



**Name of meeting:** WMCA Board

**Meeting date:** 09 May 2025

**Report title:** Public Consultation in relation to the Conferral of General Functions on the Mayor

**Responsible Director:** Helen Edwards – Chief Officer (Law, Governance and Audit)

**Report author:** Julia Cleary – Head of Governance

**Key Decision?** No

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Is the ability for the Combined Authority to make a decision internally reliant on Constituent or Non-Constituent Councils making a formal decision first?

☐ Yes ☒ No

*(If Yes – please contact the Member Relationship Manager to manage this process)*

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## Recommendations

- (1) That the WMCA Board agree to initiate a period of statutory public consultation in relation to making the functions listed in Appendix 1, functions exercisable only by the Mayor.
  - (2) That the consultation run from Monday 19 May to Friday 20 June for 5 weeks.
  - (3) That a report be brought back to WMCA on 18<sup>th</sup> July, detailing the outcome of the consultation and proposed next steps
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## Voting Requirements

**Requirement E - a unanimous vote in favour by all members of the Combined Authority appointed by the constituent councils, present and voting on that question at a meeting of the Combined Authority;**

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## 1. Executive Summary

- 1.1 Transport is currently a function of the WMCA following the transferal of all functions of the Integrated Transport Authority to it under Article 7 of the West Midlands Combined Authority Order 2016. Article 22 of The West Midlands Combined Authority (Functions and Amendments) Order 2017 provided that some of the functions of the WMCA would be Mayoral functions. However, these functions are limited in scope.
- 1.2 The Secretary of State, may make provision for any of the functions that are existing WMCA functions, to become functions only exercisable by the mayor. The transfer of functions to the Mayor can be advantageous in that it will allow for more streamlined, agile and timely decisions to be made for the benefit of the region.

1.3 Existing legislation under the Local Government Finance Act 1992, also prohibits the Combined Authority from raising a precept for any Combined Authority functions. Transferring these functions to the Mayor, will make available a new option for the Mayor to raise additional funding for these essential functions by way of a precept if the Mayor chooses to do so.

1.4 Before the WMCA Board can consider whether to transfer any of its functions to the Mayor, a legislative process must be followed. The first stage of this process is to carry out a public consultation on the proposals.

## **2. Matters for Consideration**

2.1 Under Section 107D of the Local Democracy, Economic Development and Construction Act 2009 (as amended by the Levelling Up and Regeneration Act 2023 ("LURA 2023"), the Secretary of State may by order make provision for any function of a mayoral combined authority to be a function exercisable only by the mayor.

2.2 Any order under this section can only be made with the consent of the constituent authorities and the Mayor.

2.3 Before a proposal can be submitted to the Secretary of State, the WMCA must carry out a public consultation across its area and have regard to the results of this consultation in preparing the proposal for submission to the Secretary of State. The proposal must specify the purposes to be achieved by the order which it proposes should be made.

2.4 Should the Board be minded to agree to the commencement of the consultation, then it must take place when the proposal is still at a formative stage; sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response; adequate time must be given for consideration and response; and the results of consultation must be conscientiously taken into account.

2.5 In terms of length of time for the consultation, the Cabinet Office principles suggest that timescales of between two and twelve weeks are appropriate. The appropriate timescale in any particular case depends on factors including the nature of what is being consulted on and the number of likely consultees. Given the potential effect that a transfer of functions to the Mayor would have, a period of five weeks is considered to be appropriate.

2.6 It is also necessary for any consultation to refer to the reasons for the proposal and as such the proposal must focus on the transfer of functions to the mayor as well as making reference to the fact that this would allow additional funding for transport to be raised by way of precept. A failure to do so would risk challenge to the consultation process on the basis of inadequacy in that it had not put forward sufficient reasons to allow for intelligent consideration and response.

2.7 The issue of the precept also raises significant time constraints and should the Board want to make the raising of a mayoral precept an option for the 2026/27 financial year then any consultation will need to be launched by 19 May 2025 to allow for the drafting of the Statutory Instrument to begin and be made by the Secretary of State in December 2025. Any delays in this timetable would not allow for the precept to be included within the draft Mayoral budget and expenditure plans required to be notified to WMCA Board by 1 February 2026.

2.8 The functions proposed to be transferred are listed in Appendix 1

**3. What options have been considered and what is the evidence telling us about them?**

- 3.1 In order for the prescribed process to commence as set out in Section 112A of the Local Democracy, Economic Development and Construction Act 2009 (as amended by the Levelling Up and Regeneration Act 2023 (“LURA 2023”); the WMCA is required to carry out a public consultation across the area of the combined authority prior to submitting a proposal to the Secretary of State. There are no other options available, other than to not commence the process, which has been rejected because this is seen as beneficial for the reasons set out in the executive summary.

