



**WEST MIDLANDS**  
COMBINED AUTHORITY

## **Governance Review**

Review of West Midlands Combined Authority  
Functions and Governance Arrangements

**May 2016**

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# Introduction

**The Governance Review details the incorporation of the functions and governance arrangements required to deliver the first devolution agreement in the West Midlands**

## **Creation of the WMCA**

The West Midlands Combined Authority (the “WMCA”) will be established, Parliamentary approval pending, on 1<sup>st</sup> June 2016 under the WMCA Order 2016 (the “2016 Order”) pursuant to the provisions of the Local Democracy Economic Development and Construction Act 2009 (the “2009 Act”). The aim of the West Midlands Metropolitan Authorities in creating the WMCA was to ensure that the transport, economic development and regeneration functions across the West Midlands would be strategically coordinated and integrated. A Combined Authority also offers the platform for the devolution of powers to the WMCA, enabling the West Midlands to realise its full economic potential.

## **Membership of the WMCA**

The seven West Midlands Metropolitan Authorities of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton are the “Constituent Councils” of the WMCA. The Non-Constituent Members are the three Local Enterprise Partnerships (LEPs) of the Black Country LEP, Greater Birmingham & Solihull LEP, Coventry & Warwickshire LEP and five Councils: Cannock Chase, Nuneaton and Bedworth, Redditch, Tamworth, Telford & Wrekin.

In addition to the incorporation of the functions and governance arrangements required to deliver the Devolution Agreement this Review also covers the addition of the following as Non-Constituent Members:

Stratford-on-Avon District Council  
Shropshire Council

*[other requests for membership will be considered up to the 10 June 2016]*

Any additional members build on the agreed principle that collaboration across the West Midlands with both the LEPs and local authorities is a key part of the WMCA agenda and crucial to its success. The powers and functions required to deliver the devolution agreement are contained within the Mayoral WMCA ‘powers and functions’ Scheme. The Scheme requires approval by all Constituent Councils and public consultation.

The draft WMCA (Election of Mayor) Order 2016 made under the Cities and Devolution Act 2016 (the “2016 Act”) will establish the post of WMCA Mayor *only* and is dependent on each Constituent Council’s approval in May 2016. If this approval is given, the Parliamentary process will begin and the first Mayoral election will take place in May 2017. The Mayor will be a Member of the Mayoral WMCA and its Chair.

## Policy Context

In establishing the WMCA (see the WMCA website for the Governance Review published 26 October 2015), it was recognised by the West Midlands Authorities and the three LEPs that collaboration across the West Midlands would provide the most appropriate governance model for the local authorities to act together to deliver their economic development, regeneration and transport functions and aspirations. This stronger governance would deliver a more joined up strategic approach. Bringing together policy interventions in transport and the key economic drivers that will deliver enhanced growth. By working this way, members of a Combined Authority can deliver shared strategic priorities that are best addressed at a scale above local boundaries.

The area already had a good track record of collaboration between local authorities and the LEPs on issues that affect the area covered by the Constituent local authority areas of Birmingham, City of Wolverhampton, Coventry, Dudley, Sandwell, Solihull and Walsall. However, the governance needed to change if the West Midlands was to demonstrate stronger, more efficient and more effective delivery of economic development, regeneration and transport responsibilities.

We intend to create the most effective Combined Authority in the country in order to propel our economy to further growth than can be achieved at present. Working together across the West Midlands we will achieve far more than any of us could ever deliver separately.

Maximising growth and reducing the total cost of delivering public services cannot be led at a national level: devolving national programmes and funding streams to the WMCA will enable the WMCA to align those programmes and funding streams to local priorities, enabling a focus on game changing investment in growth and on taking demand out of the system through better joined up public services.

Further devolution from Central Government will strengthen the Combined Authority with additional powers. **No existing powers will be taken from Local Authorities.** Indeed, through devolution local councils and local leaders will be better able to exercise their democratic responsibilities through more influence over greater levels of public spending in their localities.

Our Strategic Economic Plan Vision based on the WMCA and the devolution agreement (SEP+ Vision) envisages that in 2030, four years after the arrival of HS2, the West Midlands:

- Will be internationally recognised as a top 3 UK location to do business, boosting the UK's global competitiveness.
- Will be home to 150,000 businesses, almost 20,000 more than today.
- Will have 5% higher productivity than the national average.
- Will provide local people of all ages with access to first class education and training. As a result our skills levels will be higher than the national average.
- Will be home to one of the biggest concentrations of advanced manufacturing and engineering in.
- Will have businesses of all sizes investing in innovation and Research & Development drawing on our world class support infrastructure, including our network of globally recognised research, economic intelligence and policy institutes.
- Will be a world leader in creating a low carbon economy.
- Will have a supply of first class employment land of national significance generated through the addition of 1,600ha. from brownfield land, the regeneration of which has transformed large areas.
- Will have transformed our approach to planning and urban design enabling us to increase the rate of house building while improving our environment and quality of life. As a result there will be a wide choice of housing with over 1.9m homes.
- Will have eliminated our £3.9bn deficit between taxes raised and public expenditure in the area through the Public Sector Reform programme.

Devolution, and more specifically, the powers to be drawn down through the Mayoral WMCA Scheme, will greatly improve the ability of the WMCA to deliver growth and reform for the people and businesses of West Midlands.

## The West Midlands Devolution Agreement

In recognising the considerable progress made to date and the great economic potential of the West Midlands, the Chancellor of the Exchequer and the 7 West Midlands Metropolitan Leaders and the three LEP Chairs signed on 17 November 2015, the West Midlands Combined Authority devolution agreement. It is the intention that this is the first of many.

