

ITEM: 9

REPORT TO: West of England Combined Authority

DATE: 2nd JULY 2018

**REPORT TITLE: THE WEST OF ENGLAND COMBINED AUTHORITY
(ADULT EDUCATION FUNCTIONS) ORDER 2018.**

AUTHOR: Jon Hunt, Director of Business and Skills

Purpose of Report

- 1 To give consent to The West of England Combined Authority (Adult Education Functions) Order 2018 prepared by the Department for Education passing statutory duties regarding the provision of adult education currently held by the Secretary of State for Education to the West of England Combined Authority.

Issues for Consideration

- 2 The devolution of funding to address the provision of adult skills (what is currently known as Adult Education Budget) from government along with relevant Statutory Duties was part of the West of England Devolution deal. The agreed deal set out that:

“HMG will fully devolve to WECA all Adult Education Budget by 2018/19. In addition, grant to WECA co-commissioning rights to all non-devolved post-16 skills funding including that controlled by the EFA. Decisions on the devolved and co-commissioned programmes will be led by Local Outcome Agreements developed in conjunction with local employers and focusing on key sectors identified in the West of England Strategic Economic Plan.”

- 2.1 The Government now intends to bring forward the necessary Order to pass the duties to WECA to be laid before Parliament before the summer recess and coming into force from start of the academic year 2019/20. Funding is likely to arrive as a section 31 grant on a financial year basis. Our indicative funding budget is £17.6m and has been recalculated after the 17/18 academic year; the indicative budget is in-line with expectations.
- 2.2 The duties to be devolved are as anticipated and have been unchanged since officers began working with civil servants on the devolution of adult skills funding in 2015/16. The duties all come from the Apprenticeship, Skills, Children and Adult Learning Act (ASCAL) and are summarised below:

Section 86: Education and training for persons aged 19 or over (excluding those subject to adult detention)

Securing the provision of suitable facilities (*by which is meant 'courses of learning', not premises*) for education and training of those aged over 19. Suitable facilities are determined in relation to the scale of available resources and should be of a suitable quantity and quality such that they can reasonably be expected to be provided.

Section 87: Learning Aims for persons aged 19 or over, provision of facilities.

The securing of suitable provisions to enable those without a first full level 1 or 2 qualification in English and/or maths or other subjects to gain those qualifications.

Section 88: Learning aims for persons aged 19 or over: payment of tuition fees.

The duty to provide the courses for English and maths required under Section 87 free to learners aged between 19 and 23 years.

Section 90: Encouragement of education and training for persons aged 19 or over (excluding those subject to adult detention).

Encourage participation of those to whom a duty is owed in training and education. Encourage employers to participate in the education and training of the same.

Section 115: Persons with special educational needs.

In meeting the other duties, have regard to persons with special educational needs.

Section 122: Sharing of information for education and training purposes.

Defined people can share information with each other in pursuit of enabling or facilitating a particular function to be delivered.

- 2.3 There are no new 'powers' being devolved, only duties. Grants therefore are anticipated to be made using the general power of competence. Procurement of some activities may also be required, depending on the income structure of the provider.
- 2.4 The existing Combined Authority Order already gives WECA some skills related functions (in the Economic Development and Regeneration schedule). These are unrelated to adult skills and are summarised in the attached annex 1.
- 2.5 This paper seeks approval to the proposed Order only and it is highlighted that agreement to the Order does not commit WECA to any budgetary allocations nor approaches to the allocation process. The Readiness Conditions prevent WECA from taking any future funding decisions that would lead to financial destabilisation of the current provider base.
- 2.6 WECA will be asked to agree detailed allocations of the devolved funding during the budget setting process for the 2019/20 financial year. Prior to this process WECA officers will continue to work closely with our constituent Local Authorities and our provider base to develop our plans for the implementation of funding for adult education.
- 2.7 The Skills Advisory Board have discussed a number of issues that will need to be considered about the proposed approach by Government to transfer the AEB Budget without associated running costs, essentially meaning the budget will be 'top sliced' to fund administration of AEB. These financial concerns will be addressed as plans for implementation are developed.
- 2.8 In relation to the Readiness Conditions on the 18 May 2018 WECA's CEO submitted a letter to DfE stating how we expect to improve the exercise of statutory duties in the West of England and that WECA will be ready to deliver the function to residents from academic year 2019/20 along with an AEB Strategic Skills Plan and associated evidence.