**4. Reasons for recommending preferred option**

The preferred option is part of a statutory process as set out in Section 112A of the Local Democracy, Economic Development and Construction Act 2009 (as amended by the Levelling Up and Regeneration Act 2023 (“LURA 2023”);

**5. Implications and Considerations**

Priority:	Contribution:
Delivery of Strategic Transport Plan	N/A
Promote inclusive economic growth in every corner of the region	N/A
Ensure everyone has the opportunity to benefit	N/A
Connect our communities by delivering transport and unlocking housing and regeneration schemes	N/A
Reduce carbon emissions to net zero and enhance the environment	N/A
Secure new powers and resources from central government	N/A
Develop our organisation and our role as a good regional partner	N/A

**6. Financial implications:**

- 6.1 This paper requires no immediate financial decision to be made. The costs of consultation process, if approved by Board to proceed to this stage of the process, can be funded within approved budgets.
- 6.2 As noted within paragraph 1.3, the transfer of powers from WMCA Board to the Mayor would allow a mayoral precept to be raised for a wider range of functions than is currently permitted under The West Midlands Combined Authority (Functions and Amendments) Order 2017. This flexibility can then be factored into future discussions about the medium term financial plan and the financial sustainability challenge as one of a range of options available to the Authority. It does not compel the Authority to exercise that power – that will be subject to a separate consultation and approval process in the event that the Board wished to pursue that course of action.

**7. Legal implications:**

- 7.1 Transport is a function of the West Midlands Combined Authority (WMCA) by virtue of The West Midlands Combined Authority Order 2016 which, pursuant to Article 7, transferred all the functions, rights, property and liabilities from the Integrated Transport Authority to the WMCA.
- 7.2 Following the election of the WMCA mayor, and by virtue of Article 22 of The West Midlands Combined Authority (Functions and Amendments) Order 2017, some general functions of the WMCA are exercisable only by the mayor, which includes some limited transport functions.
- 7.3 To transfer any of the WMCA's powers to its Mayor, requires the Secretary of State (SoS) to make an Order under s107D of the Local Democracy, Economic Development and Constructions Act 2009 (LDEDCA 2009). This provides that SoS may by order make provision for any function of a mayoral combined authority to be a function exercisable only by the mayor, excluding PCC functions.
- 7.4 The procedure for an Order under section 107D for a transfer of the transport functions to mayor can be commenced by a proposal from the WMCA, under s112A of LDEDCA 2009, following which the proposal is submitted to the SoS. However, prior to submitting a proposal under section 112A to the SoS, s112A(3) requires the WMCA carry out a public consultation across the area of the combined authority and have regard to the results of the consultation in the preparation of the proposal for submission to the SoS.

#### Recommendations

- 7.5 The Recommendations set out in report are seeking the permission of the Board to undertake the consultation as required by law.
- 7.6 In respect of the advancing the proposal to transfer the powers to the mayor, a unanimous decision of the WMCA Board is required to go out to consultation. This is because it falls within those matters set out in paragraphs 18.10(d) of the WMCA's constitution as it will affect the exercise of the WMCA's exercise of its functions under s113A.
- 7.7 Section 113A concerns the exercise of the WMCA's functional power of competence which allows the WMCA to do anything appropriate, indirectly incidental, incidental or connected to, its functional purposes. It therefore follows, pursuant to paragraph 18.7 of the constitution that the decision will have to meet requirements C and E, effectively unanimous consent of all members of the authority voting on it.
- 7.8 In relation to the consultation itself, LDEDC 2009 does not set out any specific requirements for consultations, save for requiring the WMCA to have regard to its outcome. Early consultation is advisable to allow sufficient time for the consultation to run. As part of the consultation, it will need to be noted that currently, the Local Government Finance Act 1992 prohibits the Combined Authority from raising a precept for combined authority functions. However, it does allow a precept to be raised by the Mayor in respect of Mayoral functions. Should any resulting Order under s107D be made by the SoS, it will allow the Mayor to raise additional funding by way of a precept for not only his existing functions, but also those transferred by virtue of the Order, if the Mayor chooses to do so.

**8. Implications:**

**Programme Assurance and Appraisal Implications:**

8.1 Not applicable

**Procurement Implications:**

8.2 Not applicable

**Equality Implications:**

8.3 To understand the potential equality implications, a health equity impact assessment (HEIA) or equality considerations will be factored into the consultation exercise. A summary of the findings from the consultation will be detailed in any future report to the Board. Whether a HEIA is carried out or equality considerations are a feature of the consultation exercise, it is likely that the equality implications will be positive or neutral (no change).

