



**WEST MIDLANDS**  
COMBINED AUTHORITY

## Board Meeting

<b>Date</b>	9 December 2016
<b>Report title</b>	Implementing the devolution agreement – the Mayoral Combined Authority ‘functions’ Order
<b>Cabinet Member Portfolio Lead</b>	Councillor Bob Sleigh - Chair of the WMCA
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### Recommendation(s) for action or decision:

The Board is recommended to:

1. Provide consent to the laying of the draft West Midlands Combined Authority (Functions and Amendment) Order 2016 in Parliament, attached at appendix A.
2. Delegate approval of the outstanding areas of drafting agreement to the Chair of the Combined Authority, in consultation with the Clerk - namely the unanimous voting provision and drafting and minor amendments. This delegation is also subject to agreement of the Chair, in consultation with the Chief Executive that the generic Finance Order is in line with principles agreed in the Scheme.

## **Recommendations for noting:**

The Board is asked to note:

1. The Mayoral WMCA Scheme consultation summary, as submitted to the Secretary of State for Communities and Local Government on 5 September 2016, the link is provided in paragraph 3.3 of this report.

### **1.0 Purpose**

- 1.1 To provide the Board with the Mayoral WMCA Scheme consultation summary.
- 1.2 To seek the Board's consent to lay the draft West Midlands Combined Authority (Functions and Amendment) Order 2016 (the Order) in Parliament. The Order details the functions required by the Combined Authority to deliver the devolution deal.
- 1.3 To seek delegated approval to the Chair of the Authority, in consultation with the Clerk, of outstanding areas of agreement in the Order, namely the unanimous voting provision and minor and drafting amendments of the draft Order. This delegation will ensure that the draft Order can be laid in parliament as soon as possible following the constituent councils and Combined Authority consideration of the draft Order, if all approvals given.

### **2.0 Background**

- 2.1 The development of the government's devolution agenda created the opportunity for the West Midlands Combined Authority to negotiate and subsequently agree a proposed [Devolution Agreement](#). A period of clarification was carried out on the agreement and then ratified by the seven constituent councils throughout February and March 2016.
- 2.2 The devolution agreement was the first step for the West Midlands in securing the powers, resources and independence needed to drive economic growth, public service reform and deliver real outcomes for local people in terms of jobs, homes, better transport links and better public services. It provided for a Government 'Gainshare' payment of £36.5 million per year and opens up potential investment funds totalling £8 billion pounds whilst increasing confidence in the local area so that further private sector investment can be leveraged. It sits alongside the Midlands Engine project, a partnership with government covering the whole West and East Midlands, including the Midlands Connect initiative to take forward east-west transport investment.
- 2.3 Following the ratification of the devolution agreement, the next stage established the position of the mayor, a prerequisite to the devolution agreement. The Mayoral (elections) Order, to create the position of the mayor, was approved by the Board at its AGM on 29 June 2016. The Mayoral

(Elections) Order was subsequently made by Parliament on the 15<sup>th</sup> September 2016.

- 2.4 The 'Scheme' detailing the proposed Mayoral WMCA functions was also approved for consultation at the AGM on 29 June 2016. The conferral of these powers do not affect the Authority nor the Constituent Authorities ability to deliver their existing functions.

### **3.0 Consultation for functions to be conferred upon a Combined Authority**

- 3.1 It is a requirement that a public consultation be undertaken in most cases where additional functions are to be conferred upon a Combined Authority. The functions required by the West Midlands Combined Authority to deliver the devolution agreement were identified in a Governance Review and subsequently detailed in the '[Scheme](#)' which was then consulted on.

- 3.2 The [consultation](#) was carried out from 4<sup>th</sup> July – 21<sup>st</sup> August 2016. The consultation sought views from the public and stakeholders on the additional functions proposed to be conferred on the West Midlands Combined Authority, in order to deliver the devolution agreement.

- 3.3 The summary report is available on the WMCA website via the following link: <https://westmidlandscombinedauthority.org.uk/media/1354/mayoral-wmca-consultation-report-for-upload.pdf> for information.

### **4.0 Scheme to Order process**

- 4.1 Following the consultation, the Scheme and a summary of the responses were submitted to the Secretary of State for Communities and Local Government, as required.

- 4.2 The Department for Communities and Local Government then prepared the draft statutory West Midlands Combined Authority (Functions and Amendment) Order 2016 based on the Scheme, in consultation with the Combined Authority and the relevant government departments.

- 4.3 The draft Order is available for the Board's approval, attached at appendix A.

