

# **West Midlands Combined Authority**

## **Scheme for the transfer of police and crime commissioner functions**

### **Interpretation**

In this Scheme:

“the 2009 Act” means the Local Democracy, Economic Development and Construction Act 2009;

“the 2011 Act” means the Police Reform and Social Responsibility Act 2011;

“the 2016 Act” means the Cities and Local Government Devolution Act 2016;

“the area” means the area of the combined authority;

“the combined authority” means the West Midlands combined authority, WMCA;

“the deputy mayor for policing and crime” means the deputy mayor for policing and crime for the area;

“the mayor” means the mayor for the area;

“the OPCC” means the office of the police and crime commissioner;

“the police and crime commissioner” PCC means the police and crime commissioner for the West Midlands;

### **1. Summary**

This Scheme is prepared following the decision of the West Midlands Combined Authority (WMCA) on 20 July 2018.

The Scheme provides as follows:

- provision in relation to the transfer of police and crime commissioner (“PCC”) functions from the Police and Crime Commissioner for the West Midlands to the Combined Authority Mayor for the West Midlands in May 2020;
- transfer the property, rights and liabilities of the PCC to the West Midlands Combined Authority

Whilst recognising that the section 4 (1) (107F) 2016 Act does not require this the Scheme has nevertheless been prepared in conjunction with a Review under section 111 of the 2009 Local Democracy, Economic Development and Construction Act, as amended, which concluded that the making of an order conferring additional functions on the WMCA, as set out in the Scheme, and changes to the constitutional arrangements of the WMCA. The proposals in the Scheme will be the subject of a further public consultation. In putting forward the report before Parliament the Home

Secretary will include a description of any consultation taken into account, section 105A (10) of the 2009 Act.

## **2. Legislative Context**

The Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) established the position of PCC and specifies the core functions of a PCC. Section 107F of the Local Democracy, Economic Development and Construction Act 2009 (the “2009 Act”), inserted by section 4 of the Cities and Local Government Devolution Act 2016 (the 2016 Act), provides that a mayor for the area of a combined authority can, by order, be conferred functions of a police and crime commissioner for the area. Section 107F(8) specifies that any PCC function exercisable by the mayor is to be taken to be a function of the combined authority exercisable by the mayor acting individually, or by a person acting under arrangements with the mayor in accordance with provision made under Schedule 5C of the 2009 Act. Section 107F also specifies that an order providing for a mayor to exercise PCC functions must provide that there is to be no PCC in that area from a specified date and may cancel any future PCC ordinary elections which would otherwise have taken place in that same area, extend the term of office of the current PCC to the specified date and prevent any PCC by-election taking place in that area within six months of the specified date.

The functions are those conferred on PCCs by or under the following act or any other Act (whenever passed)

- Police Reform and Social Responsibility Act 2011

## **3. The Scheme**

The Scheme provides for the following changes:

### *3.1 Mayor with PCC responsibilities*

In line with the Local Democracy, Economic Development and Construction Act 2009 as amended by the Cities and Local Government Act 2016, Schedule 2 the Mayor will exercise PCC functions in relation to the combined authority area. This will provide for a single directly accountable individual responsible for the discharge of core PCC functions which will be consistent with the PCC model and ambition for local people to have a single point direct accountability. This includes securing that the police force is efficient and effective and holding the chief constable to account.

Under the 2011 Act the PCC is a Corporation Sole with the ability to discharge the core functions provided for in the 2011 Act. As laid out above, and in 3.3 Functions, the functions will transfer to the Mayor who will have the sole responsibility for deciding upon and discharging the functions. There are however areas that are currently solely discharged by the PCC as Corporation Sole that with the transfer will reside in the WMCA as legal entity although the decision making in respect of these functions, after the transfer, will remain with the Mayor as PCC:

- Properties, Rights and Liabilities
- Appointments

- Borrowing
- Contracts

Details as to how it is proposed that this will operate in the future can be found in 3.4, 3.5, 3.9 and 3.10 respectively.

Appropriate remuneration will be paid in respect of the Post of Mayoral PCC and any subsequent Deputy Mayor for Police and Crime, this would be developed with guidance from the Home Office who have advised that this is deemed Mayoral remuneration and so would need to be dealt with by an Independent Remuneration Panel.

### *3.2 Deputy Mayor Police and Crime*

In line with the existing provision for PCCs to appoint a Deputy PCC (DPCC) and delegate functions to them, the Mayor will appoint a Deputy Mayor for Policing and Crime (DMPC).

In addition to the restrictions laid out in the Police Reform and Social Responsibility Act 2011 and the Cities and Local Government Devolution Act 2016 the Order will require the appointment to exclude Members of the Combined Authority and will restrict the role to those individuals residing in the CA Area.