In order to receive the funding, powers and functions within the devolution agreement the agreement is based on the establishment of an elected Mayor (“the Mayor”) for the West Midlands metropolitan area (the WMCA Area) - working as part of the Combined Authority with a cabinet of Council Leaders of the Constituent Councils and subject to local democratic scrutiny. However, given the importance of existing collaboration across the three LEP geography, as well as with neighbouring areas, the devolution agreement recognises that the wider partnership with business through the LEPs and with neighbouring councils across the West Midlands will be critical to success.

The Mayoral WMCA’s ambition through the devolution agreement is to increase competitiveness and productivity, create more skilled and better paid jobs, bring more investment into the area, reform public services and reduce the region’s welfare bill. It will deliver outcomes that matter to local people: more jobs, better training and improved skills, faster, more convenient and more integrated transport links and more new homes. It will drive these ambitions through its primary focus to improve the effectiveness and efficiency of transport in the area, the exercise of statutory functions relating to economic development and regeneration in the area, skills and employment and economic conditions in the area.

It will manage a significant programme of investment in transport and economic infrastructure, circa £8 billion over 10 years, and influence and align with Government investment, in order to boost economic development and regeneration.

The related interventions will have differential impacts across the Mayoral WMCA area - underpinned by the principle that all communities benefit, but not at the same time and not in the same way. The Mayoral WMCA will seek to achieve this by using evidence based objective means by which to assess interventions, or the design of interventions, so that these are aligned to our balanced economic outcomes for the Mayoral WMCA area.

The Mayoral WMCA will continue to be focused, through the WMCA Strategic Economic Plan, on economic growth issues that will include, but are not restricted to:

- Setting the WMCA Strategic Economic Plan and investment strategy, in consultation with the LEPs and Non-Constituent Members of the Mayoral WMCA.
- Ensuring effective alignment between decision making on transport and decisions on other areas of policy such as land use, economic development and wider regeneration.
- Using WMCA wide economic intelligence and analysis as a basis for strategic planning and coordination.
- Acting as an accountable body for a range of devolved funding.
- Strategic decision-making on the skills agenda across the WMCA.
- Enabling the Mayoral WMCA to act as the forum for local authorities to exercise the Duty to Cooperate, in respect of strategic planning matters.
- Coordinating inward investment activity through the development of a range of investment mechanisms.

The directly elected Mayor for the West Midlands will act as Chair to the WMCA and will exercise the following powers and functions devolved from central government:

- Responsibility for a consolidated, devolved transport budget, with a multi-year settlement to be agreed at the Spending Review.
- Responsibility for franchised bus services, which will support the WMCA's delivery of smart and integrated ticketing across the Combined Authority's Constituent Councils.
- Responsibility for a new Key Route Network of local authority roads that will be managed and maintained at the Metropolitan level by the WMCA on behalf of the Mayor.
- Powers to drive housing delivery and improvements in housing stock which will include the same competencies as the Homes and Communities Agency. The government will also work with the WMCA Land Commission.
- The ability to place a supplement on business rates to fund infrastructure, with the agreement of the relevant local enterprise partnership boards, up to a cap.
- The ability to set a Precept.

The WMCA will also receive the following:

- Control of a new additional £36.5 million a year funding allocation over 30 years, to be invested to drive growth.
- Devolved 19+ adult skills funding from 2018/19, with the Shadow Board responsible for chairing Area Based reviews of 16+ skills provision.
- Joint responsibility with the Government to co-design employment support for the hardest-to-help claimants.
- Responsibility to work with the Government to develop and implement a devolved approach to the delivery of business support programmes from 2017 and deliver more integrated working together on investment and trade.

In addition under the devolution agreement the Government:

- Supports the ambition of the HS2 Growth Strategy and the emerging West Midlands Strategic Transport Plan, and commits to funding the Curzon Street Enterprise Zone extension in order to help deliver this strategy.
- Commits to funding the Eastside Metro extension to Digbeth, subject to a business case, to support the first part of the HS2 Growth Strategy, and supports the work of the Shadow Board to develop a delivery plan, encompassing the Metro extensions from Curzon to Interchange and from Brierley Hill, in order to realise the full benefits of HS2.
- Will work with the Shadow Board through the development of the second Roads Investment Strategy to explore options for reducing congestion on the strategic road network in the West Midlands.
- Commits to support the programme of public service reform across the West Midlands, including working with the Shadow Board to consider the scope for further devolution of youth justice services.

Further powers may be agreed over time and included in future legislation.

## Legal Context

Pursuant to articles 6 and 7 of the 2016 Order, on the creation of the WMCA, the West Midlands Integrated Transport Authority (WMITA) is abolished and all of its functions, property, rights and liabilities transferred to the WMCA. Prior to this the West Midlands Passenger Transport Executive (WMPTE) ('Centro') is transferred into the WMITA and as a result also subsequently transferred into the WMCA.

The 2016 Act (which was enacted on 28 January 2016) makes provision for conferring additional functions on Combined Authorities established under Part 6 of the 2009 Act. Sub-section 1(2)(e) of the 2016 Act refers to "*the principle that powers should be devolved to combined authorities or the most appropriate local level except where those powers can more effectively be exercised by central government.*" The 2016 Act has amended the 2009 Act so that a Combined Authority is no longer restricted to the exercise of statutory functions relating to economic development, regeneration and transport.

Section 111 of the 2009 Act allows for an existing Combined Authority to undertake a 'review of one or more combined matters' in respect of proposed changes to the Combined Authority.

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## **Review of WMCA functions pursuant to section 111 of the Local Democracy, Economic Development and Construction Act 2009**

The Government and the WMCA have reached agreement that in order to improve the ability of the WMCA to deliver growth and reform for the people and businesses of the West Midlands, through the devolution agreement, a range of powers need to be devolved to the new directly elected Mayor and to the WMCA.

The position of directly elected Mayor is not a legal requirement of a Combined Authority but the Government are clear that there must be direct accountability to residents for the new powers and funding to be passed down to the Mayoral WMCA through the devolution agreement. Therefore a Mayor is in effect a condition of the devolution of those powers and funding that form the devolution agreement in order to provide the direct accountability required by Government.