- 2.9 On the 11th June DfE confirmed that they stand by WECA's assessment that the combined authority will be ready for the 2019/20 academic year and that undertaking the functions we will realise benefits to our residents. DfE are satisfied that the tests to meet Secretary of State and Accounting Officer obligations will be met, and will be advising Ministers of this. Therefore, WECA has met the readiness conditions.
- 2.10 WECA successfully secured development funding of £280,000 in April 2018 to July 2019 which will help ensure the Combined Authority has the resource to meet the readiness conditions and prepare for the new duties.
- 2.11 There are a number of potential advantages for West of England residents and learners to devolving control of AEB from central government including:
- Improved coordination of adult learning outcomes with wider local priorities and the specific needs of local public and private sector employers;
 - Introduction of new flexible funding rules based on agreed local outcomes and enabling improved responsiveness such as multiple year funding agreements;
 - Potential enhanced value for money locally via rationalisation, reduced duplication and greater transparency leading to improved economies of scale in the provider base and a more rigorous measurement of local outcomes; and
 - Ability to retain any underspend from the allocation. This is typically 2-3% of the budget which on a £17.6m budget would equate to £352k-£528k which is estimated to be enough to cover predicted administration costs.
- 2.12 On the 23rd May 2018 the WECA Scrutiny Committee considered a report on the AEB Order which was introduced by WECA officers. Points raised by the committee members covered the following areas:
- The limited capacity within the AEB grant to cover administration costs and the need for WECA's S151 Officer to build administration costs into WECA's base budget to cover these costs
 - Whether WECA will have any control over the excluded remit in the future with a particular focus on Prison Education and whether Government may devolve these powers to WECA.
 - How the project will reach everyone who was entitled to it ensuring equality and access to all.
 - The development of the AEB Strategic Skills Plan and how this will set the framework for this project.
 - How ready this project was to start delivery and operations in Sept 2019.
- 2.13 The comments and feedback from the Committee will help shape implementation plans as they are developed.

Consultation:

- 3 The Constituent Councils are each required to give their consent to the making of the Order. Each council has considered a report recommending the transfer of the AEB powers. The Councils have given delegated authority to their Chief Executive or Director of Finance in consultation with the Leader, Mayor and/or relevant Cabinet Member to give consent on behalf of the individual council following advice on the acceptability of the final draft order. (NB at time of writing only SGC & BCC has taken the formal decision)

Other Options Considered:

- 4 The Order will give effect to the adult skills and education element of the agreed WECA devolution deal.

Risk Management/Assessment:

- 5 There are no risks arising directly from this paper. As set out in 2.5, WECA will be asked to approve detailed allocations of devolved funding during the budget setting process for 2019/20 following the co-production approach described in 2.6.
- 6 There are risks related to the implementation of AEB and these are being fully considered by officers developing implementation plans. These include: operational risks, legal risks, financial risks and reputational risks. A risk register will be submitted to DFE as part of the readiness conditions process.

Public Sector Equality Duties:

- 8 There are no direct equalities implications arising in relation to this report and these would be set out in the relevant investment decisions at the time.

Finance Implications:

- 8 There are no financial implications arising directly from the agreement to the Order. Mitigations for the anticipated financial implications from implementation of the Order are being worked up as described in paragraphs 2.7-2.10.
- 9 In discussion with Authority S151 Officers some concerns were raised that by devolution of related funding, WECA would become financially liable for the costs of the insolvency and subsequent special administration regime of any Further Education College provider. WECA will not be expected to pay for the immediate costs of the Special Administration Regime itself, nor to provide any form of exceptional financial support to a college. WECA will be responsible for the continuation of funding for the relevant learners resident in their area who are affected by the insolvency, while a solution to protect those students is identified and delivered.
- 10 The constituent councils do have a financial interest in AEB funding as they are, to varying degrees, recipients of funding. As set out in paragraph 2.6, budgets for AEB will be developed over the coming year in conjunction with constituent councils.

Legal Implications:

- 11 The West of England Combined Authority (Adult Education Functions) Order 2018 will be specified in regulations made under the Education Act 1996. The consent of the individual councils is a pre-requisite to the laying of the Order. As noted above individual councils have received a report and each has resolved to accept the AEB functions and each has given delegated authority to its Chief Executive or Finance Director to give the final consent on behalf of their council.

Recommendations:

- 12 The Committee is asked to:
1. Give consent to The West of England Combined Authority (Adult Education Functions) Order 2018
 2. Delegate to the Chief Executives of the Combined Authority and the constituent Councils, or the Director of Finance, in consultation with the respective Mayors and Leaders or relevant Cabinet Member the authority:
 - a. to confirm the final form of the West of England Combined Authority (Adult Education Functions) Order 2018 on behalf of the Combined Authority; and
 - b. to provide written confirmation to the Secretary of State consenting to the making of the West of England Combined Authority (Adult Education Functions) Order 2018.

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West of England Combined Authority Contact:

Any person seeking background information relating to this item should seek the assistance of the Contact Officer for the meeting who is **Henry Lawes** and who is available by telephoning Joanna Greenwood on 0117 426210; writing to West of England Combined Authority, 3 Rivergate, Temple Way, Bristol BS1 6ER; email: democratic.services@westofengland-ca.gov.uk

Annex 1 – Summary of skills related functions included in the original WECA Order (already with WECA held concurrently with the constituent LAs)

“The duties under sections 15ZA, 15ZB, 15ZC, 17 and 18A(1)(b) of the Education Act 1996 and the power under sections 514A and 560A of that Act (duties and powers related to the provision of education and training for persons over compulsory school age).”

Some of these duties have been added to the Education Act by ASCAL as noted below.

Section 15ZA (ASCAL) – Duty in respect of education and training for persons over compulsory school age: England. (persons over school age but under 19)

Section 15ZB (ASCAL) – Co-operation in performance of section 15ZA duty.

Section 15ZC (ASCAL) – Encouragement of education and training for persons over compulsory school age: England. (But under 19).

Section 17 (Education Act 1996) – Powers in respect of nursery education.

Section 18A (1)(b) (Education Act 1996) – Powers to arrange provision of education at non-maintained schools.

Section 514A (Education Act 1996) – Provision of board and lodging otherwise than at school.

Section 560A (Education Act 1996) – Work experience in last year of compulsory schooling.