

**Browne
Jacobson**

Practical Guide to.....
**The English Devolution
White Paper**

January 2024

Devolution Revolution.....



The biggest change to local government organisation and governance in 30 years....A wholesale re-working of Government in England with a focus on regions and the local rather than the national.....A focus on elected leaders driving strategic change.....

All of these phrases and many more have been rolled out in response to the Government's publication of the English Devolution White Paper – Power and Partnership: Foundations for Growth published in December 2024 (the 'White Paper').

Published just before Christmas, and with the Government welcoming expressions of interest by 10th January 2025, local government leaders have had only 16 working days, over the Christmas period, to get to a place where they can submit initial proposals on either local government reorganisation needed to “unlock devolution”, or on proposals for new strategic authorities (the new umbrella term for combined authorities and combined county authorities).

Many areas have moved quickly to signal a desire to be in

the Devolution Priority Programme, recognising that early adopters may fare better than those that choose to wait in terms of financial benefits and choices over factors like geography. Others are choosing to see how the initial wave fare before making decisions. Both groups have told us that they would appreciate more information about how the process of creating unitary authorities, and of creating new strategic authorities, will happen in practical terms. We have created this practical guide which sets out our views on the emerging picture to assist councils making decisions at pace.



Laura Hughes

Partner/Head of Public Law

t +44 (0)115 9766582

m +44 (0)7824 370102

laura.hughes@brownejacobson.com

Local Government Reorganisation

The White Paper

The White Paper proposes a programme of local government reorganisation for all two-tier areas as well as for smaller or failing unitary areas. It envisages that for most areas, unitary councils will have a population of 500,000 or more, but that there may be exceptions to this general position.

To progress with reorganisation, the White Paper provides that proposals will be invited from areas and that existing councils will be expected to work together to develop these and bring forward the changes as quickly as possible. The areas that will be the priority for central government will include where reorganisation can unlock devolution, where areas are in agreement and keen to move quickly, or where reorganisation can help to address wider failings.

Any proposals for reorganisation are expected to complement any plans for devolution and should not delay devolution. Instead, reorganisation plans are to be sequenced alongside devolution plans.

In terms of timeframes, we have seen an outline timetable which suggests that except where reorganisation will

unlock devolution, proposals will be asked to be submitted in the autumn of 2025. Consultation would take place through the remainder of the calendar year and into 2026, with new unitary areas coming into existence in April 2027 or 2028. It is less clear how much more quickly things may progress for areas where unitisation would unlock devolution.

The White Paper makes reference to recognising the upfront costs of reorganisation and the need to work closely with leaders to explore the support they may need to enable this. This is indicative that for priority areas or those that take steps quickly to move towards reorganisation, central government funding may be made available.

The Government has also indicated that it would be willing to postpone May 2025 elections where to do so would ease the transition process. A number of areas have been reported to have requested this.

Legislative Framework

The Local Government and Public Involvement in Health Act 2007 (the '2007 Act') provides the legislative basis for unitisation.

Under section 2 of the 2007 Act, the Secretary of State ('SoS') may invite a 'Principal Authority' (either a county council or district council) in England to put forward a proposal for a single tier of local government. This proposal can comprise:

- A single tier of local government for the whole of the county (Type A proposal);
- A single tier of local government for a district (or more districts) within the county (Type B proposal);
- A single tier of local government for one of the above that also includes one or more relevant adjoining areas (e.g. all or part of an adjoining county area) (Type C Proposal);
- A combination of the above Types B or C proposals.

