



Members of Parliament

Introduction

Thank you for the opportunity, to make a submission, in aid of the Bill committee's considerations.

Clause 44 of the English Devolution and Community Empowerment Bill ("EDCEB"), would change the mechanism for transferring the police governance functions of a democratically elected and directly accountable Police and Crime Commissioner ("PCC") to a Mayor and an appointed Deputy Mayor for Policing and Crime ("DMPC").

The proposed change: a) is unnecessary and counter-productive; b) is contrary to devolution and local choice; and c) weakens the democratic strategic accountability, governance, oversight and scrutiny of policing.

It is recommended that the Committee remove Clauses 44 and 45 from the Bill, and instead reinstate the requirement for Constituent Authorities, to support the transfer of PCC powers to a Mayor in all circumstances, which existed before the passage of the Levelling Up and Regeneration Act in 2023.

Background

Section 107F of the Local Democracy, Economic Development and Construction Act 2009 ("LDEDCA"), as amended, already enables the transfer of PCC powers to a Mayoral Combined Authority ("MCA"). If the MCA already exists, only the Mayor's consent is required. If the MCA does not already exist, the consent of the Constituent Authorities of the proposed MCA is required.

It is to be noted, that until the passage of the Levelling Up and Regeneration Act 2023 ("LURA"), the transfer of PCC powers to an existing MCA, also required the consent of the Constituent Authorities of the MCA. Therefore, both a Mayor and the Constituent Authorities had to agree, before a transfer of PCC powers could take place, ensuring there was a democratic local consensus, support and legitimacy for the transfer. The LURA removed the requirement for the Constituent Authorities to agree to a transfer of PCC powers to an MCA, meaning a Mayor could act unilaterally.

Clause 44 of EDCEB removes the requirement, for there to be consent from either the Mayor or the Constituent Authorities, for the transfer of PCC powers. Instead, the Secretary of State may transfer PCC powers if no other criterion is met, other than the boundaries of an MCA and a police area align. No local consent from the Mayor or the Constituent Authorities is required. Therefore, even if there is local democratic opposition to the transfer of PCC powers, the Secretary of State can disregard, ignore and override this.

The change is unnecessary and counter-productive

The existing statutory framework, is already delivering successive government's policy objectives. Using the existing statutory processes, MCAs have already taken on PCC powers, with local consent, in Greater Manchester, West Yorkshire, York and North Yorkshire and South Yorkshire. A further five areas, are progressing the transfer of PCC powers to MCAs in the next few years, again using the existing statutory framework and with local consent: Cumbria, Norfolk and Suffolk, Greater Essex, Sussex and Brighton, and Hampshire and Solent.

The existing legislation is no impediment, to the transfer of PCC powers to MCAs, where there is local support for such a transfer. The government is therefore legislating to solve a problem that does not exist and instead is creating legislation, that reduces the democratic and political legitimacy of the transfer of PCC powers to MCAs, by removing the requirement for there to be democratic local support for the transfer.

The change is contrary to devolution and local choice

The current statutory framework, enables the transfer of PCC functions, but only where there is democratic local support for the transfer. While the LURA weakened this framework, by removing the requirement for the consent of the Constituent Authorities where an MCA already exists, there at least has to be consent from the Mayor, for a transfer of PCC powers.

The EDCEB proposes giving the Secretary of State unfettered power to impose a transfer of PCC powers regardless of local choice, preferences and circumstances. This is both undemocratic and entirely contrary to devolution, which is the foundation upon which, this process purports to be built. The English Devolution White Paper spoke of "a permanent shift of power away from Whitehall and into the hands of those who know their communities best". Clause 44 of the EDCEB is "Whitehall knows best" at its worst.

Clause 44 of the EDCEB would enable the Secretary of State, to impose on the West Midlands what the people of the West Midlands, its local authority Leaders, and now its Mayor, have previously said they do not want.

In 2019, the then Conservative Mayor of the West Midlands proposed the transfer of PCC powers to him, and the abolition of the separate PCC role. The PCC at the time was Labour's Mr David Jamieson. The majority of the constituent authorities of West Midlands Combined Authority ("WMCA"), voted against the transfer of PCC functions to the West Midlands Mayoralty and work on a transfer ceased.

In May 2021, Labour candidate, Mr Simon Foster, was elected West Midlands PCC. His manifesto included a clear and unequivocal commitment, to retaining a democratically elected and directly accountable PCC. He defeated an opponent, who supported the transfer. He was elected on the same day, and by the same electorate, as the then Conservative Mayor of the West Midlands. The public voted for a PCC, who was committed to keeping the mayoral and PCC roles separate.

The Police and Crime Plan 2021 to 2025, included the following commitment:

"I believe that a democratically elected and directly accountable PCC is the best way to hold the police to account and convene partnership working. A separate corporation sole protects the operational independence of policing. I will work with local and national leaders to maintain this model in the West Midlands."

The passage of the LURA in 2023, enabled the then Mayor to unilaterally initiate the transfer of PCC powers, despite the majority of WMCA Constituent Authorities restating their opposition to the transfer, in 2022 and 2024.

