

*making our region more prosperous, sustainable, and fairer,  
helping our people and businesses to create and seize opportunities*

<b>Combined County Authority Board</b>		<b>Agenda Item</b> <b>13</b>
Date	16 September 2024	
Report Title	<b>Borrowing and Amendment Regulations</b>	
Accountable EMCCA Board Member	Claire Ward Mayor of the East Midlands Combined County Authority	
Accountable Chief Officer	Mark Rogers Interim Chief Executive	
Accountable Employee	Jodie Townsend Interim Director of Law & Governance and Monitoring Officer	
Report has been considered by	This report has been considered by the EMCCA Pre-Board process	
Key decision	Yes	
Public Report	Yes	
Voting Arrangements	By simple majority including the Mayor	

**Recommendation(s) for action or decision:**

**The Combined County Authority is recommended to:**

<b>A</b>	<b>Note the requirements for the making of the Combined Authorities and East Midlands Combined County Authority (Borrowing) (Amendment) Regulations 2024.</b>
----------	---

## **1. Purpose**

- 1.1 To provide the Combined County Authority with details on the content and the consent requirements of the proposed Combined Authorities and East Midlands Combined County Authority (Borrowing) (Amendment) Regulations 2024, that will confer certain additional powers (including the general power of competence for economic development and regeneration) on the Combined County Authority.
- 1.2 At the time of publication of this report clearance had not been received from the Ministry of Housing, Communities and Local Government (MHCLG) for the draft text of the SI to be included as an appendix to this report. However, civil servants from MHCLG have shared the draft text with Monitoring Officers of each of the constituent councils and of the East Midlands Combined County Authority, whom they have been working with to draft the SI.
- 1.3 As such this report sets out details of each element within the draft SI so Board is aware of what they are providing consent for.

## **2. East Midlands Combined County Authority (Borrowing) (Amendment) Regulations 2024**

- 2.1 The East Midlands Combined County Authority was established in February 2024 with making of the East Midlands Combined County Authority Regulations 2024. In the period between the passing of these and other regulations relevant to the creation of the Combined County Authority, colleagues in government have been drafting another set of regulations relating to our borrowing powers.
- 2.2 The regulations would (a) allow the Combined County Authority to borrow against income for investment like other public bodies; and (b) address issues that have been picked up from the Combined County Authority Regulations which, when addressed, will place the Combined County Authority on a similar footing as other Combined Authorities with respect to its available legal powers. The East Midlands Combined County Authority (Borrowing) (Amendment) Regulations 2024 seeks to address both by making amendments to the existing Combined County Authority Regulations. The Combined County Authority will need to consent to the making of these regulations.
- 2.3 One of the 'issues' referred to in the previous paragraph relates to the conferral on the Combined County Authority of the "general power of competence" in respect of economic development and regeneration (GPOC). As this is the conferral of an additional power which was not included within the original powers table of the appendices approved by Constituent Councils, it is necessary to seek separate consent to that power from each of the four Constituent Councils, under s.52 of the Levelling Up and Regeneration Act 2023.

### **Providing Consent**

- 2.4 The Combined County Authority must provide consent to all elements within the East Midlands Combined County Authority (Borrowing) (Amendment) Regulations 2024. This report sets out a brief explanation of each element and where it is dealt with in the draft SI.
- 2.5 Government will be making a decision to progress the draft regulations in the near future, in order to ensure swift progress of the necessary parliamentary process the necessary consents are requested to be provided at the earliest opportunity. The available parliamentary timetable means that the most prudent action is for the East Midlands elements and borrowing regulations to be contained in a single statutory instrument and laid in Parliament in October. Due to Parliamentary schedules MHCLG cannot confirm when the next opportunity for Regulations to be laid before Parliament would be.
- 2.6 MHCLG 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 October 2024, before the next meeting of the Board in early November 2024. The Combined County Authority Board may be required to convene an extraordinary meeting to consider consent to the draft regulations.