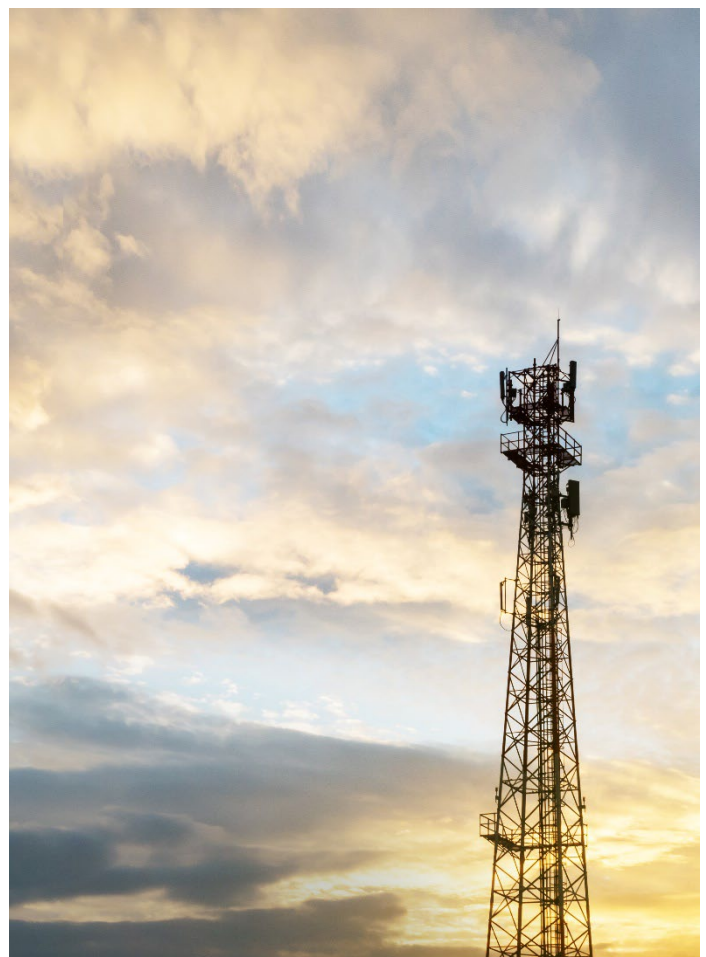
Up until 25 January 2008, the SoS was also able to direct principal councils to bring forward a proposal, which meant that the SoS could effectively force unitisation where proposals were not made voluntarily. However, the provision in the 2007 Act expired on 25 January 2008 and so this kind of direction is not currently available to the SoS. The indications in the White Paper are that the government will reintroduce this power of direction in due course – although the 2007 Act will need to be amended to enable this. This is likely to be done in the English Devolution Bill, which we suspect will be introduced later in 2025, and not come into force until at least 2026.

Proposals under Section 2 of the 2007 Act do not require a consensus from every authority affected by it. However, where a proposal is made jointly by every authority, the requirements on the SoS to consult are reduced to exclude consultation with every authority affected (see below).

Subject to consultation requirements, following the receipt

of a proposal under Section 2 of the 2007 Act, the SoS may implement the proposal, with or without modification under Section 7 of the 2007 Act. They may also seek advice from the Local Government Boundary Commission ('Commission') who may make an alternative proposal which the SoS may implement with or without modification. However, there is no obligation on the SoS to act on a proposal.

If the SoS seeks advice from the Commission, they may not make an order or decision before six weeks from the advice being requested. There are no other specific timescales to which the SoS must adhere when taking a decision, but the SoS must consult with authorities affected by the proposal (other than those which made it) and such other persons as they think appropriate before reaching a decision.



Devolution

The White Paper

Devolution is the main focus of the White Paper as it envisages universal coverage in England of 'Strategic Authorities' which may be either Combined Authorities or Combined County Authorities (and includes the Greater London Authority). In time, it is envisaged that all strategic authorities will be Mayoral Strategic Authorities ("MSAs"). However, 'Foundation Strategic Authorities' (non-mayoral) can form part of the coverage as a stepping stone.

Established Mayoral Strategic Authorities will get the most powers and integrated settlements first – the integrated settlements are intended to remove ring-fencing of funding and include additional funding and will consist of a single, mutually agreed outcomes framework, monitored over a Spending Review period. The provision of integrated settlements will start with Greater Manchester, Liverpool City Region, North East, South Yorkshire, West Midlands and West Yorkshire. Other MSAs can become eligible (and apply) to be Established MSAs subject to meeting a series of criteria, including:

- need to have been in existence for 18 months,
- have a published Local Assurance Framework,

- not subject to a Best Value Notice etc,
- no material accounting concerns, and,
- track record of managing major programmes.

