

# **Draft Scheme for the establishment of a Mayoral West Midlands Combined Authority**

## **Introduction - Delivery of the Devolution Agreement and the involvement of a directly elected Mayor**

The establishment of a West Midlands Combined Authority<sup>1</sup> presented the opportunity to have a strong, shared voice for the West Midlands and to make a step change in the collective efforts to drive the economic prosperity of the area. Effective engagement with the Local Enterprise Partnerships (“LEPs”) and the wider business community remains critical to the delivery of this ambition.

In recognising the considerable progress made to date and the great economic potential of the West Midlands, as it performs increasingly strongly on growth, inward investment and exports together with the investment in HS2, a devolution agreement (the “devolution agreement”) has been negotiated with Central Government which supports the public and private sector of the West Midlands to fully grasp these opportunities.

This Scheme for a Mayoral West Midlands Combined Authority (Mayoral WMCA) builds on the existing West Midlands Combined Authority by providing the necessary powers and decision making necessary to deliver the devolution agreement.

The devolution agreement is based on the establishment of an elected Mayor for the West Midlands metropolitan area (“the Mayor”) - working as part of the Combined Authority with a Cabinet of Council Leaders of the Constituent Councils having identified portfolios (“the Cabinet” and “Cabinet Member”) and subject to local democratic scrutiny. It is not envisaged that the Cabinet holds separate meetings; the Cabinet is part of the Mayoral WMCA, of which both LEPs and Local Authorities are Members. The ‘Cabinet’ will make decisions on the relevant matters to the WMCA Area, particularly applicable in relation to the Mayoral functions, such as the examination of the Mayoral draft budget.

Given the importance of existing collaboration across the three LEP geography (a crucial economic geography for the West Midlands area), 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.

Implementation of the devolution agreement will enable the West Midlands to tackle the economic and social challenges that the region faces. The devolution agreement includes powers to support adult skills provision and employment support, and the ability to create an integrated approach to local public transport, including a single smart ticketing system. Further powers may be agreed over time and included in future legislation, which will require further parliamentary Orders.

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<sup>1</sup> A Scheme for the establishment of the West Midlands Combined Authority was published on 26 October 2015. All definitions set out there in shall also apply to this Scheme unless otherwise specified.

## Section 1 - Establishment of the Mayoral West Midlands Combined Authority (Mayoral WMCA)

All of the provisions in this Scheme are in addition to the current Order to establish the WMCA and the Constitution of the existing WMCA.

1. A Mayoral WMCA will be established pursuant to Section 107A of the Local Democracy, Economic Development and Construction Act 2009 (the “2009 Act”) as amended by the Cities and Local Government Devolution Act 2016 (the “2016 Act”), Constituent Councils approval dependent. The Parliamentary process for the election of a Mayor in May 2017 will be required and is a separate process. This Scheme details the powers and functions that are being sought by the WMCA to enable the Mayoral WMCA, in conjunction with the Mayor, to deliver the devolution agreement.

### Membership of the Authority

2. The directly elected Mayor for the West Midlands will be a Member and Chair of the Mayoral WMCA and will be subject to the Mayoral WMCA constitution. Until such time as the Mayor is elected, a Chair and up to 2 Vice Chairs will be appointed from the Constituent Members by majority.

3. Once elected, the Mayor will appoint a Deputy from one of the Constituent Members.

4. In addition to the current Constituent and Non-Constituent Members of the existing WMCA, the following new Non-Constituent Members will be appointed from the following Councils to the Mayoral WMCA:

- Stratford-on-Avon District Council
- Shropshire Council
- *[10<sup>th</sup> June 2016 deadline has been given for consideration by the WMCA Shadow Board of additional membership]*

5. The total membership of the Mayoral WMCA will comprise of two elected Members from each Constituent Councils, one of which must include the Leader of each Constituent Council, one elected Member from each of the Non-Constituent Councils, one representative from each of the three LEPs and the elected Mayor.

## Mayor and Cabinet

6. The Leaders of 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.

7. The Mayor will also delegate to portfolio leads such areas of Mayoral responsibility as agreed by simple majority of the Cabinet.

8. 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.

9. If the Mayoral WMCA agrees, the Mayor may be paid an allowance subject to an independent review of the appropriateness and amount of such an allowance, subject to any statutory provision.

