

WMCA Board

Date	9 March 2018
Report title	Implementation of Devolution Agreement - Adult Education Budget (AEB) - Transfer of Powers to West Midlands Combined Authority (WMCA)
Portfolio Lead	Councillor George Duggins - Skills & Productivity
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Report to be/has been considered by	WMCA Programme Board - 23 February 2018

Recommendation(s) for action or decision:

The WMCA Board is recommended to:

- (1) Approve the transfer of functions to WMCA as set out in section 2.3 to ensure the successful devolution of the Adult Education Budget in 2019.
- (2) Give consent on behalf of the West Midlands Combined Authority to the making of an Order giving effect to this transfer.
- (3) Give delegated authority to the WMCA Section 151 Officer together with the WMCA Monitoring Officer in consultation with the Portfolio Lead Member to approve the final draft Devolution Order in order to meet the timetable for agreement as set out in the report.
- (4) Request that the constituent authorities give their consent to the making of an Order giving effect to this transfer including the necessary delegation to approve the final draft Order as set out in (3) above.

1.0 Purpose.

1.1 To outline the process for agreeing the Devolution Orders required to enable full devolution of the Adult Education Budget (AEB) and the timescale and proposed process for doing so.

2.0 Background

- 2.1 The West Midlands Combined Authority's first Devolution Deal was formally agreed by the Combined Authority Shadow Board on 17th November, 2015. The agreement included the transfer of adult skills funding (Adult Education Budget - AEB) to the WMCA and the subsequent Order establishing the Combined Authority contained details of a number of Adult Education powers although it did not deal with the devolution of funding. In order to prepare for devolution, the Combined Authority is required to meet a series of readiness conditions including the transfer of the Secretary of State for Education's statutory duties in relation to the provision of further education for adults.
- 2.2 The principal purpose of AEB is to engage adults in learning that supports wider economic and social priorities. Devolution of AEB will only be applied within constituent member areas, and the indicative budget will be approximately £112m for 2019/20 based on current spend on residents.
- 2.3 The Order, to be received in draft by WMCA by 19th March 2018, will set out the details of AEB functions that will be transferred to the WMCA with the agreement to devolve the budget. DfE have been clear that the Order will not cover apprenticeships, adult offender learning or provision for people aged 16 -18. Subject to these exceptions, it is proposed that the following functions contained in the Apprenticeships, Skills, Children and Learning Act (ASCAL) 2009 will transfer to the WMCA in relation to constituent member areas:
- I. S86 – Duty to provide appropriate 19+ Further Education (not to include apprenticeships, prisoner education or traineeships).
 - II. S87 – Duty to provide appropriate FE to 19+ learners who do not have certain specified qualifications
 - III. S88 – Duty to ensure that provision is free for relevant learners who do not have certain specified qualifications

The following powers will be exercised concurrently with the Secretary of State:

- IV. S90 – Duty to encourage learner and employer participation in education and training of people aged 19+ (except those in adult detention) (to be exercised concurrently with the Secretary of State)
- V. S115 – Duty to consider/have regard to the needs of 19+ learners with Special Education Needs (other than those aged 19-25 with Educational Health Care plans, who will remain the responsibility of the LAs as they are treated as 16-18 year old learners).
- VI. S122 – Power to exchange information with providers to enable provision of 19+ FE (to be exercised concurrently with the Secretary of State).

2.4 Mayoral Combined Authorities (MCAs) are required to provide the Department for Education (DfE) with consent to the draft Order by the end of April 2018 to meet the necessary timescales to enable full devolution in 2019/20. The Order will need to be laid before Parliament by the end of June 2018 and made in November 2018 to meet the timescales to commission for the 2019/20 academic year. There is a reputational risk to the WMCA if the order is not laid in a timely manner.

3.0 Financial Implications

3.1 The impact of not achieving the proposed timescale as set by DfE is that the devolution of AEB could be delayed by a further year.

4.0 Legal Implications

4.1 Devolution of the Adult Education Budget will mean that the WMCA will have the duty and responsibility to deliver the government's commitment to statutory entitlements for fully funded qualifications at Levels 2 and 3, English and Maths and the future digital entitlements for learners, free of charge. Based on figures for 2015/16, 37% of the AEB was spent on delivering statutory requirements. Although there may be a risk that these obligations exceed the available budget in any one year, the statutory entitlements are not time bound and the entitlement does not have to be offered immediately upon request. This will be reflected in the WMCA's AEB Funding Policy where it will be clearly stated that if demand exceeds availability some learners may have to wait to the following academic year.

4.2 Section 105(b) of the 2016 Cities and Local Government Devolution Act states that to allow Secretary of State to make an order for the devolution of functions, consent also has to have been given by each appropriate authority which for these purposes are the Combined Authority and the constituent authorities of that Combined Authority.

4.3 The timetable for approvals is challenging given the timetable constraints of the Parliamentary process. We have spoken to each constituent authority and agreed that they can provide appropriate consent by approving a report through their Cabinet in a timely manner to ensure that orders are laid before Parliament before the end of June 2018. A delegation is also requested to authorise the final sign off of the draft Orders when requested by the DfE on the basis that there is no material change to the drafting.

5.0 Equalities Implications

5.1 These aspects of the Devolution Agreement are reflected in the WMCA Equalities Scheme.

6.0 Other implications

6.1 Not Applicable

7.0 Schedule of background papers

7.1 None

8.0 Appendices

8.1 None