### Matters requiring clarification

- 2.7 Engagement between the Governance Group (EMCCA and Constituent Council Monitoring Officers/ Governance Leads) and MHCLG has been taking place over a number of weeks to review the content of the draft regulations, this process has identified several concerns that the Governance Group have requested clarification on.
- 2.8 The areas of clarification centre around the following:
- a. Clarification required of the legislation required to make the regulations as they relate to Borrowing Powers.
  - b. Clarification that the cross referencing of legislation within the draft statutory instrument delivers the intended general power of competence for Economic Development & Regeneration.
  - c. Clarification on the definition of a 'committee of the Combined County Authority' in reference to the delegation of mayoral general functions.
- 2.9 Officers are working with MHCLG colleagues at pace to resolve these outstanding issues. At the time of publication of this report the requested clarifications had not yet been provided.
- 2.10 The draft regulations are intended to include the following:

### **Borrowing Powers**

- 2.11 As always anticipated, all functions of the Combined County Authority are specified for the purposes of section 23(8A) of the Local Government Act 2003 – this provides that the section 1 power to borrow money under the 2003 Act applies for all Combined County Authority functions, including mayoral functions. This will enable the EMCCA to operate in a consistent way as other local authorities and Combined Authorities in respect of borrowing.
- 2.12 Whilst the Combined County Authority will be required to have regard to the Prudential Code in the usual way, the actual maximum annual borrowing limit will be subject to the agreement of a specific debt cap with His Majesty's Treasury (HMT), which cannot be exceeded.

### **General Power of Competence (GPOC) in respect of functions relating to economic development and regeneration**

- 2.13 The GPOC is sought only in respect of functions relating to economic development and regeneration in relation to the area of the Combined County Authority. For clarity, the conferral does not remove the GPOC from Constituent Councils which will each continue to hold the full GPOC as outlined in Part 1 of the Localism Act 2011 and may continue to use that power in line with applicable law.
- 2.14 The GPOC for economic development and regeneration is a function which all existing Combined Authorities have. The function was not included as part of the East Midlands Combined County Authority Regulations as, at the time, it was believed that the functional power of competence held would be adequate to undertake works associated with economic development and regeneration. It has subsequently been identified that this is not the case and by conferring this power it will provide the Combined County Authority with the same tools as its Constituent Councils to deliver on their shared priorities.
- 2.15 The GPOC for economic development and regeneration will enable the Combined County Authority to support local business as well as promote tourism in the area. This is pertinent as it is in the East Midlands Combined County Authority Proposal where reference is made to how the Combined County Authority will ensure workers, business and local areas are supported, where possible, by schemes like the UK Shared Prosperity Fund ("UKSPF") in delivering key aspirations to meet the challenges faced by the East Midlands.
- 2.16 At the request of the Governance Group (Monitoring Officer/ Governance Leads from each constituent council and EMCCA) an additional line has been inserted to the draft SI to clarify that the GPOC is exercisable concurrently with the constituent councils.

### **Amendments to Regulation**

2.17 The following technical amendments to the East Midlands Combined County Authority Regulations have been confirmed within the draft SI to address omissions and issues identified in the period since the Constituent Councils approved them back in December 2023. These technical amendments are set out below.

#### Mayoral Budget: Voting

2.18 Schedule 1, Paragraph 3(1) and Paragraph 7(a) have been amended so that the 2/3 majority for the approval of the mayoral budget applies which had not originally been included. The 2/3 majority was referred to in the Proposal for the EMCCA approved by the four Constituent Councils in March 2023 and this amendment regularises the position.

#### Other voting arrangements

2.19 The draft SI outlines the functions which have separate voting arrangements to Schedule 1, Paragraph 3(1)(a) – (b), these are the mayoral budget and the unanimous voting required in relation to Transport Act 2000.

#### Non-Constituent Voting

2.20 The current legislative framework does not allow for Non-Constituents to have the ability to vote at Combined County Authority Committees and Sub-Committees. The Combined County Authority committed to work with Government to ensure legislation was developed that provided the ability for Non-Constituents to vote at committees of the Combined County Authority in the future if the Combined County Authority wished to provide such voting powers.