10. It is proposed that there should be provision to enable the Mayor to appoint one person as the Mayor's political adviser and to provide for the terms and conditions of such appointment in accordance with Section 9 of the Local Government and Housing Act 1989.

## Voting

11. 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 this 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.

12. **Mayoral functions** will be devolved to the Mayoral WMCA by central government, exercised by the Mayor and subject to the provisions in this Scheme.

13. **Mayoral WMCA/Mayoral joint functions** are identified in Section 2 of this Scheme and are subject to the Mayor's vote being included in the majority in favour with the two-thirds of the Constituent Member voting.

14. **Mayoral WMCA functions**, such as those contained within the WMCA establishment Order regarding transport and economic development and regeneration, are **not subject to the Mayor's vote** being included in the majority in favour with the two-thirds of the Constituent Member voting. **The items reserved for unanimous voting of the Constituent Members are also not subject to the Mayor's vote in favour.**

15. The specific issues that are reserved for unanimous Constituent Member voting, in addition to any further unanimous issues specified in this Scheme, are:

- (a) approval of borrowing limits, treasury management strategy including reserves, investment strategy and capital budget of the Mayoral WMCA;
- (b) the conferral of further functions on the Mayoral WMCA;
- (c) voting rights for Members of the Mayoral WMCA appointed otherwise than from among the elected Members of the Constituent Councils;
- (d) the exercise of its functions in accordance with Section 113A of the Local Democracy, Economic Development and Construction Act 2009 (the "2009 Act")<sup>2</sup>;
- (e) amendments to the standing orders of the Mayoral WMCA; and
- (f) such other plans and strategies as may be determined by the Mayoral WMCA and set out in its standing orders.

16. Any delegation of any Combined Authority function pursuant to Section 101 the Local Government Act 1972 is a matter for the unanimous decision of the Constituent Members only.

## Overview and Scrutiny and Audit Arrangements

17. The joint Overview and Scrutiny arrangements and the Audit committee of the Mayoral WMCA will comply with the provision of S104 (9) of the 2009 Act and any subsequent regulations issued under the 2016 Act. The Audit Committee will include at least one independent person.

18. No Member of the Mayoral WMCA or its committees (other than the Overview and Scrutiny Committee) can be a Member of any Mayoral WMCA Overview and Scrutiny Committee.

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(2) Section 113A was inserted by section 13 of the Localism Act 2011.

## Section 2 - Functions Sought by the Mayoral WMCA

19. **Existing WMCA transport and economic development and regeneration functions**, provided for in the establishment of the WMCA, **will remain exercisable by the Mayoral WMCA, not the Mayor**. In order to deliver the devolution agreement, the Mayoral WMCA is seeking the additional functions detailed in this section. The mechanism for exercise of the function is highlighted and voting arrangements for those functions are in accordance with paragraphs 13-16 of this Scheme.

### Transport

20. The powers and functions funded from the “ITA levy” are **to remain as WMCA functions, funded by the “ITA levy”**. There are **no** proposals to move functions funded by the “ITA levy” to Mayoral functions. Any reference to functions currently undertaken by Constituent Councils will be run **either concurrently or jointly with the Mayoral WMCA**.

### Consolidated multi-year local transport capital block allocation

21. The Mayoral WMCA will receive a devolved and consolidated multi-year local transport capital allocation for the area of the Mayoral WMCA to enable greater surety of funding, more effective and efficient long-term asset management and procurement arrangements. **A Mayoral Function, carried out in accordance with the Cabinet’s examination of and ability to reject the Mayoral budget**, in accordance with paragraph 8 of this Scheme.

### Public Transport and related infrastructure

22. It is proposed that the Secretary of State for Transport to make grants to bus service operators under Section 154 of the Transport Act 2000, in relation to services which operate wholly or mainly within Mayoral WMCA Area, be **exercised by the Secretary of State for Transport in consultation with the Mayor**. 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 and in expectation of the new regime to be introduced by the forthcoming Bus Service Bill. **A Secretary of State function, exercised in consultation with the Mayor**.