Combined with the reorganisation of local government described above, the White Paper envisages a consistent structure across England comprising strategic authorities and principal authorities akin to the structure in existence in London and Greater Manchester.

The White Paper is clear that legislation will be brought forward to enable central government to direct the bringing forward of devolution proposals where local leaders have 'not been able' to make progress. This will also remove the ability for single local authority devolution to have a Mayor or for Mayors to be called anything except Mayors.

Legislation will also be brought forward which sets out a framework which details which powers go with each type of authority. This will comprise a consistent floor of powers which can still be added to through the establishment regulations for any strategic authority.

Governance arrangements are also intended to be standardised in relation to budget setting and transport levies. For Mayoral Strategic Authorities, voting arrangements will be moved to a simple majority voting approach, with existing arrangements (which include vetoes) being overridden by the new provisions.

In relation to process, the strategic authorities will continue to be established using secondary legislation but taking account of the new legislative framework. New requests for devolution will be assessed against geography and governance criteria in the White Paper, with priority areas forming part of a new Devolution Priority Programme.

In terms of the geography of strategic authority areas, anticipated areas should have 1.5m plus in terms of population, be functional economic areas, have contiguous boundaries with constituent councils, should not create devolution islands, have the ability to deliver, be aligned with other public sector boundaries as far as possible, and have an identity.

Outside of local government, devolution will be advanced by national agencies like Homes England, Great British Railways, National Highways, Great British Energy, National Energy System Operator, and the Arts Council being asked to reconfigure for regional working.

Central government is keen to progress the devolution agenda as quickly as possible, with the strategic authorities for priority areas likely to be coming forward within 2025 for establishment in 2026, and first ayoral elections in May 2026.



Legislative Framework

Whilst it is clear from the White Paper that significant legislative change is anticipated, strategic authorities can be established under the existing legislative framework. The precise provisions in relation to such establishment are dependent on whether it is a Combined Authority or Combined County Authority that is under consideration.

Combined Authorities may be established under the Local Democracy, Economy and Construction Act 2009 ('2009 Act'), whilst for the establishment of Combined County Authorities, the relevant legislation is the Levelling-up and Regeneration Act 2023 ('2023 Act'). The establishment is by order (for CAs) or regulations (for CCAs) of the SoS.

A key difference between a CA and CCA is the nature of the areas that are combined. CAs can be established for an area consisting of the whole of two or more local government areas (being district or county council areas), whilst CCAs can be established for areas consisting of the whole of one two-tier county council area and at least one of another county council area or unitary area. The White Paper makes clear that CCAs will be the preferred model in two-tier areas and that CAs will not be used in these areas, but that CCAs will cease to exist once all two-tier areas have become unitarised. Both a CA or CCA can be mayoral or non-mayoral.

The process for the establishment of either a CA or CCA is similar. In either case, a proposal may be produced, consulted upon and submitted to the SoS (s109A 2009 Act, s45 2023 Act). Whilst all constituent councils do not need to be involved in the production of the proposal, they must all consent to its submission to the SoS (s109A(6) 2009 Act, s45(6) 2023 Act) and any establishment Order or Regulations must be consented to by all constituent councils (s110(1)(d) 2009 Act, s46(1)(d) 2023 Act). For CCAs constituent councils do not include the district councils in the area in question and instead will only comprise the upper-tier councils in the area.