2.21 Regulation 35(b) has been updated to enable non-constituent members to be voting members of committees or sub-committees subject to a resolution of the Combined County Authority under s11(4) of the Levelling Up and Regeneration Act 2023. This was also envisaged as part of the original proposal submitted to government although it will be a matter for the Combined County Authority to determine if and how such voting may be applied.

#### Ability of the Mayor to establish committees and sub-committees to delegate the exercise of Mayoral functions

2.22 Regulation 26 has a new sub-paragraph (9A) enabling a mayor to arrange for mayoral functions to be exercised “by a committee of the Combined County Authority, consisting of members appointed by the mayor (whether or not members of the Combined County Authority)”. This is consistent with the original expectations as set out in the Proposal.

#### Resolution of cross-referencing error

2.23 Regulation 10(3) of the East Midlands Combined County Authority Regulations will be rectified so the Combined County Authority is to be treated as a local authority for the Area in respect to sections 17 and 18 of the Housing Act 1985. These sections relate to the acquisition of land and buildings for housing purposes which is a key aspect of the East Midlands Combined County Authority remit as set out in the Proposal.

### **3. Background**

3.1 The East Midlands Combined County Authority was established in February 2024 with making of the East Midlands Combined County Authority Regulations 2024.

3.2 Officers from EMCCA and the constituent councils have been working with colleagues in MHCLG in the drafting of the East Midlands Combined County Authority Regulations. This process has involved changes being made to the draft SI to clarify that the General Power of Competence for economic development and regeneration is held concurrently with each constituent council.

3.3 Additionally, the Chief Executives of constituent councils have been briefed on the East Midlands Combined County Authority Regulations during the development process.

## **4. Appendices**

4.1 There are no appendices to this report.

## **5. Implications**

### **Financial Implications**

5.1 This report is financial in nature and there are no direct implications arising. Subject to Consent being given to the Combined Authorities and East Midlands Combined County Authority (Borrowing) (Amendment) Regulations 2024, the Combined County Authority will have flexibility to undertake borrowing subject to approval as part of the Annual Budget setting process.

### **Legal Implications**

5.2 The regulations are required to make appropriate technical amendments to bring the EMCCA Regulations and the powers and functions of the Combined County Authority in line with the expectations of the original Proposals.

5.3 When a report is brought forward seeking consent of the Combined County Authority, a delegation to the Chief Executive is considered necessary in case of any further technical amendments which may be required between the point of CCA consent being given and when the final version has been through the parliamentary counsel process and is laid before Parliament.

5.4 A statutory consultation was undertaken at the time of the Proposal for an East Midlands Combined County Authority, the issues within the draft SI are in line with the expectations set out in the Proposal approved by the Constituent Councils and submitted to Government.

5.5 Part 1 of the Local Government Act 2003 (“the 2003 Act”) makes provision in respect of capital finance and accounts of local authorities. Section 1 of the 2003 Act provides for local authorities to be able to borrow for purposes relevant to their statutory functions and for the prudent management of their affairs.

5.6 The Combined County Authority’s powers to borrow will be specified in the regulations. Approving the borrowing limits of the Combined County Authority, including determining the borrowing limits of the Combined County Authority in relation to transport matters pursuant to section 3 of the Local Government Act 2003, are matters reserved for the Combined County Authority (Board).

### **Other Significant Implications**

5.8 None identified

### **Background Papers**

5.9 East Midlands Combined County Authority Proposal Document: [v1.2 \(eastmidlandsdevolution.co.uk\)](https://www.eastmidlandsdevolution.co.uk/v1.2)

5.10 East Midlands Devolution Deal: [East Midlands devolution deal - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/east-midlands-devolution-deal)

5.11 East Midlands Combined County Authority Regulations 2024: [The East Midlands Combined County Authority Regulations 2024 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2024/1000)