

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to: **CABINET**
Report of: **Corporate Director – Place**
Date of Decision: **17th April 2018**
SUBJECT: **DEVOLUTION OF THE ADULT EDUCATION
BUDGET TO THE WEST MIDLANDS COMBINED
AUTHORITY**

Key Decision: **YES** **Relevant Forward Plan Ref:**
If not in the Forward Plan: **Chief Executive approved**
(please "X" box) **O &S Chairman approved**
Relevant Cabinet Member(s): **Councillor Ian Ward, Leader**
Relevant O&S Chair: **Councillor Mohammed Aikhlaq, Corporate
Resources and Governance**
Wards affected: **All**

1. Purpose of report:

- 1.1 To provide Cabinet with the necessary information to consent to the making of the draft Parliamentary Orders to transfer adult skills funding, known as the Adult Education Budget (AEB) from Central Government to the West Midlands Combined Authority (WMCA) from 2019-2020 for the service delivered via Birmingham Adult Education Service (BAES) as part of a wider devolution to the WMCA.
- 1.2 Inadvertently the published Forward Plan did not include this item and therefore clearance has been sought from the Chief Executive and Chair of the Corporate Resources and Governance Overview and Scrutiny Committee to this report being considered at this meeting as an urgent key decision not in the Forward Plan.

1 Decision(s) recommended:

It is recommended that Cabinet:

- 2.1 Approves the transfer of functions and funding to WMCA, to ensure the successful devolution of the Adult Education Budget to the West Midlands Combined Authority as of and continuous beyond April 2019.
- 2.2 Delegates authority to the Chief Executive, in consultation with the Leader of the City Council, to approve the final draft Devolution Order and consent to the Devolution Order being made.
- 2.3 Authorises the City Solicitor to negotiate, execute and complete all relevant legal documents necessary to give effect to the approved action.

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3. Consultation

- 3.1 Internal: Officers from City Finance and Legal and Democratic Services have been involved in the preparation of this report. The Cabinet Member for Jobs and Skills and the Assistant Director 14-19 Education Pathways and Participation (on behalf of the Corporate Director Children and Young People) and the Jobs and Skills Manager have been consulted on the report and are supportive of the proposals and recommendations.
- 3.2 External. Consultation on the principle of the Combined Authority having adult education was undertaken by DFE as part of a national programme for devolution.

4. Compliance issues:

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

- 4.1. This report supports ongoing funding for Birmingham Adult Education Services to support Birmingham City Council's commitment to improving jobs and skills in the city ensuring that Birmingham is a great city to succeed in.

4.2 Financial Implications

- 4.2.1 The approved net budget for the Adult Education Service in 2018/19 is (£0.365m) - this represents gross expenditure of £15.640m and is funded by specific government grants of £10.533m and the remainder of £5.472m represents fees/charges from service users and use of prior year reserves to fund ongoing service improvement. .
- 4.2.2 The specific grant will no longer be provided directly to the City Council (or any of the other six West Midlands local authorities) by central government in 2019/20 if the Order is approved by Parliament during this year and the resources will instead be provided to the WMCA. It is possible that the WMCA may then choose to either passport these resources directly to the local authorities or alternatively commission services through specific contracts with local authorities.
- 4.2.3 The full details are not clear at this stage and there may be some financial implications for the Council in 2019/20 and beyond if the services are commissioned by the WMCA. These details will be included in specific future reports or reflected in the overall annual budget report to City Council in March 2019.

4.2.4 There are no human resource implications arising from this report at this stage.

4.2.5 There are no corporate landlord implications arising from this report at this stage.

4.3 Legal Implications

4.3.1 Section 105(B) of the Local Democracy, Economic Development and Construction Act 2009 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.

4.3.2 The Order 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:

S86 – Duty to provide appropriate 19+ Further Education (not to include apprenticeships, prisoner education or traineeships).

- I. S87 – Duty to provide appropriate FE to 19+ learners who do not have certain specified qualifications
- II. 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:

- III. 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)
- IV. 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).
- V. S122 – Power to exchange information with providers to enable provision of 19+ FE (to be exercised concurrently with the Secretary of State).

4.3.3 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 adult qualifications at Levels 2 and 3, English and Maths and the future digital entitlements for adult learners, free of charge.

- 4.3.4 Based on figures for 2015/16, 50% of the Birmingham City Council's AEB allocation was spent on delivering statutory requirements (including ESOL). 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.
- 4.3.5 The timetable for approvals is challenging given the timetable constraints of the Parliamentary process. It is our understanding that WMCA have consulted 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. In order to achieve this Birmingham City Council and other local authorities have been asked to secure that approval by the end of April .
- 4.3.6 A delegation from Cabinet to the Chief Executive and the Leader has also been requested to authorise the final sign off of the draft Orders when required by the DfE on the basis that there is no material change to the drafting.