23. To strengthen our Safety and Security agenda the public transport Safer Travel Police Team will be provided with powers to ensure a consistent approach and more effective response on our bus network and related infrastructure. The powers sought below are to **be concurrently/jointly exercised with the Constituent Councils, as Mayoral WMCA functions:**

- **The Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) England Order 2005** - the Mayoral WMCA is seeking functions equivalent to those contained within Section 144 of the Transport Act 2000 (civil penalties for bus lane contraventions), allowing the Mayoral WMCA to be an approved Local Authority. The outcome would be to ensure a consistent approach to the enforcement, application of penalty charges etc. of bus lanes.
- **The Health Act 2006** - to provide the Mayoral WMCA with the ability to tackle smoking in public places, specifically on buses and in enclosed bus stations.
- **The Anti-Social Behavior, Crime and Policing Act 2014** - the powers contained within are currently held by Local Authorities, NHS, social landlords, Police Forces and Transport for London. The Mayoral WMCA is seeking equivalent functions to enable the Mayoral WMCA to efficiently secure Orders that apply across the whole of the Mayoral WMCA Area rather than at present in individual Constituent Council areas.

24. Bus re-franchising and enhanced quality contracts - the Mayoral WMCA is seeking enhanced powers to deliver integrated smart ticketing across all local modes of transport in the Mayoral WMCA Area. **A joint WMCA/ Mayoral function.**

### **The West Midlands Key Route Network (WMKRN)**

25. The Mayoral WMCA is seeking functions equivalent to those contained within Part 1 of the Road Traffic Regulation Act. These functions would enable the WMKRN be statutorily defined, to enable Orders such as 'Safer Vehicles', 'Air Quality', "Moving Traffic Violation" Orders etc. to be uniquely identified for the WMKRN, or the equivalent provisions sought in order to allow the WMKRN of local authority roads to be strategically managed and coordinated at the West Midlands Metropolitan level, with joint asset management and procurement, by the Mayoral WMCA on behalf of the Mayor.

26. The Mayoral WMCA is seeking functions equivalent to the below, **to be exercised by the Mayoral WMCA on behalf of the Mayor, concurrently with the Constituent Council on the WMKRN**, unless otherwise stated:

- **Section 6 of the Highways Act 1980** (enabling the Secretary of State or Highways England to delegate to or enter into an agreement with a county council, metropolitan district council or London borough council in relation to the construction, improvement or maintenance of trunk roads.) It is proposed that the section should be modified to include the Mayoral WMCA in the authorities to which such functions may be delegated to support better integration between local and national networks, or the equivalent legislative provision in order to achieve the aim of better integration. **A joint WMCA/Mayoral function.**
- **Section 8 of the Highways Act 1980** (enabling local highway authorities and Highways England to enter into agreements with other such authorities in relation to the construction, improvement, maintenance etc. of a highway for which any party to the agreement is the highway authority.) It is proposed that the section be modified to allow the **Mayoral WMCA to be a party to such agreement as if it were a local highway authority, with the affected highway authority(ies) consent**, or the equivalent legislative provisions in order to allow the WMCA to be party to such agreements. **A joint WMCA/Mayoral function.**
- **Section 62 of the Highways Act 1980 - General Power of Improvement**, or the equivalent legislative provisions to provide Mayoral WMCA with General Power of Improvement in respect of highways. This will enable the Mayoral WMCA, by agreement with local highway authority, to undertake works on the WMKRN for Transportation purposes as if the highway authority, **with the affected highways authority(ies) consent(s).** **A joint WMCA/Mayoral function.**
- The Mayoral WMCA is seeking functions equivalent to those contained within S49 New Roads and Street Works Act 1991 to enable the **Mayoral WMCA to be defined as a Street Authority for the WMKRN**, or the equivalent legislative provisions, in order to enable the Mayoral WMCA to develop a Permit Scheme, coordinate Notices etc. on the WMKRN. **The receipt of notices, register, inspections etc. would still be carried out by the Local Highway Authority.** The Mayoral WMCA would also enable eligibility for the 18% diversionary works contribution from utilities for non-Metro Schemes. **A joint WMCA/Mayoral function.**
- The Mayoral WMCA is seeking functions to place a **duty on the Mayoral WMCA, in consultation with the appropriate authorities**, to report to the Secretary of State an assessment of existing traffic flows, forecast growth and reduction targets in respect of the WMKRN. Section 2 of the Road Traffic Reduction Act 1997 sub sections 1, 2 and 3, or the equivalent functions in order to achieve the Mayoral WMCA's duty to report. **A Mayoral function.**
- The WMKRN be designated a civil enforcement area for moving traffic contraventions **Section 74 and Schedule 8 Part 2 (10) of the Traffic Management Act 2004**, or the equivalent legislative provisions, so as to ensure the expeditious movement of traffic on the most critical local roads

across the West Midlands in terms of economic growth, productivity and jobs.  
**A joint WMCA/ Mayoral function.**