When a proposal is submitted, the SoS may make an order (CA) or regulations (CCA) establishing the new CA

or CCA provided that:

(a) the Secretary of State considers that to do so is likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the area,

(aa) the Secretary of State considers that to do so is appropriate having regard to the need—

(i) to secure effective and convenient local government, and

(ii) to reflect the identities and interests of local communities,

(ab) the Secretary of State considers that its establishment will achieve the purposes [specified to be achieved under the proposal]

(b) the constituent councils' consent, and

(c) the SoS considers no further consultation is necessary. (s110(1) 2009 Act), s46(1) 2023 Act

This is the way that CCAs have been created to date, with all having been created pursuant to a proposal from Councils.

However, it is clear from the legislation that the SoS can create CAs/CCAs without needing to receive a proposal. In such a case the SoS may make an order or regulations establishing the new CA or CCA if:

(a) the Secretary of State considers that to do so is likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the area,

(aa) the Secretary of State considers that to do so is appropriate having regard to the need—

(i) to secure effective and convenient local government, and

(ii) to reflect the identities and interests of local communities,

(b) the constituent councils' consent, and

(c) the SoS has carried out and considered the outcomes of a public consultation (s110(1) 2009 Act), s46(1) 2023 Act)

The indicative timetable we have seen suggests that consultations for the Devolution Priority Programme will begin this month. We consider that the only way that this is possible is if the SoS is intending to create CCAs without requiring proposals from the areas concerned.

This would suggest that the SoS will consult on the basis of a document they produce to be the subject of the consultation. We would imagine much of this would be generic and based on the policy position in the White Paper, with some local detail provided by areas also included. Following the undertaking of the consultation, steps will be taken to proceed to draft the regulations creating the CCA and negotiating finance packages with the areas in question.

An Order or Regulations prescribes the powers and functions to be exercisable by the CA or CCA alongside other governance matters including voting and the constitution. This will be a key area for legislative change, with a move to a more fixed framework of powers proposed in the White Paper. We envisage that until the new English Devolution Bill has been passed, regulations will in any event be produced on a standard basis reflecting what will be in the new framework of powers on a policy basis.



Key Considerations

Sequencing

The White Paper makes it clear that the Government's main priority remains devolution. This was also re-emphasised in the letter to councils from John MacMahon on 16 December 2024. This is why the timetabling that we have been privy to so far indicates that consultation on new strategic authorities will begin in January 2025, whereas the majority of local government reorganisation proposals are not being sought until the autumn of 2025. However, the paper does also indicate that if local government reorganisation is needed to unlock devolution, then it may be prioritised where it is tied to devolution proposals. Accordingly, the majority of areas will be expected to bring forward devolution proposals first, with local government reorganisation to follow.

As the bulk of the areas of the country not yet covered by an existing combined authority, or combined county authority are in the south of England in shire county areas, we know the vast majority of these new strategic authorities will be combined county authorities. This means that the counties and/or unitaries included in the proposed devolution boundaries will need to consent to the laying of the regulations creating the CCA. The districts or boroughs sitting underneath the counties will not however have to consent to the creation of a new CCA. Whilst the governance model does give districts/boroughs a seat at the table in new CCAs, they do not have the same voting rights as constituent councils, and even where rights are extended, will be in the minority, meaning limited formal control (although the small number of CCAs already established have been keen to ensure that districts/boroughs have the opportunity to input/be involved/have influence).

The creation of unitary councils underneath the new CCAs can then proceed following the creation of the CCA for the area.

For the small number of areas where reorganisation will 'unlock' devolution – presumably because upper-tier councils which currently will not consent to be part of

forming a CCA can be reorganised out of existence – the process of unitisation will come first. Following the local government reorganisation, the blocker to devolution will be removed and so the creation of a new strategic authority can be proceeded with. Whether the new strategic authority will be a CA or a CCA will depend on whether all of the councils joining together to form the new strategic authority are (following reorganisation) unitaries. If they are, a CA will be created.