To give effect to the agreement the WMCA is required to comply with and follow the procedures in the 2009 Act, as amended by the 2016 Act, to make any changes to existing Combined Authority arrangements. This is achieved by publishing this Governance Review and a Scheme. The Governance Review details the functions and governance arrangements that are more effectively and efficiently carried out by the Mayoral WMCA and the Scheme details additional functions, powers and membership. The Scheme will be the primary document for the detail of those functions and powers and will be consulted on.

The 2016 Act has made significant amendments to the 2009 Act to reflect the fact that a Combined Authority is now able to request the Secretary of State to make an order which will allow a Combined Authority to exercise any “function of a local authority” that is exercisable in relation to all or part of the Combined Authority’s area (i.e. Combined Authorities are no longer restricted to the exercise of local authority functions relating to economic development, regeneration and transport.)

The 2009 Act also allows a Combined Authority to request the Secretary of State to make an Order which will allow a Combined Authority to exercise a function of a “public authority” (e.g. The Secretary of State, the Homes and Communities Agency etc.) that is exercisable in relation to a Combined Authority’s area or confer on a Combined Authority, in relation to its area, a function corresponding to a function that a public authority has in relation to another area (e.g. functions of the Mayor of London / the GLA).

In addition Section 107 of the 2009 Act allows for a Mayor to be provided for the area of a Combined Authority and makes provision for:

- any function of a Combined Authority which has an elected Mayor (a “Mayoral Combined Authority”) to be a function only exercisable by the elected Mayor;
- the costs of an elected Mayor for the area of a Combined Authority that are incurred in, or in connection with, the exercise of “Mayoral functions” to be

met from precepts issued by the authority under section 40 of the Local Government Act 1992.

As part of this review of the functions of the WMCA under section 111 of the 2009 Act (the “**Section 111 Review**”), the WMCA has considered the various functions that the Government has agreed should be conferred on either the WMCA or the Mayor under the devolution agreement and whether there are any related additional functions that the WMCA should seek in order to enable the WMCA and the Mayor to exercise their devolved functions as effectively as possible.

As a result of the significant amendments to the 2009 Act made by the 2016 Act, the Section 111 Review carried out by the WMCA has also considered more generally whether there are any local authority functions that are exercisable within the West Midlands that would be more appropriately exercised at WMCA level and if there are any “public authority” functions that are exercisable within the West Midlands which could be more effectively exercised at WMCA level.

The Review has also considered:

- whether any of the functions that are **currently** conferred on the WMCA by the 2016 ‘establishment’ Order are functions that the WMCA proposes the new WMCA Order should seek to make “Mayoral functions” which are only be exercisable by the Mayor.
- whether the **additional** functions that the WMCA proposes should be conferred on the WMCA should be WMCA functions or “Mayoral functions”; and
- whether all of the additional functions that the WMCA proposes should be conferred on the WMCA should be exercised by the WMCA **concurrently/jointly** with the Constituent Councils or the public authority which has the function by virtue of any enactment;

The Government and the WMCA are in agreement that the powers which are to be conferred on the Mayor and on the WMCA will be more effectively exercised at a West Midlands level than by central Government. Detailed in the section below is the rationale behind the exercise of those functions, whether by the Mayor, the Mayoral WMCA with the support of the Mayor, or the Mayoral WMCA.

# **Powers and functions to be conferred on the Mayoral WMCA and the exercise of those powers and functions.**

## **Governance Arrangements**

### **Mayor and Cabinet**

The Mayor will be a member of the Mayoral WMCA and its Chair. This is specified in the devolution agreement and as above provides the direct accountability required by Government for the powers and functions being devolved to the Mayoral WMCA.

The Leaders of the Constituent Councils, who are members of the Mayoral WMCA, will hold the office of portfolio leads for aspects of the WMCA's responsibilities, on the basis to be set out in its Constitution and in consultation with the Mayor and will be collectively known as the Cabinet operating with collective responsibility. Portfolio leads will be decided by unanimous vote of the Constituent Members.

The Mayor will propose the Mayor's draft annual budget, which covers Mayoral functions. The Cabinet will examine the Mayor's draft annual budget and the plans, policies and strategies, as determined by the Mayoral WMCA and will be able to reject them if two-thirds of the Mayoral WMCA Cabinet agree to do so. In the event that the Mayoral WMCA reject the proposed budget, then the Mayoral WMCA shall propose an alternative budget for acceptance by the Cabinet, subject to two-thirds majority of those present and voting. The Mayor shall not be entitled to vote on the alternative Mayoral WMCA proposed budget.

### **Voting**

Proposals for a decision of the Mayoral WMCA may be put forward by the Mayor or any Member of the Mayoral WMCA. Any questions that are to be decided by the Mayoral WMCA, unless otherwise specified in the Mayoral WMCA 'functions' Scheme or the Mayoral WMCA Constitution, are to be decided by way of two-thirds majority of Constituent Members, and overall majority of all Members present and voting.