**Inclusive Growth Implications:**

8.4 Not applicable

**9. Risk implications, including Risk Appetite:**

9.1 Not applicable

**10. Local Authority Impact:**

10.1 Not applicable

**11. List of appendices referred to:**

11.1 Appendix 1 – List of functions to be transferred

**12. Background papers used to compile this report:**

12.1 Not applicable

**13. List of Other Relevant Documents**

13.1 None

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## TRANSPORT FUNCTIONS OF WMCA

- **Transport Act, 1968 Part 2:**
  - Provision of public passenger transport services – Duty and powers of the ITA Executive (now, the WMCA) to secure provision of public passenger transport services including carrying passengers by road, by any form of land transport (e.g. railway) and by water (section 9, 10), including:
    - a. Power to formulate policies for transport with duty to consult on such policies (section 9A & 9B)
    - b. Duty to have regard to the transport needs of the disabled and elderly (section 9A(5))
  - General Powers (section 10) -
    - a. to enter to into arrangement with operators for works, maintenance, operation or staffing of network, station or light maintenance depots.
    - b. to let passenger vehicles on hire.
    - c. to construct, manufacture, produce, purchase, maintain and repair anything required for the purposes of their business.
    - d. to acquire undertakings if its assets are required for business purposes.
    - e. To promote or oppose any Bill in Parliament with the approval of the CA
    - f. to do all other things which in their opinion are necessary to facilitate the proper carrying on of their business
  - Further powers of Executives (WMCA) (section 10A)-
    - a. To do anything appropriate for the purpose of carrying out functions
    - b. To do anything which the CA considers appropriate for purposes incidental to the CA's functions
    - c. To do anything which the CA considers indirectly appropriate for purposes incidental to the CA's functions
- **Transport Act, 1985 (Part V)**
  - Obligation to invite tenders for subsidised services (section 88-92) – Duty of the WMCA to invite tenders for service subsidies, unless the exceptions in section 91 apply.
  - Travel concession schemes (section 93) – Power to establish concessionary travel schemes for eligible persons based on age, disabilities etc.
- **Midland Metro Act, 1989**
  - Power to carry out works (section 7 -25, Schedule 1)
  - Power to acquire land (section 26 -35)
  - Power to make Bye-Laws for Midland Metro (section 49)

- **Midland Metro (Penalty Fares) Act 1991**
  - Power to prescribe charging of penalty fares for specified violations committed by persons using the Midlands Metro. (section 40-9)
- **Transport Act 2000 Part 2:**
  - Local Transport Plans -To develop a policy for the promotion and encouragement of safe integrated efficient and economic transport (sec 108)
  - Bus Services Schemes – Bus Franchise Schemes etc (sections 113C to 141A)
  - Road User Charging - can only be made jointly with the local traffic authority (section 163)
  - Trunk Road Charging Scheme –power to request and trunk road charging scheme (section 167)
- **The Service Subsidy Agreements (Tendering) (England) (Amendment) Regulations 2004**
  - De Miniums subsidies – the Regulation empowers the CA to grant subsidies to operators to maintain the bus network, subject to certain thresholds of annual spend.
- **Local Transport Act 2008**
  - Power to take an action if the CA determines that doing so is likely to achieve the promotion or improvement of the economic, social and/or environmental well-being of its area.
- **Functions Under the 2016 Order**
  - Functions of the former West Midlands Passenger Executive and Powers and duties under the Transport Act 1968 (see above under Transport Act 1968).
- **Bus Services Act, 2017 Amendments and Provisions**
  - Amended the Transport Act, 2000 to provide for enhanced partnership plans and schemes to achieve implementation of local transport services.
  - Amended the Transport Act, 2000 to provide for franchising schemes and advanced ticketing schemes for bus services.
- **Functions Under the 2017 Order**
- Transport
  - (Article 6) Bus Lane Contraventions - enforcement of penalty charges. (this function may be funded out of a levy)



By way of information, the following powers are already powers in respect of transport exercisable by the Mayor under the 2017 Order:

- Transport
  - a. (Article 3) Payment of Grants (functions of the SoS under section 31 of the Local Government Act 2003)
  - b. (Article 4) Power under section 6 to maintain and improve trunk roads on behalf of the SoS and section 8 Highways Act 1980 for the repair and maintenance of the Combined Authority roads set out in the Schedule 1 of the Order as amended by the West Midlands Combined Authority (Business Rate Supplements Functions and Amendments) Order 2018
  - c. (Article 5) Promoting Road Safety – duties under sections 39(2) and (3) of the Road Traffic Act 1988 to prepare measures to promote road safety and to carry out studies into road accidents
  - e. (Article 7) Duty to prepare report under section 2 of the Road Traffic Reduction Act 1997 including an assessment of the levels of local road traffic and targets for the reduction of road traffic.
  - f. (Article 8) Permit Schemes under section 33 and 33A of the Traffic Management Act 2004 for managing works within streets.
  - g. (Article 9) Apparatus affected by highways, bridge or transport works and sharing of costs of the necessary diversionary works (sections 83 and 85 of the New Works and Street Works Act 1991 and the 2000 Regulations)

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