### **5.0 The Draft Order**

- 5.1 The draft Order reflects the devolution agreement and Scheme, as approved by the Combined Authority on 29 June 2016. Where the draft Order does not reflect the Scheme, or there are variations, these key areas are detailed at paragraph 6.0 below and the full summary of drafting position at Appendix B.

- 5.2 The rationale for any variations are that: the detail is being considered further by government, it is not appropriate for some of the elements of the Scheme to be contained within the legislative Order (for example where the matter is

already contained within existing legislation), and/ or the outcome required will be achieved through different legislative means.

- 5.3 It is crucial for the delivery of the devolution deal and the wider devolution agenda that the draft Order is laid in Parliament as soon as possible. Therefore, the Board is asked to consent to the laying of the draft West Midlands Combined Authority (Functions and Amendment) Order 2016 in Parliament and delegate approval of outstanding areas of agreement, namely the unanimous voting provision and minor and drafting amendments to the Chair of the Authority, in consultation with the Clerk. This delegation is also subject to agreement that the generic Finance Order (paragraph 6.2.1) is in line with principles agreed in the Scheme.
- 5.4 Following the Board's consideration of the draft Order, the draft Order will be laid in Parliament, if all approvals have been given from the Constituent Councils). It is important to note that the Order cannot be amended once laid in Parliament, it will either be approved or rejected by Parliament.

## **6.0 Key areas of variation through Scheme to Order process**

### **6.1 Unanimous Voting**

- 6.1.1 Within the Order to establish the West Midlands Combined Authority and re-stated in the Scheme, there were certain items reserved to require the unanimous decision of the Constituent Members, such as amendments to the Constitution, the approval of borrowing limits, capital budget of the Combined Authority and amendments to the standing orders (full list in paragraph 15 of the [Scheme](#)).
- 6.1.2 Following the incorporation of the Mayoral governance model into the Combined Authority, the government's position is that the exclusion of the mayor in such items is not aligned to the devolution agenda.
- 6.1.3 At the point of writing and building on previous negotiations, the proposition from government is that the mayor votes in all 'unanimous' items, however the mayors vote is **not** required to be in the vote 'for', **unless** the matter affects the mayor's general functions (which are detailed in Part 10, Article 22 of the draft Order).
- 6.1.4 The implication of this, which still needs drafting into Part 12 Article 24 of the draft Order, is that the mayor votes in all decisions, in line with the devolution deal, but cannot 'veto' the unanimous points unless the matter in question affects the mayor's General Functions, which are explicitly detailed in the Order. The opportunity for a 'veto' is therefore restricted in line with these specific Mayoral functions. It would remain the case that in both situations that all Constituent member votes would still be required for the decision to be approved.

- 6.1.5 As the drafting is yet to be finalised, delegation to the Chair of the Authority in consultation with the Clerk, is recommended to agree the position on this matter.
- 6.1.6 It is also important to note that in line with the devolution deal, the mayor is required to vote in favour of all decisions arising from the devolution agreement. The mayor however is not required to vote in favour of the functions and powers detailed in the establishment Order, i.e. transport and economic development and regeneration.
- 6.1.7 It is also important to note is that the mayor cannot 'force' a decision with regards to Combined Authority decisions, if a vote were to take place, it would be a block rather than a forced decision.
- 6.2 Finance
- 6.2.1 Finance Order - DCLG have confirmed that a generic Financial Regulation Order will be laid in Parliament to cover financial aspect for all Combined Authorities. These will cover the Non-Transport Levy, Precepting etc. Non Transport Borrowing at this stage will not be included as this has not been finalised following the Autumn Statement announcement that Combined Authorities will be given Non Transport borrowing Powers. It is likely following further discussions that this will be included in a future Order.
- 6.2.2 As recommended in this report, the delegation to the Chair, in consultation with the Clerk is also subject to agreement of the Chair that the generic Finance Order is in line with principles agreed in the Scheme.
- 6.3 Mayoral WMCA Development Corporations
- 6.3.1 There is still discussion of an associated risk of Mayoral WMCA Development Corporations, regarding the impact of Non-Domestic Rate Relief (NNDR) and Compulsory Purchase Orders (CPOs). The concern is that, whilst the Constituent Councils affected by the development corporation have to agree to its establishment, it could be that the development corporation determines to grant NNDR and seek CPO's without the further need to seek affected constituent authority approval.
- 6.3.2 To ensure that the affected Constituent Councils are protected through the WMCA Constitution, the intention is to provide the necessary checks and safeguards within the Constitution.
- 6.2.3 Ultimately and importantly, of course, if Constituent Councils do not think at the point of creating a development corporation that they are sufficiently safeguarded, they can withhold their consent to the establishment of an MDC in their area **and it cannot be established in their area** as the Constituent Council consent is required to establish the development corporation.

