

Appendix 3

West Midlands Combined Authority

Draft Scheme for the transfer of functions in relation to Bus Service Operator's Grant under section 154 (1) of the Transport Act 2000 to WMCA as a Mayoral function

Draft Scheme for the future transfer of functions in relation to Bus Service Operator's Grant under section 154 (3) of the Transport Act 2000 to WMCA

Proposal for the Making of an Order under sections 105A of the Local Democracy, Economic Development and Construction Act 2009 as amended by the Cities and Local Government Devolution Act 2016 (the 2009 Act)

This scheme has been prepared by the West Midlands Combined Authority in consultation with the Leaders of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton Local Authorities.

The scheme sets out proposals for conferring on WMCA of the function of the Secretary of State of administering Bus Service Operator's Grant under sections 154 (1) of the Transport Act 2000 as a Mayoral function.

The scheme also sets out proposals for the future conferring on WMCA of the function of the Secretary of State in relation to the making of policy for the administration of Bus Service Operator's Grant under section 154 (3) of the Transport Act 2000. It is proposed that this function be conferred to be exercisable subject to the the conclusion of consultation on national BSOG reform and the publication of guidance by the Secretary of State.

If national reforms are delayed significantly, the exploration of alternatives including full BSOG policy devolution, may be brought forward.

Introduction

The West Midlands has been at the forefront of devolution in England. In November 2015, the government and WMCA agreed an ambitious devolution deal, including a directly elected mayor and powers to improve transport, skills, housing and to drive growth in the region. In 2017, devolution was deepened, and new funding agreed, including significant further investment in transport. The West Midlands has seized these opportunities, demonstrating what local leaders can achieve when empowered with the tools they need. Local leaders have increased investment in transport from £38 million in 2016/17 to £363 million in 2021/22, pioneered new approaches to brownfield development and net zero homes and delivered the c. £130 million Adult Education Budget, securing an over 10% increase in 2020 alone in the portion of the population with Level 3 skills.

The West Midlands is now embarking on a new phase by bringing greater investment, control over investment and powers to the region.

The new deal is estimated to be worth in the region of £1.5bn and it is hoped that this will reboot the economy, provide vital housing, jobs and skills, bolster our existing strengths in transport and Smart City Region innovation, and drive our net zero ambitions. The deal looks to create a more prosperous and better-connected West Midlands which is fairer, greener and healthier.

The WMCA have conducted a Governance Review under Section 111 of the 2009 Act (the Review) in relation to the delegation to the Combined Authority of additional functions and duties relating to:

- Bus Service Operators Grants (under section 154 (1) of the Transport Act 2000)
- Bus Service Operators Grants (under section 154 (3) of the Transport Act 2000)

Governance Review and Proposal

Background

Commercial Bus Service Operator's Grant (BSOG) is existing funding which Government currently pays directly to operators. BSOG is directly linked to bus fuel consumption, and this can undermine environmental objectives, with a reduced incentive on operators to invest in more zero emission buses. Circa £26m per annum was paid to bus operators across the WMCA area (pre-pandemic).

With a unique bus market, with one commercial operator operating over 95% of the West Midlands bus network, ensuring that value for money is achieved locally from public subsidy and planning an effective recovery for bus services post pandemic is difficult. This has been further exacerbated by a reduction in local bus market competition, with five local bus operators ceasing operations since March 2020, and ongoing bus industry pressures such as driver shortages, wage, and fuel cost inflation.

The WMCA needs new levers to incentivise and influence the direction and navigation of a modern and responsive bus network and to stimulate private sector competition back into our bus market.

Proposal

Administering BSOG will support WMCA early engagement with bus operators in the West Midlands, ahead of the anticipated further devolution of powers in relation to policy and BSOG. This may mitigate against unpredictable and potentially disruptive market behaviour and may act to encourage high levels of professional conduct in the market being maintained during this period. These powers would assist WMCA in being able to gain valuable insight and the additional scrutiny provided by WMCA may be able to encourage more efficient practices by the operators.