- The Mayoral WMCA is seeking functions equivalent to those contained within **section 39(2) and (3) of the Road Traffic Act 1988**, to have **concurrently** the power of a local authority to promote road safety and give road safety information and training. **A joint WMCA/Mayoral Function.**

27. The Mayor and the Mayoral WMCA will have the power to create **Low Emissions Zones and Clean Air Zones, with the affected highway authority(ies) consent. A joint WMCA/Mayoral function.**

## HS2 Growth

28. 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.

29. It is proposed that the Mayoral WMCA should have functions equivalent to those of the Mayor of London under Part 8 of the Localism Act 2011 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 (“WMCADCs”). **A Mayoral WMCA function.**

30. Section 202 of the Localism Act 2011 currently allows for the Mayor of London to decide that the Mayoral Development Corporation(s) should have certain planning functions in relation to the whole or part of the Mayoral development area. It is proposed that Section 202 of the Localism Act 2011 is modified to provide that this power should **only be exercised by the Mayoral WMCA with the consent of the local planning authority(ies) for the relevant area(s)**, or the equivalent statutory provisions in order to ensure that the planning function is **only** exercisable with the consent of the local planning authority(ies) for the relevant area(s).

31. The Mayoral WMCA is seeking provision equivalent to those contained within Schedule 1 of the Land Compensation Act 1961 (relating to disregard of actual or prospective development in certain cases), so that land designated as a WMCA developmental area is treated in the same way as land designated as an urban development area.



## Skills

32. The Mayoral WMCA will build on the existing collaboration between the three LEPs and 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.

## Employment

33. 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.

34. The Mayoral WMCA is seeking functions equivalent to the Secretary of State functions under Sections 2 and 10A of the Employment Training Act 1973, to be exercised **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. **A joint WMCA/Mayoral function.**

## More and Better Homes

35. The Mayoral WMCA is seeking the objectives and functions of the Homes and Communities Agency (“HCA”) under Section 2(1) (with a limitation to the West Midlands) and Section 3-12, 17 and 18 of the Housing and Regeneration Act 2008 (“H&R Act 2008”), **to be exercised concurrently with the HCA.** These functions, would be **non-Mayoral functions** with the exception of the specific HCA compulsory purchase powers as detailed in paragraph 38.

36. 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.

37. The functions in paragraph 35 include functions enabling the achievement of the above objectives, including a power of HCA compulsory purchase in Section 9 of the H&R Act 2008 (subject to the authorisation of the Secretary of State). In respect of this section, in order to achieve the objectives above, the Mayoral WMCA should have the benefit of exemption from Section 23 of the Land Compensation Act 1961 enjoyed by the HCA under section 23(3)(d) of that Act.

38. The Mayoral WMCA is seeking functions contained in Section 9 of the H&R Act 2008, as a **Mayoral function, 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.

## Supporting and Attracting Business and Innovation

39. The government commits to working with the 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.

## Culture

40. The Mayoral WMCA is seeking functions equivalent to those contained in Section 145 of the Local Government Act 1972 to provide and support cultural activities and entertainments, to be exercised concurrently with the Constituent Councils. This is in addition to the current WMCA function to encourage visitors and provide conference and other facilities. The devolution of the power to provide and support cultural activities and entertainments will assist in the promotion of the West Midlands thereby attracting business and innovation into the region. **A Mayoral WMCA function.**

## Data Sharing

41. There will be a number of instances in connection with specified functions and powers, held by both the Authorities and the Mayoral WMCA, when various enactments enable or require that local or public authorities to share information with other persons or bodies and in particular enable / require those other persons or bodies to share information with the local or public authority. It is proposed that in such instances such enactments are amended to **put the Mayoral WMCA in the same position as the local or public authority**, or the equivalent legislative provision is utilised to ensure that the Mayoral WMCA is able to share such information.