### *3.3 Functions*

As per the Police Reform and Social Responsibility Act 2011 the following functions in general, will exist. A PCC may delegate any function to a DPCC, with the exception of those strategic functions reserved as being exercisable only by the PCC. The functions which may not be delegated by a PCC to a Deputy PCC, and as such by a Mayor acting as PCC to a DMPC are:

- issuing a police and crime plan;
- setting the police budget including the council tax requirement; and,
- Chief Constable dismissals, suspensions and appointments.

Functions that may only be exercised by the PCC or DPCC and, correspondingly, may only be exercised by the Mayor acting as PCC or the DMPC are:

- determining police and crime objectives;
- attendance at a meeting of a Police and Crime Panel in compliance with a requirement by the panel to do so;
- preparing an annual report;
- appointing a local auditor under section 7 of the Local Audit and Accountability Act 2014 (“the 2014 Act”); and
- deciding whether to enter into a liability limitation agreement under section 14 of the 2014 Act.

In addition the Mayor, acting as PCC or the DMPC, may also delegate or sub delegate functions, but not those listed above subject to statutory limitations.

### *3.4 Transfer of properties, rights and liabilities*

All property, rights and liabilities which are property, rights and liabilities of the PCC will transfer and vest in the WMCA. However, all decisions relating to PCC functions (and relating to assets and liabilities etc) will be for the mayor as the directly elected individual.

In addition to the Mayors existing 'functional power of competence' the Order will also provide for:

- all functions in relation to such property, rights and liabilities are to be exercised by the mayor;
- all decisions relating to such property, rights and liabilities are to be made by the mayor;
- any receipts arising from such property, rights and liabilities (whether arising from their use, sale, disposal or otherwise) are to be paid into the police fund kept by the mayor by virtue of section 21 of the 2011 Act.

Unless delegated by the Mayor in line with 3.3 above.

In addition the use of these assets will also be ring fenced within the Constitution so as to emulate as far as possible the current PCC 'corporation sole' arrangement.

### *3.5 Office of the Police and Crime Commissioner OPCC*

The staff within the OPCC, including any secondments, will transfer under a statutory transfer order which will replicate the characteristics of a TUPE transfer.

The Mayoral OPCC will be managed by an 'OPC' Executive Director'.

Arrangements would be made locally for the Mayor to be involved with any appointment.

### *3.6 Monitoring Officer and Chief Finance Officer (Section 151 Officer)*

There will be a monitoring officer whose responsibilities include the Mayor's exercise of PCC functions. The person appointed to be the monitoring officer will be able to cover a range of policy areas, not just policing.

In addition there will be a chief finance officer (Section 151 Officer) whose responsibilities include the Mayor's exercise of PCC functions. The person appointed to be chief finance officer can cover a range of policy areas, not just policing.

Arrangements would be made locally for the Mayor to be involved with any appointments.

### *3.7 Police and Crime Panel*

There will be no change to the role and arrangements in respect of the Police and Crime Panel. Members of the Combined Authority will not be a member of the PCP.

Scrutiny of the discharge of PCC functions will be performed by the Police and Crime Panel who hold the appropriate powers, set out in the Police Reform and Social Responsibility 2011 Act alongside their responsibilities and membership requirements, to effectively scrutinise the actions and decisions of the Mayor PCC and enable the public to hold them to account.

The Police and Crime Panel (PCP) will exercise broadly the same functions as PCPs under the PCC model, but with some minor modifications such as ensuring the panel only scrutinises the policing element of the precept, which forms a separately identifiable component of a wider combined authority precept, rather than the whole precept.

### 3.8 *Police Funds*

Police Funds will be kept separate to the discharge of other Mayoral Combined Authority functions and into which all receipts arising and liabilities incurred in the exercise of PCC functions must be paid. Within the existing arrangements for a combined authority mayor PCC, there is a single precept comprising of separate components for the mayor's general functions and one for policing. The PCC component is required to appear separately on council tax bills.

Arrangements will need to be made in the Order to extend the financial year in accounting terms for the WMPCC so that the PCC and CC prepare statement of accounts for the period 1 April 2019 up to the date of transfer.

Money paid into the police fund will be reserved for policing, for example receipts from the sale of police assets would have to be spent on matters relating to policing. In line with statutory guidance for PCCs, as set out in the 'Revised Financial Management Code of Practice' for policing, the Mayor would have to publicly account for how police funds are spent.

The police fund, which will include precept income, will also include reserves maintained for policing and crime reduction. The Local Government Finance Act 1992 requires billing and precepting authorities in England and Wales to have regard to the level of reserves needed for meeting estimated future expenditure when calculating the budget requirement. Police reserves should be maintained in accordance with the relevant guidance, agreed accounting principles and locally agreed financial regulations and schemes of governance.

All decisions on money relating to policing must be made by the mayor. Money in the police fund can only be spent on policing and matters that are incidental to the mayor's PCC functions.

Decisions on the sale of police assets and reinvestment of receipts must be made by the mayor and money paid into police fund from where it can only be spent on matters that are incidental to the mayor's PCC functions.