**The voting mechanism and exercise of functions in the Mayoral WMCA is dependent on who is exercising the function, the Mayor or the Mayoral WMCA, the exercise of which are summarised below.**

## Mayoral functions

Mayoral functions will be devolved to the Mayoral WMCA by central Government, exercised by the Mayor and subject to the provisions in the Scheme:

- **HCA CPO Powers** – only exercisable by the Mayor with the **consent of the Mayoral WMCA Cabinet Member(s)** for the area(s) of the land to be compulsorily acquired.
- **Grants to Bus Service Operators** – The Secretary of State to consult the Mayor in making grants to bus service operators which operate services wholly or mainly within the Mayoral WMCA Area. This would provide WMCA with an early opportunity to engage on a formal basis with operators of the current commercial bus network, prior to the forthcoming Buses Bill.
- **Devolved, consolidated transport budget** – to enable greater surety of funding, more effective and efficient long-term asset management and procurement arrangements. **To be exercised in accordance with the Cabinet’s ability to and examination of and ability to reject the Mayoral budget.**
- **Reporting on the West Midlands Key Route Network (WMKRN)** – The WMKRN is the responsibility of the Mayor and is managed and maintained at the Metropolitan level by the WMCA on behalf of the Mayor. The Mayoral function element of the WMKRN is the duty to report to the Secretary of State an assessment of traffic flows, forecast growth and reduction targets in respect of the WMKRN, **in consultation with the appropriate authority(ies).**
- **Mayoral precept** – provisions are sought enabling the Mayor to raise a precept as provided for in the 2016 Act and to aid the delivery of the investment programme.
- **Raising of business rate supplement** – The Mayor will have the ability to raise a business rate supplement, **with the agreement of the relevant LEP Board(s) and the Mayoral WMCA**, up to a specified cap, for investment in specified projects, aiding the delivery of the investment programme driven by the WMCA Strategic Economic Plan.
- **Functional power of competence** – The Mayor will not have the general power of competence, however the Mayor should have, as an ancillary power, a functional power of competence, enabling the Mayor to do things appropriate or incidental to, or connected with, the Mayor’s functions and in order to aid the delivery of the investment programme.

## Joint WMCA/Mayoral functions

A joint WMCA/Mayoral power is the responsibility of the Mayor, but for example is maintained/managed by the Mayoral WMCA. These functions are the responsibility of the Mayor **therefore the exercise of the functions at Mayoral WMCA level are subject to the Mayor's vote in favour:**

- **The West Midlands Key Route Network** – The WMKRN is the responsibility of the Mayor but maintained and managed by the WMCA, powers and functions are sought to achieve this and are outlined in the transport section, below, and detailed in the Scheme. Further joint WMCA/Mayoral transport functions sought are regarding bus re-franchising and enhanced quality contracts.
- **Low emissions and clean air zones** - the Mayor and the Mayoral WMCA will have the power, subject to proposals being brought forwards, to create low emissions and clean air zones with the affected highway authority(ies) consent.
- **Homes and Communities Agency (HCA) objectives and functions** – Mayoral WMCA to exercise functions concurrently with the HCA to drive housing delivery.
- Arrangements, exercised jointly/concurrently with the Secretary of State, for the purpose of **assisting persons to train for, obtain and retain suitable employment**, and enter into agreement for the provision of ancillary goods and services.

## Mayoral WMCA functions

Functions exercised by the Mayoral WMCA and **not** subject to the Mayor's vote in favour.

- **Current WMCA powers and functions** – contained within the WMCA establishment Order – i.e. transport functions currently undertaken by the Passenger Transport Executive (PTE), and economic development and regeneration functions. It is not appropriate that the Mayor is required to vote in favour as such functions are Local Authority functions, exercised concurrently/in parallel and with the Local Authorities.
- **HS2 Growth** – The WMCA to have the ability to designate any area of land, with the consent of the local planning authority(ies) for the area(s) in the Mayoral WMCA Area, as a development area leading to the establishment, by Order, of WMCA development corporations. As per the devolution agreement, this would be a Combined Authority-led development corporation to deliver local growth.
- **Matters reserved to unanimous Constituent Member voting** – contained within the WMCA establishment Order and WMCA Constitution, agreement of such matters are subject to a unanimous vote of the Constituent Members.

# Powers and functions to be conferred on the Mayoral WMCA

## Transport

### *Current position under 2016 Order*

The current WMCA's transport functions are inherited from the former West Midlands Integrated Transport Authority and Passenger Transport Executive (WMITA and WMPTE (Centro)). These will remain **WMCA functions**.

### *Proposals for new Transport Functions*

A high quality, efficient, effective and reliable transport network and infrastructure is a prerequisite in driving the economic prosperity of the area.

To achieve this, the Mayor will:

- Receive a multi-year devolved and consolidated local transport capital block allocation from Government for the area of the Mayoral WMCA (i.e. the areas of the Constituent Councils). This will support the delivery of a single asset management plan, working towards shared procurement of highways maintenance services across the Combined Authority's Constituent Councils as practical, reflecting existing contractual and PFI arrangements.
- Receive powers for the franchising of bus services in the Mayoral WMCA area, subject to necessary legislation and local consultation. This will help to deliver integrated smart ticketing across all local modes of transport in the Mayoral WMCA area and align with the work of Midlands Connect on smart and integrated ticketing across the Midlands.
- Take responsibility for a new Key Route Network of defined local authority roads; the management and maintenance of which will be undertaken at the Metropolitan level by the Mayoral WMCA on behalf of the Mayor. This is in order to secure a consistent approach and to have oversight of the local roads that link key centres of growth and employment. Also to provide links to the Strategic Network are seen as critical for the expeditious movement of traffic both within and through the West Midlands to support our key aims of economic growth, productivity and job creation.

## Consolidated multi-year local transport capital block allocation

The Government have agreed to the allocation of a 5 year capital allocation for highway maintenance and integrated transport improvements. Having longer term certainty of allocation will allow for improved network maintenance and management enabling greater efficiencies and effectiveness in procurement and improved asset management.

