



**Dated 16 November 2017**

**London Councils**

**Business Rates Pilot Pool**

**Legal Note on Executive Functions**

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1 **Query: is participation in a business rates pool in pilot and entry into a Memorandum of Understanding an executive function?**

1.1 The relevant functions<sup>1</sup> are:

1.1.1 administrative functions as a billing authority<sup>2</sup> pursuant to the Non-Domestic Rating (Rates Retention) Regulations 2013, [and GLA only], administrative functions as a major precepting authority pursuant to s.39(1)(aa) of the Local Government Finance Act 1992];

1.1.2 entry into the Memorandum of Understanding (**MOU**) as ancillary and incidental to those functions pursuant to s.111 Local Government Act 1972<sup>3</sup>;

1.1.3 appointment of a representative for consultative purposes.

1.2 With regards to the administrative functions and the entry into the MOU, the Secretary of State has not made any regulations under s.9D(3) Local Government Act 2000 (**LGA 2000**). Therefore by default, the above functions fall to be the responsibility of the executive of the local authority under executive arrangements pursuant to s.9D(2) LGA 2000. Nor are the above functions listed in The Local Authorities (Functions and Responsibilities) (England) Regulations 2000. Hence under s.9DA(2) LGA 2000 the above functions are exercisable by the executive.

1.3 Moreover, pursuant to s.9E LGA 2000, any functions which under the arrangements are the responsibility of "*(a) a mayor and cabinet executive, or (b) a leader and cabinet executive (England), are to be discharged in accordance with this section*"<sup>4</sup>. The "*senior executive member - (a) may discharge any of those functions, or may arrange for the discharge of any of those functions - (i) by the executive, (ii) by another member of the executive, (iii) by a committee of the executive, (iv) by an area committee, or (v) by an officer of the authority*"<sup>5</sup>. Therefore, if operating executive arrangements, the decision with regard to the participation in the business rates pool and signature of the MOU can be made by the mayor and cabinet executive, or the leader and cabinet executive, or senior executive member, or by any other duly empowered individual or meeting in accordance with s.9E LGA 2000 and the authority's scheme of delegation.

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<sup>1</sup> "Function" means a function of any nature, whether conferred or otherwise arising before, on or after the passing of this Act: LGA 2000 Act s.9D(9). Any reference in Pt 1A to the discharge of any functions includes a reference to the doing of anything which is calculated to facilitate, or is conducive or incidental to, the discharge of those functions: 2000 Act s.9R(5): see *Champion v North Norfolk DC* [2013] EWHC 1065 (Admin) (para.1-36) (Cross on Local Government Law (2017, Sweet & Maxwell))

<sup>2</sup> Paragraph 45 (Interpretation) of Schedule 7B defines a "relevant authority" as a billing authority in England, or a major precepting authority in England. The list of billing authorities at Schedule 5, Part 1 of the Non-domestic Rating (Rates Retention) Regulations 2013/452 includes the GLA and the London Boroughs<sup>2</sup> as billing authorities and the GLA is also a precepting authority pursuant to section 39 (1) of the Local Government Finance Act 1992.

<sup>3</sup> Local authorities have a power to enter into arrangements between them including under section 111 of the LGA 1972: "*Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions*". If the MOU is succeeded by a more detailed Inter Authority Agreement (**IAA**) this could be a legally binding contract. If so then the relevant power would be s111, LGA 1972 in conjunction with section 1(1) of the Local Government (Contracts) Act 1997 "*for the provision or making available of ... Services for the purposes of, or in connection with the discharge of the function of the local authority*".

<sup>4</sup> s.9E(1)(a), (b) Local Government Act 2000

<sup>5</sup> s.9E(2) Local Government Act 2000

- 1.4 The resolution also involves "appointment of a representative for the purposes of consultation". It is our view that this can similarly be regarded an "executive function" as it:
- 1.4.1 Will not involve the appointment to an external body per se; and
  - 1.4.2 Provided the appointment does not constitute a change of "office",
- 1.5 Then the resolution to delegate this consultative role does not fall within Schedule 2 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, 'Functions which may be (but need not be) the responsibility of an authority's executive'.
- 1.6 However, whether a change of office is triggered (thus engaging paragraph 19<sup>6</sup> of Schedule 2) will depend upon the authority's own scheme of delegation and the terms of the relevant individual's current official mandate.
- 1.7 It is anticipated that the Leaders' Congress will be informed as to the outcome of the Lead Authority's decisions regarding SIP allocation to projects under the London Business rates pool but the Leaders' Congress will not be making decisions on this issue.<sup>7</sup>.

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<sup>6</sup> Schedule 2 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 'Functions which may be (but need not be) the responsibility of an Authority's Executive'

<sup>7</sup> *"the appointment of any individual - (a) to any office other than an office in which he is employed by the authority; (b) to any body other than – (i) the authority; (ii) a joint committee of two or more authorities; or (c) to any committee or sub-committee of such body, and the revocation of any such appointment"* may be (but need not be) the responsibility of an authority's executive"-Paragraph 19 of Schedule 2 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000.