### 3.9 *Borrowing*

The Mayor will be ultimately responsible for decisions relating to borrowing in relation to PCC functions, as laid out in the 'Revised Financial Management Code of Practice' for Policing, but may delegate them in practice. The cost of such borrowing will be met from Police Funds and as above kept separate to the discharge of other Mayoral Combined Authority functions. This does not detract from the legal status of the Combined Authority as the borrowing party.

The WMCA will have the same borrowing rights for Mayor PCC functions that are currently enjoyed by the PCC.

The current WMCA Borrowing Order does not list what functions WMCA can borrow for. Instead, it says that legislation will be put in place to allow "the West Midlands Combined Authority powers to borrow for its new functions." So it would apply to any functions WMCA add later unless the deal is modified to exclude them.

The WMCA will seek an amendment to its existing debt cap arrangements with HMT to reflect its assumption of new responsibilities relating to the Mayoral PCC. The Mayoral PCC debt cap should be in addition to the WMCAs existing arrangements with HMT.

### 3.10 *Contracts*

Decisions on entering into contracts regarding police matters are functions of a PCC under the PCC model (with scope for some delegation to the Chief Constable).

As such and in keeping with the PCC model the Mayor will have ultimate responsibility for all contracts relating to police matters, although they may provide consent for contracts to be entered into by the chief constable or another to whom the Mayor personally delegates responsibility to as per existing agreements and protocols.

Decisions on the issuing of policing related grants would also rest with the Mayor or anyone to whom they delegate responsibility.

### 3.11 *Police and Crime Plan*

The police and crime plan which involves consideration of the strategic policing requirement is a key public facing deliverable. The provisions on police and crime plans as set out in the 2011 Act will still apply in respect of the Mayor acting as PCC.

### 3.12 *Policing Protocol*

As a matter of law, the Policing Protocol will apply to a Mayor acting as a PCC as it applies to a PCC. Apart from the changes in governance outlined in the Governance Review, all other aspects of existing primary legislation relating to the role and functions of the PCC will remain unchanged.

### 3.13 *West Midlands Police*

West Midlands Police will remain a distinct and separate organisation.

### 3.14 *Inspection, Investigation and Complaints*

The powers of HMICFRS, as set out in the Police Act 1996, and the police complaints procedure, as set out in the Police Reform Act 2002 and subsequent amendments, will still apply.

### 3.15 *Consequential amendment and modification requirements*

The following consequential amendment and modification requirements of enactments will be required in their application to the WMCA with Mayoral PCC functions:

#### **Primary Legislation**

**Amendments to the Police Reform and Social Responsibility Act 2011**

**Modifications to the Local Government Act 1972**

**Police (Property) Act 1897**

**Trustee Investments Act 1961**

**Pensions (Increase) Act 1971**

**Local Government (Miscellaneous Provisions) Act 1976**

**Local Government, Planning and Land Act 1980**

**Local Government Finance Act 1988**

**Road Traffic Act 1988**

**Local Government and Housing Act 1989**

**Police Act 1996**

**Police Reform Act 2002**

**Proceeds of Crime Act 2002**

**Local Railways and Transport Safety Act 2003**

**Government Act 2003**

**Local Government and Public Involvement in Health Act 2007**

**Local Democracy, Economic Development and Construction Act 2009**

**Police Reform and Social Responsibility Act 2011**

**Local Audit and Accountability Act 2014**

## **Secondary legislation**

**Motor Vehicles (Third Party Risks) Regulations 1972**

**Official Secrets Act 1989 (Prescription) Order 1990**

**Police (Disposal of Sound Equipment) Regulations 1995**

**Police (Property) Regulations 1997**

**Health and Safety (Enforcing Authority) Regulations 1998**

**Motor Vehicles (Driving Licences) Regulations 1999**

**Redundancy Payments (Continuity of Employment in Local Government, etc) (Modification) Order 1999**

**Motor Vehicles (Access to Driver Licensing Records) Regulations 2001**

**Police and Criminal Evidence Act 1984 (Drug Testing of Persons in Police Detention) (Prescribed Persons) Regulations 2001**

**Police Regulations 2003**

**Docking of Working Dogs' Tails (England) Regulations 2007**

**REACH Enforcement Regulations 2008**

**Elected Local Policing Bodies (Specified Information) Order 2011**

**Policing Protocol Order 2011**

**Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012**

**Police Appeals Tribunals Rules 2012**

**Police and Crime Commissioner (Disqualification) (Supplementary Provisions) Regulations 2012**

**Police and Crime Panels (Precepts and Chief Constable Appointments) Regulations 2012 55**

**Local Government Pension Scheme Regulations 2013**

**Local Audit (Auditor Resignation and Removal) Regulations 2014**

**Combined Authorities (Mayors) (Filling of Vacancies) Order 2017**