The allocation will be to the Mayor for subsequent distribution to the Constituent Councils. Allocation of the funding will be treated as part of the Mayor's budget and therefore subject to Cabinet's examination of and ability to reject the Mayoral budget, in accordance with the Scheme, **A Mayoral function.**

## Public Transport and related infrastructure

To implement and deliver the above it is proposed that:

- The Secretary of State<sup>1</sup> to make grants to bus service operators in relation to services which operate wholly or mainly in the Mayoral WMCA Area, to be exercised by the Secretary of State for Transport in consultation with the Mayor. The eligibility requirements for the grant would remain unchanged. This would provide the WMCA with an early opportunity to engage on a formal basis with operators of the current commercial bus network, prior to the new regime to be introduced by the forthcoming Bus Service Bill. **A Secretary of State function, exercised in consultation with the Mayor.**
- to strengthen the WMCA's Safety and Security agenda and to provide our Safer Travel Police Team with similar powers to that of Transport for London, that exist to help secure effective working on our public transport network and related infrastructure, additional powers are required to be exercised as **Mayoral WMCA functions**, concurrently/jointly with the Constituent Councils to:
  - provide the ability<sup>2</sup> to tackle smoking in public places, most specifically on buses and in enclosed bus stations; and
  - provide powers<sup>3</sup> currently held by Local Authorities, NHS, social landlords, Police Forces and TfL in order to enable efficient action to secure Orders that apply across the whole of the Mayoral WMCA Area.
- to ensure a consistent approach to the enforcement<sup>4</sup> of bus lane penalty charges etc. are applied.

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<sup>1</sup> Section 154 of the Transport Act 2000

<sup>2</sup> Section 10 of the Health Act 2006

<sup>3</sup> Anti-Social Behaviour, Crime and Policing Act 2014

<sup>4</sup> Approved Local Authority for the purposes of Section 144 of the Transport Act 2000 - Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005

## The West Midlands Key Route Network (WMKRN)

The WMKRN serves the main strategic demand flows of people and freight across the metropolitan area, and provide connections to the national strategic road network. The KRN handles a significant proportion of these flows, highlighting the importance of this network and the role it plays in supporting the economic growth objectives across the WMCA area. It also serves large local flows which use main roads and will need to provide good access for businesses reliant on road based transport. Around 60% of journeys to work by residents of the Metropolitan Area involved crossing a district boundary, giving weight to the need for a commonly agreed main road network to handle this movement more effectively.

In order for the WMKRN of local authority roads to be strategically managed and coordinated at the Metropolitan level, with joint Asset Management and Procurement, **by the Mayoral WMCA**, on behalf of the Mayor it is proposed that:

- the WMKRN be statutorily defined<sup>5</sup> to enable Orders such as ‘Safer Vehicles’ and ‘Air Quality’ Orders to be uniquely identified for the WMKRN.
- the Mayoral WMCA be a party to agreements<sup>6</sup> as if they were a highway authority. The Secretary of State, Highways England and local highways authorities can enter into agreements with each other for the construction and improvement of roads for which one party to the agreement is the highway authority. This is important in connection with the Mayors strategic management and oversight role in relation to the WMKRN and coordinating the exercise of transport responsibilities. However, it should be emphasised that there is no proposal for the Mayoral WMCA to be the local highway authority or have powers in relation to the day to day operation or maintenance of such highways **This will be a joint WMCA/ Mayoral Function with the effected highway authority(ies) consent.**
- the Mayoral WMCA is provided with the power<sup>7</sup> to enable it to undertake works on the WMKRN for Transportation purposes as if it were the highway authority, **joint WMCA/ Mayoral Function with the effected highway authority (ies) consent.**
- the Mayoral WMCA is defined<sup>8</sup> as a Street Authority for the WMKRN. This would enable the WMCA to develop a Permit Scheme, coordinate Notices etc. for the WMKRN. The receipt of notices, register, inspections etc. would still carried out by the Local Highway Authority. It would also enable eligibility for the 18% diversionary works contribution from utilities for non-metro Schemes. **A joint WMCA/ Mayoral Function.**
- a duty<sup>9</sup> be placed on the Mayoral WMCA, in consultation with the relevant local highway authorities, to report to the Secretary of State on an

<sup>5</sup> Road Traffic Act Regulations 1984 – General Interpretation of the Act – definition of WMKRN

<sup>6</sup> Sections 6 and 8 of the Highways Act 1980

<sup>7</sup> Section 62 of the Highways Act 1980 – General Power of Improvement

<sup>8</sup> S49 of the New Roads and Street Works Act 1991 – The Street Authority and other Relevant Authorities

<sup>9</sup> Section 2 of the Road Traffic Act Reduction 1997, subsections 1,2 and 3



assessment of existing Traffic flows, forecast growth and reduction targets in respect of the WMKRN. **A Mayoral Function**

- the WMKRN to be designated a civil enforcement area<sup>10</sup> for moving traffic violations. **A joint WMCA/ Mayoral Function**
- that the Mayoral WMCA should exercise **concurrently with the local highway authority** (the Constituent Councils) the functions<sup>11</sup> in relation to road safety. This function relates to preparing and carrying out of a programme of road safety measures, including road safety studies, studies into accidents, accident prevention campaigns, advice as to the use of roads and on the construction of new roads, and arranging for the giving of practical training to road users. **A WMCA non-mayoral function.**

In addition the Mayor and the Mayoral WMCA should receive the following duties<sup>12</sup> regarding the creation of Low Emission Zones and Clean Air Zones:

- duty to cause a review to be conducted of quality for the time being, and the likely future quality within the relevant period, of air within the authority's (WMCA) area and associated duties;
- duty to designate air quality management areas;
- duties in relation to designated areas; and
- any other such duties that are appropriate in order to effectively deliver the Low Emission and Clean Air Zones.

This would be a **joint WMCA/ Mayoral Function with the effected authority(ies) consent.**

## **HS2 Growth**

The Mayoral WMCA will deliver the objectives of the HS2 Growth Strategy. In order to manage risks and support delivery there will be a prioritised programme of projects with milestones, input, output, outcomes and benefit indicators that local partners will use to track delivery. In addition consideration will be given to the remit and governance of a Combined Authority-led Development Corporation to deliver the local growth. Functions to enable the effective delivery of the HS2 growth strategy are detailed in the Scheme.