We are aware that some areas are proposing twin tracking the two processes. We consider that this would be possible in practical and legal terms. Whether it will be sensible, however, will depend on what is proposed. If, for example, a single county area wanted to form two new unitaries and then create a new strategic authority on the same geography as the former county, it may make sense to run the processes alongside one another (though we suspect that there would be challenges based on size if such an approach was pursued). However, in most cases, it may well just involve too much work to run both processes alongside one another leading to significant capacity issues (bearing in mind that councils will need to continue to deliver services through this period). Our experience of advising on the creation of several CCAs is that it takes up very significant levels of officer time to create a new CCA; so significant that delivering on the project and the 'business as usual' activities of councils are challenged. If an area was also attempting to undertake local government reorganisation alongside the creation of a CCA this would be a very significant undertaking. We also do not know if MHCLG would be in a position to support delivery (their current plans appear to be to stagger creation of new strategic authorities and local government reorganisation).

Even if the two processes were to be pursued alongside one another, the order/s creating the new unitary authority will need to pre-date the order/regulations establishing the new strategic authority to ensure that the correct legal entities are participating in the strategic authority.

Key Considerations

Size and Geography

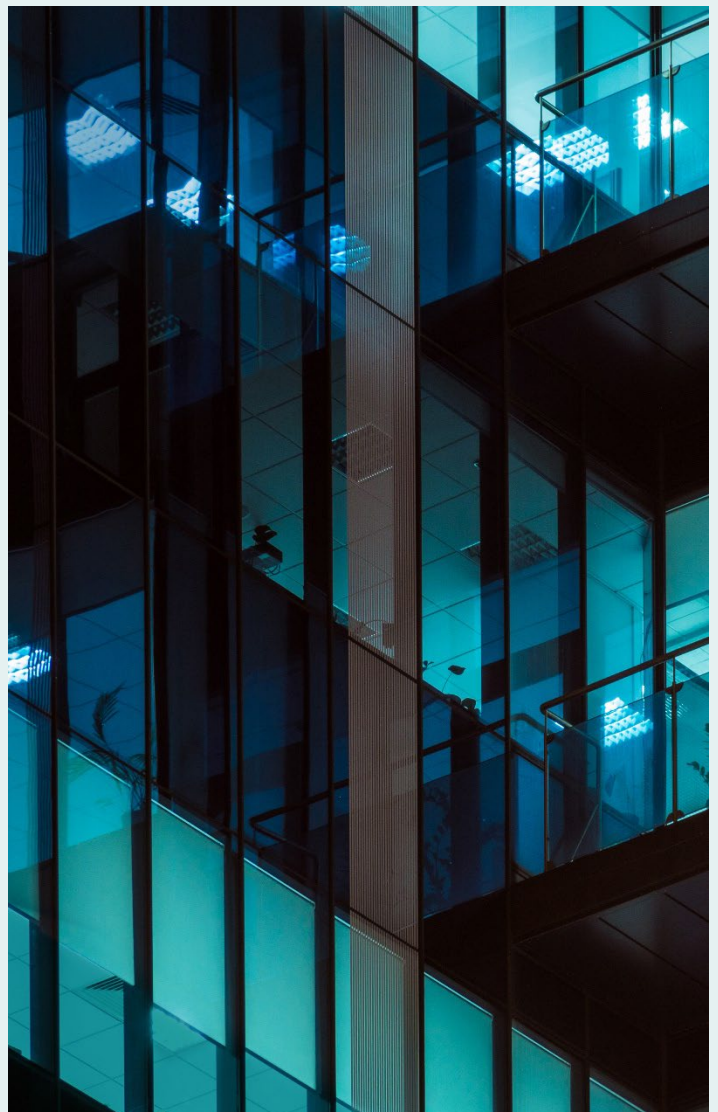
There is a clear policy view in the paper that larger local authorities have more chance of surviving and thriving. There is therefore a requirement that new unitary councils will be more than 500,000 people, and new strategic authorities more than 1.5 million (so essentially formed of at least three unitaries). We are aware of areas where proposals are being advanced which do not meet these size targets. Where this is the case, we would suggest that it will be very important to have other reasons related to functional economic geography, alignment with other public sector boundaries, or identity to persuade the Government that the smaller size is sustainable and sensible.

