Furthermore, the inclusion of any area in a spatial development strategy is also subject to the consent of those members of NEMCA appointed by the constituent council(s) directly affected.

Part 7 – mayoral development corporations

Articles 38 to 40 provide the Mayor with powers under the Localism Act 2011 to establish mayoral development corporations subject to the consent of those members of NEMCA appointed by the constituent council(s) directly affected.

This set of functions is equivalent to those which were conferred on NTCA under the 2018 Order.

Part 8 -Mayoral functions and funding

(NB: by virtue of NEMCA being a mayoral combined authority, the Mayor - as is this case with NTCA currently - will also have the power under section 40 of the Local Government Finance Act 1992 to issue a council tax precept on behalf of NEMCA to provide for the costs of the Mayor relating to the exercise of mayoral functions.)

Article 41

This identifies the functions which are exercisable by the Mayor as being

- the compulsory purchase powers for housing, regeneration and planning purposes (see comments above re articles 33 and 35)

- the spatial development strategy powers (see comments above re articles 36 and 37)
- the powers under the Transport Act 2000 to prepare the Local Transport Plan for NEMCA's area and the power to pay grants to bus service operators (see comments above re Part 4 and article 23)
- the power to pay grants to constituent councils for highway functions (see comments above re article 26)
- the powers relating to mayoral development corporations (see comments above re Part 7)
- a power of competence under section 113A of the Local Democracy Economic Development and Construction Act 2009 for the purposes of the above functions.

Article 42

This provides that the Mayor may enter into arrangements jointly (joint committee) with the Combined Authority, constituent councils and other councils relating to the exercise of the above functions.

Article 43

This provides that the constituent councils must ensure that those costs of NEMCA which are reasonably attributable to the exercise of its functions must be met.

It also provides that the constituent councils must meet the costs of the expenditure reasonably incurred by the Mayor to the extent that the Mayor has not decided to meet these costs from other resources available to the Combined Authority.

The costs identified in this Article are to be shared equally between the constituent councils unless they decide a different apportionment.

Article 44

This allows NEMCA to borrow for both mayoral and non-mayoral functions.

Articles 45 to 47

These provisions enable the Mayor to levy a supplement on business rates to raise monies for expenditure on projects which will promote economic development in the NEMCA area.

Part 9 – additional functions

Articles 48 to 55 set out a range of largely operational/administrative functions which replicate what was provided to NTCA together with a number of legislative amendments relating to the transport arrangements set out earlier in the order, as well as making clear that NEMCA will replace NECA and NTCA as a constituent authority of Transport for the North, the subnational regional transport body.

Schedule 1 – Constitution

This schedule set out the fundamental principles of how NEMCA will operate but NEMCA will adopt its own constitution to supplement these principles.

Paragraph 1

This provides that there are 10 Members of NEMCA are as follows:

- i. the Mayor
- ii. a member appointed by each of the 7 constituent councils;
- iii. a member appointed by NEMCA as a representative of the business community who will chair the (non-statutory) business board; and
- iv. a member appointed by NEMCA as a representative of the community and voluntary sector (CVS)

It also provides that each constituent council can appoint 2 substitute members and that NEMCA can appoint a substitute for the business representative and the CVS representative respectively.

The Mayor must appoint one of the constituent council members to act in their absence as the Deputy Mayor. Where a constituent council member acts as the Deputy Mayor, then one of that constituent council's substitute members will act as the representative of the constituent council for the purposes of decision-making.

Paragraph 2 and 3

This provides that the quorum for a meeting of NEMCA is the Mayor (or Deputy Mayor) and at least 5 constituent council members.

The Mayor and the constituent council members each have a vote. The business representative and the CVS representative do not have votes (unless the voting members agree to give them voting rights).

Most decisions on the use of non-mayoral functions are decided by a simple majority vote but any decision which would lead to a financial liability falling directly on a constituent council will only be passed if the member appointed by that constituent council forms part of that majority.

Furthermore, where a decision is to be made by a simple majority on the exercise of a non-mayoral function, that majority must include the Mayor if it relates to a "new"

function conferred by the order (which means a function which was not held previously by either NECA or NTCA). Otherwise, where a decision is made by a simple majority on a non-mayoral function, the Mayor may ask the authority to reconsider that decision if the mayor did not vote in favour of the decision.

The following decisions on non-mayoral functions require a unanimous vote from the Mayor and all 7 constituent council members:

- approval of, and any amendment to, the combined authority's annual budget excluding those elements of the annual budget which relate to Mayoral functions;
- approval of, and any amendment to, the setting of any levy which the combined authority shall apply to any constituent council;
- agreement to confer upon the Mayor a duty to produce a Spatial Development Strategy;
- approval or amendment of the combined authority's constitution or standing orders.

The Mayor's exercise of mayoral functions is also subject to the following:

- the adoption of a spatial development strategy requires the support of at least four constituent council members;
- the authority may amend the Local Transport Plan by a simple majority of the constituent council members present at a meeting;
- the authority may amend the Mayor's budget if at least 5 constituent council members agree.

This is in addition to the requirements set out earlier in the order which provide that the exercise of the Mayor's functions require the consent of the member appointed by the constituent council whose area is affected.

Paragraph 4

This allows NEMCA to delegate decisions on the exercise of non-mayoral functions to a committee or subcommittee or to an officer or to another local authority.

Paragraph 5

This provides that NEMCA cannot pay remuneration (other than travel and subsistence) to its members but its constituent councils may pay such remuneration. However, NEMCA can pay an allowance to the Mayor having considered the report of an Independent Remuneration Panel established by NEMCA or by one or more of the constituent councils.

Paragraphs 6 and 7

These provide that NEMCA shall appoint an overview and scrutiny committee (OSC) and an audit committee respectively. Each shall comprise an equal number of members from each constituent council.

The OSC is to be chaired by an “appropriate” person, which means an elected member who is from a different political party to that of the Mayor. The audit committee is to be chaired by an independent person (ie co-opted member) appointed by NEMCA.

Paragraphs 8 and 9

These are standard provisions about the keeping of records and NEMCA being able to make its own standing orders to regulate its business.

Schedules 2 to 6

These set out detailed amendments to other legislation to give effect to the provisions in the body of the order. Schedule 2 deals with the changes relating to the spatial development strategy; schedule 3 deals with the changes relating to the permit schemes under the Traffic Management Act 2004; schedule 4 deals which changes relating to the housing, regeneration and planning powers at Part 6 of the order; schedule 5 deals with the changes relating to mayoral development corporations and schedule 6 deals with the adult education functions.