Appendix A - Scheme

West Midlands Combined Authority Scheme

This scheme is prepared and published following the decision of the West Midlands Combined Authority (WMCA) on 8 September 2017.

The proposals in this scheme will be subject to a further public consultation.

The scheme provides as follows:

1.1 It is proposed that the functions exercisable by the West Midlands Fire and Rescue Authority (WMFRA) across the area that the WMCA covers, should become functions of the WMCA pursuant to sections 105 A of the Local Democracy, Economic Development and Construction Act 2009.

These functions are those as set out in the following acts and other relevant identified sections:

- Local Government Act 1985 (including Part IV, schedule 10).
- Local Government in Housing Act 1989.
- Fire and Rescue Service Act 2004.
- Fire and Rescue Order 2007.
- National Framework for Fire and Rescue Services in England 2012.
- Regulatory (Fire) Reform Order 2005.
- Civil Contingencies Act 2014.

The requirements for change are set in 1.16 of this scheme.

1.2 It is proposed that the properties, rights and liabilities of the WMFRA would become functions of the WMCA.

1.3 It is proposed that the functions relating to fire and rescue referred to in 1.1 should become WMCA functions.

1.4 It is proposed that the fire and rescue functions once they become functions of the WMCA are exercisable only by the Mayor (section 107D (1) Cities and Local Government Devolution Act 2009).

1.5 For the purposes of the exercise of the fire and rescue functions, the Mayor may do anything that the WMCA may do under section 113A of the LDEDC Act 2009 (general power of EPB or combined authority) (1).

1.6 It is proposed that the WMCA has the same borrowing powers in respect to its functions, relating to fire and rescue as are currently exercised by the WMFRA.

1.7 It is proposed that the WMCA retain the same core grant and precept funding arrangements in respect to its functions relating to fire and rescue, as currently exercised by the WMFRA.

1.8 It is proposed that both the funding and reserves for fire are ring fenced within the Mayoral WMCA.

1.9 Any decisions or acts made before abolition of the WMFRA should have effect as if agreed by, or, in relation to the Mayoral WMCA. For example, the setting of the precept for, under section 40 Local Government Finance Act 1988 to the constituent councils in respect of the financial year beginning before transfer in governance, should have effect as if issued by the Mayoral WMCA.

1.10 It is proposed that Members of the WMCA may assist the Mayor in the exercise of the fire and rescue functions in line with delegations, provided that the functions may not include:

- Functions relating to the budget and setting of the precept,
- Functions relating to statutory plans such as the Integrated Risk Management Plan (IRMP) and strategies,
- Functions relating to all properties, rights and liabilities,
- The appointment of the Chief Fire Officer and Principal officers.

Mayoral Fire Advisory Committee

1.11 It is proposed that the Order should contain provision for the Mayor to arrange for a committee of the WMCA (the Mayoral Fire Advisory Committee), consisting of members appointed by the constituent councils, to advise and support the Mayor in relation to West Midlands Fire Service (WMFS).

1.12 It is proposed the committee appointed should consist of a minimum of fifteen elected members from across the constituent councils, the Police and Crime Commissioner (in accordance with the Policing and Crime Act 2017) and two further co-opted members from Health and Ambulance to promote greater challenge, transparency and further collaboration.

1.13 The following additional provisions are proposed to apply to the Mayoral Fire Advisory Committee (the Committee):

Governance

- Appointment of elected members from each of the constituent councils will be made so that the members of the committee taken as a whole, reflect as far as reasonably practicable, the overall balance of political parties prevailing amongst the constituent councils.
- The majority of members of the committee must be members of the constituent councils, all of those members have one vote.
- Where a member is not from a constituent council (a co-opted member) they will not have voting powers.
- Two-thirds of members must be present for a meeting to be quorate.
- The Chair of the Committee will be appointed by the Mayor in consultation with constituent council leaders.

Functions

- The Committee will not be a decision-making committee this responsibility will remain with the Mayor and Chief Fire Officer, as appropriate.
- The Committee will advise the Mayor, support the Mayor and review decisions made by the Mayor.
- Where decisions are reviewed, the Committee will submit a report to the WMCA Overview and Scrutiny Committee.
- The Committee will support the Mayor in providing advice around exercising fire functions, to ensure the right level of detail and understanding is provided to inform the Mayor's role as the Authority.
- The Committee will represent the priorities and strategy of the Mayor and WMFS in their respective local authorities and will report on performance in relation to fire functions.
- The Committee will represent the priorities and strategy of the Mayor and West Midlands Fire Service (WMFS) within the seven constituent councils, regionally with other Fire and Rescue Services, and nationally through the National Joint Council and Local Government Association.
- The Committee will seek to influence the Government on behalf of the Mayor in matters related to the delivery of fire and rescue services locally, regionally and nationally.
- The Committee will enable the development of partnerships and services to the community through constituent council engagement.

A member's allowance scheme for the committee will be payable by the WMCA.