## **7.0 Next Steps**

- 7.1 The draft Order is attached at appendix A, and a summary attached at appendix B, for reference. If approved by the Board the draft Order provisions, identified in paragraph 6.0 of this report, will be worked through and finalised and draft Order consented to by the Chair of the Authority, in consultation with the Clerk.
- 7.2 Following Constituent Councils and the Combined Authority consideration of the draft Order, by the 9<sup>th</sup> December 2016, it is anticipated that the draft Order will be laid in Parliament before the end of the year. Subject to Parliamentary approval it should be 'made' in mid to late February.

## **8.0 Financial implications**

- 8.1 The draft Order deals mainly with the functions and decision-making of the mayor and Combined Authority in accordance with the devolution agreement. It also makes some provisions about funding. In particular, it provides that the mayor can only agree financial contributions from the constituent councils through a two-thirds majority approval by the Combined Authority (similar to existing transport levy approval arrangements).
- 8.2 Other financial matters are expected to be dealt with in a generic Finance Order for all combined authorities, which at the time of writing is not available from government. The matters within the generic Finance Order are expected to include:
- Mayoral ability to set a Council Tax precept for mayoral functions
  - Separate budgets to be set for mayoral and combined authority functions, with both budgets requiring a two-thirds approval by the combined authority.
- 8.3 The mayor's ability to make a Supplementary Business Rate or "Infrastructure levy" on the Business Rate is not covered by the draft Order or the proposed Finance Order, but will be enabled under the Local Growth and Jobs Bill expected to be laid in parliament in January.
- 8.4 Some technical financial issues remain unclear and the Combined Authority finance leads are awaiting a government response. In particular:
- Funding of mayoral overspends: it is assumed that these would be a first charge against future mayoral budgets, but this needs to be explicit in the statutory arrangements.
  - Future mayoral funding of mayoral commitments: again, it is assumed that future mayors will be required to fund the commitments of their predecessors, such as the revenue costs of borrowing funded from a

mayoral Infrastructure Levy or precept. However, the WMCA finance leads have not seen how this is proposed to be provided for in the Orders.

- 8.5 Government have suggested that the delegation to consent to the laying of the Order in Parliament includes the sight of the Finance Order and the satisfactory resolution of these technical issues, as recommended in this report.

## **9.0 Legal implications**

- 9.1 The approval of all seven of the Constituent Councils of the West Midlands Combined Authority and the Combined Authority itself is required before the draft Order can be laid in Parliament. The draft Order will then go through the parliamentary process necessary for the draft Order to be formally approved and to become law.
- 9.2 The Order provides details of the functions and powers that both the WMCA and the Mayor will have, the status of the Order drafting is detailed in Appendix A. By consenting to the draft Order the Combined Authority will be approving the conferral of the functions on the Mayoral WMCA required to deliver the devolution deal.

## **10.0 Equalities implications**

- 10.1 An initial equalities analysis has been carried out on the Mayoral West Midlands Combined Authority Scheme, having due regard to the equalities implications of the Scheme, on which the draft Order is based, and it was concluded that further detailed analysis was not required. However, any project/programmes to result from the incorporation of the Scheme detail are subject to an individual equalities analysis.

## **11.0 Human resources implications**

- 11.1 There are no human resource implications arising from this report.

## **12.0 Schedule of background papers / links used**

- 12.1 The West Midlands Devolution Agreement:  
<https://westmidlandscombinedauthority.org.uk/media/1024/westmidlandsdealdocument.pdf>

Mayoral West Midlands Combined Authority Governance Review and Scheme:

<https://westmidlandscombinedauthority.org.uk/media/1237/mayoralwmca-governance-review.pdf>

<https://westmidlandscombinedauthority.org.uk/media/1236/mayoral-wmca-scheme.pdf>

Initial Equality Analysis on the Mayoral\_West Midlands Combined Authority Scheme: <https://westmidlandscombinedauthority.org.uk/media/1235/initial-equality-analysis-mayoral-scheme.pdf>

Consultation document:

<https://westmidlandscombinedauthority.org.uk/media/1355/summary-of-consultation-responses-appendix-a-consultation-documents.pdf>

Summary of consultation responses report:

<https://westmidlandscombinedauthority.org.uk/media/1354/mayoral-wmca-consultation-report-for-upload.pdf>