Having misunderstood the law and the local consultation requirements that remained in the LURA, the Home Secretary, as a consequence of a judicial review pre-action protocol letter, launched a short, unexpected and retrospective consultation, on whether the transfer should take place. The majority of respondents to the Home Secretary's own consultation, were opposed to the transfer of PCC powers to the Mayor.

A claim for a judicial review, that was heard in March 2024, found the Home Secretary's decision to transfer the PCC powers to the West Midlands Mayoralty to be unlawful, and the court's ruling meant that the Mayor and PCC roles were to be kept separate.

The election for West Midlands PCC took place in May 2024 and Mr Simon Foster, who campaigned and pledged to retain a separate PCC role, won with a significantly increased majority, defeating another candidate committed to transferring the PCC role to the Mayoralty.

The former Mayor, who had proposed the transfer was also defeated at the polls, and Richard Parker was elected. He also does not advocate, for the transfer of PCC powers to the Mayoralty.

Therefore, the transfer of the PCC powers to the mayoralty in the West Midlands, is not supported by:

- The electorate of the West Midlands, as expressed in 2021 and 2024
- The Police and Crime Commissioner for the West Midlands, expressed both in his election manifesto, pledges and Police and Crime Plans
- The majority of West Midlands local authorities and constituent members of WMCA, as expressed in 2019, 2022 and 2024
- The majority of respondents to the Home Office's own consultation in 2024
- The Mayor of the West Midlands, elected in 2024

The Police and Crime Plan 2025 to 2029, includes the following commitment:

"I believe in the need for a democratically elected and directly accountable Police and Crime Commissioner, whose one and only top priority is preventing and tackling crime. To be the voice of the people, you must be elected by the people.

The Police and Crime Commissioner model ensures that there is effective and efficient accountability and governance of policing on behalf of the people. I remain opposed to the transfer of policing governance to the Mayoral Combined Authority."

"I will work to influence national policy and practice on all matters relating to crime, policing, community safety and criminal justice that impact the West Midlands, including:

Retaining a democratically elected and directly accountable Police and Crime Commissioner within the West Midlands."

Clause 44 of the EDCEB would enable the Secretary of State to override and ignore the clearly and repeatedly expressed preference of the West Midlands electorate, PCC, local authorities, consultation respondents, and Mayor.

The change weakens democratic strategic accountability and oversight of policing

It is presumed by the EDCEB, that the appointment of a DMPC by a Mayor, is equivalent to the exercise of police and crime functions by a PCC. This is not the case.

A democratically elected and directly accountable PCC has preventing, tackling and reducing crime as their one and only top priority. Mayors have a wide range of responsibilities. Policing, crime, community safety and criminal justice, is not their one and only top priority.

EDCEB will abolish, the democratic right of the people of the West Midlands to vote and determine for themselves, who they want to represent them as their Police and Crime Commissioner. As a consequence, it removes the people's choice. It transfers power away

from the people and places it, in the hands of a Mayor, who then largely delegates day to day responsibility for crime, policing, community safety and criminal justice, to an appointed and unelected Deputy Mayor.

It will require Mayors to appoint a DMPC, which relegates accountability, governance, oversight and scrutiny for policing, crime, community safety and criminal justice to an appointed and unelected role. There is no requirement to appoint the DMPC on merit, and their appointment relies solely, on the political patronage of the Mayor.

A DMPC is not democratically elected and directly accountable to the electorate. They have no democratic mandate and as such, cannot be the 'voice of the people'. They are, in reality, accountable not to the electorate, but only to the Mayor, making them less visible, less legitimate and potentially less effective. A DMPC has no democratic and personal mandate. To be the voice of the people, one has to be elected by the people.

There is no interest or inclination on the part of central government, to ever engage in any evidence led or informed decision making in connection with this matter. There is no evidence base or data available, or that is ever sought to be relied upon, to establish that the Mayoral model is any more effective and efficient, in relation to accountability, governance, oversight and scrutiny, in relation to policing, crime, community safety and criminal justice. The liberal and simplistic reference to the word 'levers' and the bare assertion that it might be, is merely that – a bare assertion – and that is no basis, on which to engage in any decision making, by any serious government.

EDCEB confuses matters further, by proposing the creation of Mayor appointed "Public Safety Commissioners", who may not have PCC powers. It will become even less clear, where accountability and responsibility lie.

Given this, where a local area prefers the retention of the more accountable, democratic, focused, effective and efficient separate PCC model, this preference should be respected by central government and not simply disregarded and ignored. To do otherwise, is both undemocratic and entirely contrary to devolution, which is the foundation upon which, this process purports to be built.

Recommendations

1. The EDCEB Committee is recommended to remove Clauses 44 and 45 from the Bill, and thereby enable local devolution to decide, whether to retain separate Mayoral and PCC functions.
2. The EDCEB Committee is recommended to reinstate the provisions removed by the LURA 2023, and require Mayoral and Constituent Authority consent, for the transfer of PCC functions to a Mayoralty.

Office of the Police and Crime Commissioner for the West Midlands
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