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<sup>10</sup> Section 74 and Schedule 8 of the Traffic Management Act 2004

<sup>11</sup> Sections 39 (2) and (3) of the Road Traffic Act 1988

<sup>12</sup> Sections 82 – 84 of the Environment Act 1985

## **Skills**

### ***Current position under 2016 Order***

The Combined Authority is designated a local authority for purposes of section 84(2) of The Apprenticeships, Skills, Children and Learning Act 2009 (duty of the Chief Executive of Skills Funding to co-operate with local authorities in relation to apprenticeship training) and has duties and powers<sup>13</sup> related to the provision of education and training for persons over compulsory school age.

### ***Proposals for new skills functions***

The importance of the existing collaboration between the three LEPs on employment and skills is recognised and central to the WMCA's skills ambition. With this in mind the WMCA will begin to prepare for local commissioning which will allow the Mayoral WMCA to agree with providers the mix and balance of provision that will be delivered in return for the block funding, and to define how success will be assessed. It will develop a series of outcome agreements with providers, about what should be delivered in return for allocations in the 2016/17 academic year. This will replace the current system of funding by qualifications as providers will receive their total 19+ skills funding as a single block allocation.

For the 2017/18 academic year, and following the area review, the Government will work with the Mayoral WMCA to vary the block grant allocations made to providers, within an agreed framework.

From 2018/19, there will be full devolution of funding. The Mayoral WMCA will be responsible for allocations to providers and the outcomes to be achieved, consistently with statutory entitlements. The Government will not seek to second guess these decisions, but it will set proportionate requirements about outcome information to be collected in order to allow students to make informed choices.

## **Employment**

The Mayoral WMCA will work with the Department for Work and Pensions (DWP) to co-design the future employment support, from April 2017, for the hardest-to-help claimants, many of whom are currently referred to the Work Programme and Work Choice. The Employment and Skills Strategy for the three LEP Area will influence the co-design.

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<sup>13</sup> Duties under section 15ZA, 15ZB, 15ZC, 17A, 18A (1)(b), and the power under sections 514A and 560A of the Education Act 1996

The respective roles of DWP and the Mayoral WMCA in the co-design will include:

- DWP setting the funding envelope, the Mayoral WMCA can top up if they wish to, but are not required to.
- The Mayoral WMCA setting out how they will join up local public services in order to improve outcomes for this group, particularly how they will work with local Clinical Commissioning Groups/third sector organisations and NHS England/the Work and Health Unit nationally to enable timely health-based support.
- DWP setting the high-level performance framework. The primary outcomes will be to reduce unemployment and move people into sustained employment. The Mayoral WMCA will have some flexibility to determine specific local outcomes that reflect the priorities outlined within the Employment and Skills Strategy and are complementary to the ultimate employment outcome (for example in-work wage progression).

### ***Proposals for new employment functions***

Pending the outcome of the above co-design it is proposed that the Mayoral WMCA should have the power<sup>14</sup> to exercise functions **concurrently with the Secretary of State** to make appropriate arrangements for the purpose of assisting persons to train for, obtain and retain suitable employment, and enter into agreements for the provision of ancillary goods and services as a **A joint WMCA/Mayoral function**.

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<sup>14</sup> Sections 2 and 10A of the Employment Training Act 1973

## More and Better Homes

The Mayoral WMCA and its Constituent and Non-Constituent Councils will support an ambitious target for the increase in new homes, and will report annually on progress against this target.

The objectives are:-

- to improve the supply and quality of housing;
- to secure the regeneration or development of land or Infrastructure;
- to support in other ways the creation, regeneration and development of communities or their continued well-being; and
- to contribute to the achievement of sustainable development and good design.

The Homes and Communities Agency (“HCA”) and the Mayoral WMCA will work together to develop a joint approach to strategic plans for housing and growth proposals for the area.

The Government will work with the Mayoral WMCA to support the West Midlands Land Commission. The West Midlands Land Commission will ensure there is a sufficient, balanced supply of readily available sites for commercial and residential development to meet the demands of a growing West Midlands economy. It will create a comprehensive database of available public and private sector land, identify barriers to its disposal/development, and develop solutions to address those barriers to help the West Midlands meet its goal to deliver a significant number of additional new homes over the next 10 years, and to unlock more land for employment use. The Mayoral WMCA will also be able to use their proposed Land Remediation Fund to support bringing brownfield sites back into use for employment and housing provision.

The Mayoral WMCA and the Government will continue to discuss the devolution of housing loan funds. We also intend to develop further a proposition on a Housing Investment Fund, for discussion with Government.

### ***Proposals for new housing functions.***

To enable the achievements of the objectives outlined in this section, including a power of HCA CPO and Mayoral WMCA exemption to mirror the HCA in relation to the provision of land and infrastructure for housing. It is proposed that the Mayoral WMCA be given the relevant powers<sup>15</sup> of the HCA.

The functions set out in the above would **be non-Mayoral functions** with the exception of the specific HCA compulsory purchase powers in Section 9 of the Housing & Regeneration Act 2008 which would be a **Mayoral function, but would only be exercisable by the Mayor with the consent of the Mayoral WMCA Cabinet Member(s) for the area(s)** of the land to be compulsorily acquired.

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<sup>15</sup> Section 2 of the Housing and Regeneration Act 2008 (limited to the WMCA Area) and sections 3 to 12, 17 and 18 of the Housing and Regeneration Act 2008

## Land Commission

The devolution agreement provides that the Government will work with the WMCA Land Commission (the “**WMCA Land Commission**”). The WMCA will seek the appropriate legislative provision to allow the Secretary of State to make schemes for the transfer to the WMCA of “designated property, rights or liabilities of a specified public body” where such property is in West Midlands Area.