1.14 The Chief Fire Officer (CFO) as head of paid service will be accountable to the Mayor in the operation of their duties.

1.15 It is proposed that the CFO maintains full accountability for the operational functions of the Fire Service. This will include:

- The management of the Fire and Rescue Service,
- The appointment and development of staff,
- The delivery of WMFS Strategy (including matters relating to exercising functions of the Fire and Rescue Services Act 2004 and other relevant legislation),
- The delivery of staffing structures and models which support current and future Strategy,
- The deployment of resources to meet risk,
- The transformation of services and reform of the workforce to meet WMFS and Mayoral/WMCA priorities.

1.16 Modification requirements of enactments in their application to the WMCA as a Fire and Rescue Authority.

Primary Legislation

Local Government Act 1972

1. In section 138(5) of the Local Government Act 1972 (powers of principal councils with respect to emergencies or disasters) (a), the reference to “metropolitan county fire and rescue authority” is to apply as if it included “the WMCA as a fire and rescue authority”.

Local Government in Housing Act 1989

2. (1) The Local Government and Housing Act 1989(c) is modified as follows.

   (2) In section 67 (application of provisions about companies in which local authorities have interests), subsection (3)(k) applies as if the reference to “joint authority established by Part IV of that Act” included a reference to “the WMCA as a fire and rescue authority”.

   (3) In section 155 (emergency financial assistance to local authorities) subsection (4)(g) applies as if the reference to a “joint authority established by Part IV of the Local Government Act 1985” included a reference to “the WMCA as a fire and rescue authority”.

Crime and Disorder Act 1998

3. (1) The Crime and Disorder Act 1998(d) is modified as follows.

   (2) In the definition of “fire and rescue authority” in section 5(5) (authorities responsible for strategies), the reference in paragraph (b) to a “metropolitan county fire and rescue authority” is to apply as if it included a reference to “the WMCA as a fire and rescue authority”.

   (3) In the definition of “relevant authority” in section 115(2), the reference in paragraph (j) to a “metropolitan county fire and rescue authority” is to apply as if it included a reference to “the WMCA as a fire and rescue authority”.

Local Government Act 2003

1. Section 23(1) of the Local Government Act 2003 (meaning of “local authority” for purposes of Part 1) (a) the reference in paragraph (k) to “a joint authority established by Part IV of that Act” is to apply as if it included a reference to “the WMCA as a fire and rescue authority.”

Fire and Rescue Services Act 2004

2. (1) The FRS Act 2004(b) is modified as follows.

   (2) Section 4A (power to provide for police and crime commissioner to be fire and rescue authority) has effect as if at the end of subsection (3)(b) there were inserted—
   “, and (c) outside the Area.”;

(3) Section 4B (1) (changes to existing fire and rescue authorities) has effect as if the reference to fire and rescue authorities in England outside Greater London did not include the WMCA.

Secondary legislation

6. In section 1 of the FRS 2004 Act(1), after subsection (4) insert—

   "(5) This section is also subject to an order under Part 6 of the Local Democracy, Economic Development and Construction Act 2009 which transfers the functions of a fire and rescue authority to a combined authority established under section 103 of that Act".

7. In paragraph (a) of the definition of "local authority" in regulation 2(1) of the Pipelines Safety Regulations 1996 (interpretation)(c) the reference to a "metropolitan county fire and rescue authority" is to apply as if it included a reference to "the WMCA as a fire and rescue authority".

8. In article 1(2) of the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 (application of order to best value authorities) (d) the reference in paragraph (c) to a "metropolitan county fire and rescue authority" is to apply as if it included a reference to "the WMCA as a fire and rescue authority".

9. In regulation 3 of the Community Right to Challenge (Fire and Rescue Authorities and Rejection of Expressions of Interest) (England) Regulations 2012 (relevant authorities) (e) the reference in paragraph (a) to a "metropolitan county fire and rescue authority established under section 26 of the Local Government Act 1985" is to apply as if it included a reference to "the WMCA as a fire and rescue authority".

10. (1) The Local Government Pension Scheme Regulations 2013(f) are modified as follows. (2) After regulation 64(8), insert—
    "(8A) Paragraph (8B) applies where the exiting employer is the WMFRA and the liabilities of the fund in respect of benefits due to the WMFRA's current and former employees (or those of any predecessor authority) have been or are to be transferred to the WMCA by virtue of this Order.
    (8B) Where this paragraph applies, no exit payment is due under paragraph (1) and paragraph (2) does not apply.".

11. In regulation 2(1) of the Explosives Regulations 2014 (interpretation)(g) in the definition of "local authority", the reference in paragraph (c) to "a metropolitan county fire and rescue authority" is to apply as if it included a reference to "the WMCA as a fire and rescue authority".

12. In regulation 2(1) of the Control of Major Accident Hazards Regulations 2015(a) in paragraph (b) of the definition of "local authority", sub-paragraph (ii) is to apply as if there were substituted for that sub-paragraph—
    "(ii) the Area, the WMCA as a fire and rescue authority;".