Subject to national reform, and through greater local control and design of policy, the WMCA would look to incentivise bus operators to use the grant to ensure investment

in bus services aligns with WMCA policy outcomes. WMCA priorities for BSOG would seek to target: -

- **Incentivising greener vehicle fleet investment and maximising our position as the UK investment leader in decarbonising bus fleets.** Further boosting over £150m of fleet investment between public and private partners.
- **Incentivising and working with private bus operators to expand bus services into areas of poor accessibility.** This would place a greater focus on where bus route mileage is delivered, compared to the current approach focused on total quantum. This would help to tackle the issue of 'overbussing' on certain routes to maintain a dominant commercial position at the expensive or more marginal, socially beneficial services, thus helping to deliver greater benefits with the same level of public funding.

The WMCA has direct experience in managing bus funding support grants, such as Local Transport Fund (up to July 2023), BSOG+ (up to 2025) and local raised funding through the WMCA's Transport Levy (for subsidies services).

With significant investment made to support bus services across the West Midlands, the devolution of BSOG funding to the WMCA would support this continued improved local planning of bus services. As stated above and subject to national reforms, WMCA requires flexibility in the way in which the grant is distributed to support its aim of incentivising a move to zero emission buses and an expansion of services into areas with poor accessibility. WMCA can also act as a trailblazer area for the early delivery of national BSOG reforms, working in partnership with DfT.

Overall, these reforms would help to achieve our wider network expansion plans that match the Government's Levelling Up mission and the aim to increase bus use outside of London, bringing us much closer to London standards. This aligns with the WMCA's Local Transport Plan outcomes to improve accessibility, electrify the transport system and reduce traffic to drive behaviour change.

Bus services are important for those who lack access to a private vehicle, those on the lowest incomes, and for those living in the most deprived communities. The WMCA area has some of the most deprived wards in England and circa 25% of households do not have access to a car, with this increasing to 40% in some of our most deprived communities.

The devolution of BSOG administration and anticipated policy making powers to WMCA would enable WMCA to deliver economic, social and environmental benefits through the distribution of the grant and to improve the effectiveness of service delivery.

Conclusion

Having considered the findings of the Review, the WMCA concluded that an Order by the Secretary of State to make the changes considered in the Review, including delegating additional functions to the Combined Authority, would be likely to improve the exercise of statutory functions in relation to the Combined Area. The WMCA have therefore resolved to prepare and publish this Scheme under section 112 of the 2009 Act.

Functions exercised by the Mayor

Bus Service Operators Grant (Public Authority Function) (Section 105A of the Local Democracy, Economic Development and Construction Act 2009)

It is proposed that the Government will devolve powers for the payment of the bus service operators grant to WMCA to be a general function of the Mayor under section 154 (1) of the Transport Act 2000.

It is further proposed that the Government will devolve powers, at a future date to be agreed with WMCA, following the conclusion of nation consultation and guidance being issued by the Secretary of State in relation to bus service operators grant to WMCA under section 154 (3) of the Transport Act 2000.

Since the award of Bus Service Operators Grant is a public function of the Secretary of State the Order will be made under section 105A of the 2009 Act. The procedural requirements under Section 105B do not include a requirement for public consultation before the making of an Order and in this case it is not thought necessary for a public consultation exercise to be carried out.

WMCA will provide support to identify the funding for bus services entirely within the WMCA boundary that is paid to commercial operators and would be suitable to be devolved to WMCA, both currently and following national reform.

Governance and constitutional matters

Governance Arrangements

A decision in relation to the conferring of a new function on WMCA would require a unanimous vote of the members representing the Constituent Authorities at the WMCA Board.

The Award of Bus Service Operator's Grant will need to be included as a Mayoral function in the definition of Mayoral general functions set out in Article 22(5) of the West Midlands Combined Authority Functions and Amendment) Order 2017

Review and Scrutiny

The operation of the function of the award of Bus Service Operators Grant will be subject to review and Scrutiny in accordance with the Constitution and the Scrutiny Protocol.