## Supporting and Attracting Business Innovation

The Government has committed to working with the Mayoral WMCA and the Greater Birmingham & Solihull, Black Country and Coventry & Warwickshire LEPs to support the further development and implementation of the three LEP Integrated Business Support Ecosystem, an environment where business are enabled to start, grow and succeed through integrated and locally relevant support and access to finance, and in particular will:

- Review the Inward Investment resource location of regional (IST) staff across the three levels of: Partnership Managers; Business Development and Key Account Management teams. The aim will be to seek to agree options for co-location, under UKTI/IST management
- Establish a joint governance structure with quarterly meetings attended by a Director level representative from both UKTI investment and the Mayoral WMCA.
- Ensure a portion of the GREAT campaign budget for overseas based activity (the UK government’s campaign to promote the UK internationally) is aligned to appropriate West Midland’s sector strengths.
- Continue devolved inward investment funding for the Drive West Midlands initiative with the Automotive Investment Organisation to be considered as part of the Spending Review, Export Strategy and future sector prioritisation work. This will determine whether funding should be continued until 2020.

On trade, the Government will:

- Ring-fence trade services resource within the Mayoral WMCA area based on an agreed export plan with a dual key approach to activities and reporting on outputs and outcomes to the Mayoral Combined Authority.
- Develop an export plan between the Mayoral WMCA and UKTI HQ which will allow flexibility.

On other business services, the Government will:

- Work with the Mayoral WMCA to develop a devolved approach to delivery of business support from 2017 onwards.
- Work with the Mayoral WMCA to design a joint approach to enterprise start-up activity.

- Consider the Mayoral WMCA access to finance needs and how these interact with national access to finance programmes, such as the British Business Bank.

## Culture

### *Current position under 2016 Order*

The WMCA Order 2016 provides for the power<sup>16</sup> to encourage visitors and provide conference and other facilities. This should remain a non-Mayoral function to be exercised concurrently with the Constituent Councils.

### *Proposals for new culture functions*

The Mayoral WMCA to be further given the power<sup>17</sup> **to provide and support cultural activities and entertainments** as a **non-Mayoral function** to be exercised concurrently with the Constituent Councils. The devolution of this power will assist in the promotion of the West Midlands thereby attracting business and innovation into the region.

## Information Sharing Provisions

For the purposes of exercising Mayoral WMCA functions concurrently/jointly with the Constituent Councils or a public authority the WMCA needs to rely on the same information sharing gateways applicable to those authorities.

In most instances the relevant statutory provisions contain a local authority definition that does not specifically recognise a Combined Authority. Whilst some of the relevant functions have yet to be sought, the data sharing is required to enable the further development work agreed in the devolution agreement and the subsequent development of further schemes to seek transfer of additional powers.

For this reason it is proposed that the following enactments be amended to ensure the data provisions sought below apply to the Mayoral WMCA.

The Mayoral WMCA seeks application of the data sharing provisions outlined below. It should be noted that the current definition of a “local authority” does not include a Combined Authority<sup>18</sup>.

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<sup>16</sup> Section 144 of the Local Government Act 1972

<sup>17</sup> Section 145 of the Local Government Act 1972

<sup>18</sup> Section 65 of the Education and Skills Act 2008

- If requested to do so, educational institutions will be obliged under section 14 Education and Skills Act 2008 (the “ESA 2008”) to supply relevant information about a student or pupil to the WMCA.
- The Mayoral WMCA will have the power to seek the supply of information from other public bodies.
- The Mayoral WMCA will be able to rely on the information sharing provisions in section 17 ESA 2008 (primarily concerning the exchanges between local authorities and their service providers) and; in section 77 ESA 2008 to support local authorities to deliver their duties under section 68 ESA 2008, including such amendments, modifications and enactments of legislation governing information sharing.

The Mayoral WMCA to be able to share relevant information for education and training purposes between local authorities and their service providers and for similar exchanges between these bodies with the Secretary of State and/or their service provider<sup>19</sup>.

When exercising its functions to consider crime and disorder implications the Mayoral WMCA seeks relevant authority status<sup>20</sup> to enable it to share information in accordance with the provisions in sections 17A and 115 of this the Crime and Disorder Act 1998.

For the purposes of discharging environmental functions in relation to Mayoral WMCA’s air quality functions the provision<sup>21</sup> to disclose prescribed information between relevant Ministers of the Crown, relevant agencies and local enforcing authorities is sought as the definition does not currently include a Combined Authority.

Current legislation enables the Secretary of State to make regulations allowing certain persons, including the Department for Work and Pensions, to share social security and employment and training information with other Government Departments and their service providers, certain types of local authorities and their service providers. The Mayoral WMCA seeks to be included in the definition of a ‘relevant authority’ in order to facilitate the exchange of information and training purposes.

The Mayoral WMCA seeks designation as a relevant authority<sup>22</sup> in order to facilitate the exchange of information for employment and training purposes in order to share the following information:

- Social Security Information<sup>23</sup>
- To enhance a person’s skills and qualifications with a view to improving their prospects of finding and retaining employment<sup>24</sup>

<sup>19</sup> Section 122 of the Apprenticeships, Skills, Children and Learning Act 2009

<sup>20</sup> Part 1 Chapter 1 (1A) Crime and Disorder Act 1998

<sup>21</sup> Section 113 of the Environment Act 1995

<sup>22</sup> Section 72 of the Welfare Reforms and Pensions Act 1999

<sup>23</sup> Regulation 13(1)(b)(iv) of the Social Security (Claims and Information) Regulations 1999

<sup>24</sup> Regulation 13(1A) of the Social Security (Claims and Information) Regulations 1999

- social security information or information relating to employment or training for the purposes of research, monitoring or evaluation<sup>25</sup>

The Mayoral WMCA seeks designation<sup>26</sup> so as to enable the Secretary of State or a person supplying services to the Secretary of State, to supply relevant information to qualifying persons for certain purposes, including welfare services (which includes support, assistance including by means of a grant or loan or the provision of goods or services, advice or counselling to individuals with particular needs), and for these and for the use of that information.