The question of geography is an interesting one. With parts of the country already covered by strategic authorities, there is a necessity to close the existing gaps, meaning that new proposals coming forwards have to “fit” with one another with ‘no gaps and no overlaps’. It seems unlikely that this will be entirely achieved with a bottom-up approach, and hence the powers of compulsion anticipated may be used to forcibly close the remaining gaps. Arguably therefore it makes sense to be in the early wave of proposals where there may be greater scope for the Government to give what is asked for on geography (and essentially leave any gaps to be closed down the line).

There is also the option for existing strategic authorities to take in additional geographies and for some areas which are close to existing strategic authorities this may be attractive. We suspect that the Government will generally respect the wishes of existing strategic authorities on this issue however, so if an area does have aspirations to join existing strategic authorities, we would suggest that those authorities are approached early.

Equally in relation to local government reorganisation, most of the discussions we are aware of seem to

contemplate creating one or more unitary authorities on the same boundaries as, or within the boundaries of, existing county councils. That does not need to be the case, and it is open for areas of bring forward proposals with other councils which currently fall outside of their county. Such proposals may however be regarded as more challenging by Government, particularly if they will pull against other public authority boundaries (although clearly the opposite can also be true with new boundaries improving contiguousness with other public authorities).



Key Considerations

Consent and Consensus

As stated above, the creation of a new CCA will require the consent of all of the upper-tier councils in the area that it covers. In contrast, local government reorganisation does not require the consent of all of the councils in the area (of whatever level), only that a proposal is made which the Secretary of State decides to implement.

The White Paper makes it clear that areas where consensus has been achieved will be prioritised. Whilst there is an indication in the paper that powers of compulsion will be introduced through the English Devolution Bill for devolution, and to require proposals to be made for local government reorganisation, these will not be available imminently.

Accordingly, if areas cannot reach consensus on the creation of strategic authorities it would make sense for some of the councils in the area to propose local government reorganisation (where consensus is not required, but a proposal is). This could either be designed to 'unlock' devolution, or simply to progress whilst powers of compulsion in respect of devolution are awaited.

Government approach & priorities

Whilst we cannot predict with total accuracy how Government will approach prioritisation of proposals from areas, it seems to us that their main priority is continuing to drive for full coverage of strategic authorities. We also consider that they will wish to achieve some easy 'wins' so are likely to seek to start with 'easier' proposals where there is agreement between all (or the vast majority) of the parties. Accordingly, areas in agreement on creation of new strategic authorities or on local government reorganisation who are prepared to work at pace are likely to be prioritised and included in the Devolution Priority Programme.

Areas not in the Devolution Priority Programme would be best served by taking a little more time to work on proposals and seek consensus, or failing that, working on proposals which provide a compelling case for reorganisation or devolution on the geographies proposed.

Next Steps

We are likely to know very soon which areas are in the Devolution Priority Programme, and the timetable they will be working to. Those areas will have to rapidly establish joint working protocols across councils, and secure sufficient resource (whether internal or external) to deliver the programme at pace.

Other areas should continue to talk to other councils in their area, to work out the best approach for their areas. A well thought through proposal which has a high degree of consensus is much more likely to be attractive to MHCLG than multiple competing proposals which they will need to sit in judgement on.

To view our office locations visit [brownejacobson.com/contact-us](https://www.brownejacobson.com/contact-us)

Browne Jacobson is the brand name under which Browne Jacobson LLP and Browne Jacobson Ireland LLP provide legal and other services to clients. The use of the name “Browne Jacobson” and words or phrases such as “firm” is for convenience only and does not imply that such entities are in partnership together or accept responsibility for acts or omissions of each other. Legal responsibility for the provision of services to clients is defined in engagement terms entered into between clients and the relevant Browne Jacobson entity. Unless the explicit agreement of both Browne Jacobson LLP and Browne Jacobson Ireland LLP has been obtained, neither Browne Jacobson entity is responsible for the acts or omissions of, nor has any authority to obligate or otherwise bind, the other entity.