4.4 Public Sector Equality Duty

- 4.4.1 The Public Sector Equality Duty Statement is appended – Appendix 1. An initial equality analysis has been undertaken – Appendix 2. Members are assured there is no reason not to approve the recommendations from an equalities perspective. The funding for Adult Education in Birmingham City will transfer from Central Government to Local Government and there is no evidence that this transfer will adversely affect the residents of Birmingham City. There are no environmental implications arising from this report.

5. **Relevant background/chronology of key events:**

- 5.1 The journey to full devolution of the Adult Education Budget is at a critical point and, whilst not all facts are known, decisions to move forward need to be made.
- 5.2 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.

- 5.3 This decision represents the final step in implementing devolution of Adult Education funding to the Combined Authority. 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.
- 5.4 The Adult Education Budget is extremely important to Birmingham as a City as its principal purpose is to engage adults in learning that supports wider economic and social priorities. In particular, the Adult Education Budget enables BAES to engage with approximately 9000 city residents, of which the overwhelming majority do not have the qualifications, skills and attributes required to enter the city's labour market; one third (2700 people) reside in the most deprived communities across the city and within areas of high deprivation that fall within the bottom 10% nationally; seventeen per cent (1530 people) have a disability and/or learning difficulty.
- 5.5 To fully devolve the functions and funding for the Adult Education Budget a Devolution Order is required. The following functions will transfer to the WMCA when the transfer of powers, provided in the Order, is complete. These functions are contained in the Apprenticeships, Skills, Children and Learning Act 2009:
- Duty to provide appropriate 19+ Further Education (not to include apprenticeships, prisoner education or traineeships)
 - Duty to provide appropriate Further Education to 19+ learners who do not have certain specified qualification
 - 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:

- Duty to encourage learner and employer participation in education and training of people aged 19+
 - Duty to consider/have regard to the needs of 19+ learners with Special Education Needs
 - Power to exchange information with providers to enable provision of 19+ Further Education
- 5.6 The next stage is for the Orders to be laid before Parliament prior to the July recess and local authorities are being asked to agree to the Orders being made without sight of them.

- 5.7 All Local Authorities in England are being asked to give delegated powers to the Chief Executive and Portfolio Lead Member to approve the final draft Orders to meet the timetable for agreement set out in the report.
- 5.8 The timeline for achieving full devolution of the Adult Education Budget is:
- Mayoral Combined Authorities and its constituent authorities are required to provide the Department for Education with consent to the draft Order by the end of April 2018.
 - The draft Order will need to be laid before Parliament by the end of June 2018
 - The Order will be made in November 2018.
 - If these timescales are met full devolution will take place for 2019-20 academic year.
 - The combined indicative budget for constituent members will be approximately £112 million for 2019-2020. Transitional protection agreements are likely to operate from 2019-20 for two years.
 - Birmingham City Council will expect to receive circa £10m through a grant agreement to continue to deliver the services provided through the Birmingham Adult Education Service.
- 5.9 The challenging timelines laid out in this report are widely acknowledged but if they are not met devolution of the Adult Education Budget will be delayed a further year. This could be reputationally damaging to central and local Government departments involved.
- 5.10 A full due diligence process will need to be carried out for Birmingham Adult Education Service and WMCA as this devolution approach proceeds.

6. Evaluation of alternative option(s):

- 6.1 The principle of devolution of the Adult Education powers including funding was included in the first devolution deal. However agreement on the funding was not included within the subsequent statutory orders. The transfer of powers now is consistent with the agreed approach to devolution. Birmingham City Council as a constituent authority of WMCA could delay /opt out of this agreement. However this would undermine the overall devolution deal for WMCA.

7. Reasons for Decision(s):

- 7.1 The transfer of the powers as set out in this report is consistent with the agreed approach to devolve the adult education functions to West Midlands Combined Authority already agreed in principle by Birmingham City Council as part of the first phase devolution deal.
- 7.2 The recommendation is for the Cabinet to give consent to both the making of the Order and the delegation of authority to sign-off the draft final Order. Giving consent will provide the Department for Education with the authority it needs to meet the challenging timelines to ensure the Adult Education Budget is fully devolved by the 2019-2020 academic year
- 7.3 It is not recommended that the consent is withheld as this may prevent the WMCA from achieving full devolution for the 2019-2020 academic year. There is a risk of reputational damage to the WMCA and its constituent members if the process slips a further year.

Signatures

Date

Cabinet Member

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Councillor Ian Ward
Leader

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Chief Officer

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Jacqui Kennedy
Corporate Director - Place

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List of Background Documents used to compile this Report:

- 1. None

List of Appendices accompanying this Report (if any):

- 1. Public Sector Equality Duty Statement
- 2. Equality Analysis

Report Version

Dated