The Mayoral WMCA seeks designation<sup>27</sup> as a qualifying person in relation to:

- the provision of welfare services either as a local authority or as a person prescribed or of a description prescribed by the Secretary of State.
- the Secretary of State's ability to supply relevant information for the purposes of identifying households eligible for support under a Troubled Families Programme, providing advice support and assistance to members of such households and for monitoring and evaluating such programmes

The Mayoral WMCA seeks Government's support to use the following national administrative data sets in order to support our ambition to develop an integrated data system to improve outcomes for individuals with multiple indicators of vulnerability (unemployment, offending, substance misuse, poor mental health and homelessness) while respecting legal and other privacy concerns. These will include:

- The Prisons Database (held by the Ministry of Justice)
- The Work and Pensions Longitudinal Study (held by the Department for Work and Pensions)

The Government can support the WMCA in analysing and interrogating health data sources to improve care whilst respecting legal and other privacy concerns. These will include:

- Hospital Episodes Statistics, Mental Health Minimum Dataset (held by the Health and Social Care Information Centre)
- National Drug Treatment Monitoring System (held by Public Health England)

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<sup>25</sup> Regulation 13(4) of the Social Security (Claims and Information) Regulations 1999

<sup>26</sup> Section 131 of the Welfare Reform Act 2012

<sup>27</sup> Social Security (Civil Penalties) Regulations 2012



## Finance and funding

### ***Current position under 2016 Order***

The Mayoral WMCA will be funded through two main sources. In relation to its transport functions, the Transport Levying Bodies Regulations 1992, as amended, enable a Combined Authority to issue a levy to its Constituent Councils to fund “*all those liabilities failing to be discharged by it which are reasonably attributable to the exercise of its transport functions for which provision is not otherwise made*”. **The current arrangements for a Transport Levy will remain.**

The WMCA 2016 Order also provides for a statutory recharge whereby the Constituent Councils are required to “*meet the costs of the WMCA reasonably attributable to the exercise of its functions relating to economic development and regeneration.*”

### ***Proposals for new Financing Functions***

#### **Precept(s) for Mayoral functions**

Under Section 5 of the 2016 Act a Mayoral WMCA becomes a major precepting authority for the purpose of the Local Government Finance Act 1992 (the “**LGFA 1992**”) and may issue a precept<sup>28</sup>.

It is proposed that the Secretary of State makes an Order to enable the Mayor to raise a precept in accordance with the Act, and to aid the delivery of the investment programme. The Order is to contain provision requiring the Mayor to maintain a fund in relation to receipts arising, and liabilities incurred and about the preparation of an annual budget in relation to the exercise of those general functions.

The Order for the costs of the elected Mayor to also include provision for:-

- (a) the mayor to prepare a draft budget
- (b) the draft to be scrutinised by other members of the Combined Authority and its Scrutiny Committee
- (c) the making of changes to the draft as a result of such scrutiny
- (d) the approval of the draft by the Combined Authority (including a power to veto the draft in circumstances specified in the order and the consequences of any such veto)
- (e) the basis on which such approval is given.

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<sup>28</sup> Section 40 of the Local Government Finance Act 1992

The Cabinet will examine the Mayor's draft annual budget and the plans, policies and strategies, as determined by the Mayoral WMCA, and will be able to reject them if two-thirds of the Mayoral WMCA Cabinet agree to do so. In the event that the Mayoral WMCA reject the proposed budget then the Mayoral WMCA shall propose an alternative budget for acceptance by the Cabinet, subject to a two-thirds majority of those present and voting. The Mayor shall not be entitled to vote on the alternative Mayoral WMCA proposed budget.

## Levies

The 2016 Act removes the restriction of levying for transport only enabling regulations to be made to enable a Combined Authority to be a levying body in respect of non-mayoral functions other than transport, provided that the Constituent Councils consent. It is proposed that provision is made<sup>29</sup> to enable the Combined Authority to be a levying body in respect of all its non-Mayoral expenditure.

## Borrowing

Previous legislation provided that capital finance applies to a Combined Authority as it applies in relation to a local authority, except that the power to borrow confers power on such a Combined Authority to borrow money for a purpose relevant to its transport functions *only*. Therefore the Mayoral WMCA is prevented from borrowing for the purposes of its economic development and regeneration functions and as a result one of the Constituent Councils would in effect need to borrow on Mayoral WMCA's behalf. The Greater Manchester Combined Authority have found this approach to be unsatisfactory, administratively burdensome and inconvenient. For the West Midlands to also proceed in this way would be extremely unsatisfactory.

The 2016 Act remedies this difficulty. It amends previous legislation so that in addition to borrowing for transport functions, a Combined Authority may borrow in relation to "*any other functions of the authority that are specified for the purpose of [section 23(5)] in regulations made by the Secretary of State*". Such functions include Mayoral and non-Mayoral functions.

Such regulations may only provide borrowing powers for a particular function of the Mayoral WMCA if all the Constituent Councils consent. It is proposed that the regulations should provide for the **Mayoral WMCA to have borrowing powers** in respect of all of its functions.

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<sup>29</sup> S9 of the Cities and Local Government Devolution Act 2016

## **European Funding**

The Mayoral WMCA will work with the Government to achieve Intermediate Body status for European Regional Development Funding and European Social Funding for the Greater Birmingham & Solihull LEP only, to complement other aspects of this devolution agreement.

## **Conclusion**

It is considered that the conferral of additional functions on the WMCA and the associated governance changes, as recommended by this review and incorporated in the Scheme, would be likely to improve the exercise of statutory functions in relation to the area of the WMCA at the appropriate local level.

The functions and powers detailed in this Governance Review and Scheme would give effect to the devolution agreement and with this and future agreement of devolution deals, improve the ability of the WMCA to deliver growth and reform for the people and businesses of the West Midlands.

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