42. Such enactments include for example:

- Sections 14, 16, 17 and 77 of the Education and Skills Act 2008;
- Section 122 of the Apprenticeships, Skills, Children and Learning Act 2009;
- Sections 17A and 115 of the Crime and Disorder Act 1998;
- Section 113 of the Environment Act 1995;
- Section 72 of the Welfare Reform and Pensions Act 1999;
- Regulation 13 of the Social Security (Claims and Information) Regulations 1999;
- Section 131 of the Welfare Reform Act 2012; and
- Regulation 5 of the Social Security (Information-sharing in relation to Welfare Services etc.) Regulations 2012.

43. In addition the Mayoral WMCA is seeking functions to allow the Mayoral WMCA access to the following national data sets together with any subsequently identified data sets in order to progress those actions identified in the devolution agreement:

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

## Mayoral Provisions

44. The functions which are to be Mayoral functions pursuant to the devolution agreement and the conditions under which they can be exercised by the Mayor are detailed throughout Section 2 and 3 of this Scheme, these are:

- HCA CPO powers (with the consent of the appropriate authority(ies))
- Grants to Bus Service Operators (Secretary of State to consult the Mayor)
- Devolved, consolidated transport budget
- Reporting on the Key Route Network (in consultation with the authorities)
- Mayoral precept
- Raising of a business rate supplement (in agreement with the relevant LEP Board(s) and the Mayoral WMCA)
- Functional power of competence

45. **The Mayor will have responsibility for a devolved and consolidated transport budget and for a franchised bus service.** As part of the Mayoral budget, the consolidated transport budget will be subject to the examination of the Cabinet and can be rejected if two-thirds of the Cabinet decide to do so, in accordance with paragraph 8 of this Scheme.

46. It is **not** proposed that the Mayor should have the general power of competence. However, the Mayor should have, as an ancillary power, a functional power of competence that is similar to the power under section 113A of the 2009 Act. This would enable 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.

47. The Mayoral WMCA is seeking functions equivalent to those contained within section 107E of the 2009 Act, that by Order of the Secretary of State the Mayor will be able to enter into a joint exercise arrangement for the exercise of functions pursuant to section 101(5) Local Government Act 1972.

48. The Mayor will arrange for the exercise of Mayoral functions by such persons permissible under section 107D of the Local Democracy and Economic Development Act 2009 where required to do so by unanimous resolution of the Constituent Council Members present and voting.

## Section 3 - Finance and Funding

49. The WMCA will create a fully devolved investment strategy, covering all devolved functions and income streams in order to deliver the devolution agreement.

50. The 2016 Act makes provision for a Mayoral Combined Authority to act as a major precepting authority. It is proposed that the Scheme seeks to secure the provisions **enabling the Mayor to raise a precept** as provided for in the 2016 Act and to aid the delivery of the investment programme.

51. It is proposed that the Order seeks to secure the provisions set out in **section 74** of the Local Government Finance Act 1988, to enable the Mayoral WMCA to issue a levy to its Constituent Councils for **the expenditure of the Mayoral WMCA that is reasonably attributable contribution for all other non-Mayoral functions**.

52. It is proposed that regulations are made pursuant to section 23 (5) of the Local Government Act 2003 to give the Mayoral WMCA borrowing powers for any purpose relevant to the exercise of its functions, both Mayoral and Mayoral WMCA.

53. The Mayor will have the ability, in consultation with businesses, with agreement of the relevant LEP Board(s) and the Mayoral WMCA, to raise Business Rate Supplement, up to a specified cap for investment in specified projects, aiding the delivery of the investment programme driven by the WMCA Strategic Economic Plan. The Mayoral WMCA will be a levying authority for the purposes of the Business Rates Supplement Act 2009 and the Constituent Authorities shall be deemed to be acting jointly through the Combined Authority in accordance with Section 2(3) of the Business Rates Supplement Act 2009.

54. The Mayoral WMCA will work with government to explore the options available to the region as it moves towards 100% business rate retention. The first step in that transition will see the Mayoral WMCA pilot a Scheme which will enable the Combined Authority to retain an agreed level of business rate growth that would otherwise have been paid as central share to government, above an agreed baseline, for an initial period of five years.

55. 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, which will complement other aspects of the devolution deal.

## **Section 4 - Substructures and Internal Scheme of Delegation**

56. The Mayoral WMCA may establish further joint committees or sub-committees and delegate powers and functions as considered by it to be appropriate, in accordance with its constitution.

## **Section 5 - Subsequent Reviews**

57. There may be further reviews required in as further devolution deals are agreed.

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