

The West Midlands Combined Authority (Functions and Amendment) Order 2017

About this report

Section 105B of the Local Democracy, Economic Development and Construction Act 2009 (“the 2009 Act”), inserted by section 7 of the Cities and Local Government Devolution Act 2016, sets out the procedure for making orders under section 105A of the 2009 Act which makes provision for a Combined Authority to exercise functions exercised by a public authority. Section 105B provides that at the same time as laying a draft of a statutory instrument containing an order under that section before Parliament, the Secretary of State must lay before Parliament a report explaining the effect of the order and why the Secretary of State considers it appropriate to make the order.

This report accompanies the West Midlands Combined Authority (Functions and Amendment) Order 2017 (“the Order”) which is to be made, subject to Parliament’s approval, under provisions within the 2009 Act, including section 105A.

1 Description of the Combined Authority

1.1 The West Midlands Combined Authority (“WMCA”) was established on 16 June 2016 by the West Midlands Combined Authority Order 2016 (S.I. 2016/653)¹ to facilitate co-ordination and integration of economic development, regeneration and transport functions (and included dissolving the West Midlands Integrated Transport Authority and conferring its functions on the WMCA). The WMCA is constituted of the local authorities for the areas of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton.

1.2 A Devolution Deal² – an agreement with Government to devolve a range of powers and responsibilities to a mayoral combined authority – was agreed between the shadow WMCA and the Government on 17 November 2015. It included establishing a WMCA, to be led by an elected Mayor, and for the conferral of a number of local authority and public authority functions on the WMCA.

1.3 The West Midlands Combined Authority (Election of Mayor) Order 2016 (S.I. 2016/933)³ – which was made on 15 September 2016 - provides for there to be a Mayor for the area of the WMCA and specifies the term of office for the Mayor, the dates on which elections for the return of a Mayor shall take place and the intervals between elections. The first election is to take place on 4 May 2017 and the Mayor will take office on 8 May 2017.

1.4 The provisions in this Order confer on the WMCA functions agreed in the Devolution Deal, and put certain constitutional arrangements in place for the Combined Authority.

¹ <http://www.legislation.gov.uk/uksi/2016/653/contents/made>

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/477421/West_Midlands_devolution_deal_unsigned_final_web.pdf

³ <http://www.legislation.gov.uk/uksi/2016/933/contents/made>

2 Conferral on WMCA of public authority functions: powers

2.1 Section 105A(1)(a) of the 2009 Act (other public authority functions) empowers the Secretary of State by order to make provision for a function of a public authority that is exercisable in relation to a combined authority's area to be a function of the combined authority.

2.2 Section 105A(1)(b) of the 2009 Act further provides that the Secretary of State may by order make provision for conferring on a combined authority in relation to its area a function corresponding to a function that a public authority has in relation to another area.

2.3 Section 105A(2)(a) of the 2009 Act provides that an order may include further provision about the exercise of the function, including provision for the function to be exercisable by the public authority or combined authority subject to conditions or limitations specified in the order.

2.4 Section 105A(3) of the 2009 Act provides that the provision for the exercise of the function that may be included in an order under section 105A(1)(a) may include, in particular, provision for the function to be exercisable by the combined authority concurrently with the public authority.

2.5 Section 114 of the 2009 Act empowers the Secretary of State by order to make incidental, consequential, transitional or supplementary provision for the purposes of, or in consequence of, an order under Part 6 of that Act or for giving full effect to such an order. Section 117(5) of the 2009 Act provides that an order under Part 6 of the 2009 Act may include provision amending, applying (with or without modifications), dis-applying, repealing or revoking any enactment whenever passed or made. These powers have been used to modify the application to the WMCA of the provisions in the Local Government and Housing Act 1989, the Greater London Authority Act 1999, the Traffic Management Act 2004, the Housing and Regeneration Act 2008, the Local Transport Act 2008 and the Localism Act 2011.

3 Effect of the order; considerations informing the Secretary of State's decision

3.1 Power to pay grant

3.1.1 The Government committed in the Devolution Deal to giving the Mayor the responsibility for a devolved and consolidated transport budget consisting of various funding streams. In order to realise the ambitions of the Devolution Deal and enable coordination and integration of transport functions, the Mayor will set the annual budget for delivering transport functions across the WMCA. Consequentially, the Mayor will be able to pay grants to the constituent councils, and within this Order the power of the Secretary of State to pay grants to councils under Section 31 of the Local Government Act 2003 is conferred on the WMCA to be exercised by the Mayor.

This power to pay grants is not specifically limited to the allocation of transport budgets, and if further devolved grants are provided to the WMCA then the Mayor will have the power to allocate such funds to individual councils of the WMCA. For the purposes of this Order, the power is being conferred to allow the Mayor to be able to pay funds to the constituent councils for functions for which they are the Highways Authority, and this is exercisable with consideration given to the conditions which are contained within the Order, these being:

- the Mayor must have regard to the desirability of ensuring that the council has sufficient funds to facilitate the effective discharge of those functions; and
- the Mayor must take into account any other sources of funding available to the council for expenditure incurred or to be incurred in relation to the exercise of its highways functions.

3.1.2 The WMCA's scheme, which set out their proposals for the Combined Authority, stated that the devolved transport fund will enable "*greater surety of funding, more effective and efficient long-term asset management and procurement arrangements*". In response to the consultation, although no specific question was asked on the allocation of transport funds to the constituent councils, 1025 respondents (79 per cent) agreed or strongly agreed with the transport proposals within the scheme. In the free text responses 68 respondents (10 per cent) supported devolution to the local area (as opposed to decisions being made by Central Government), and 21 (3 per cent) thought the pooling of resources would lead to efficiencies. A small number of respondents 42 (6 per cent) expressed concerns that funding would not be shared evenly amongst the constituent councils, however we do not consider this to be a particular concern given the conditions placed on the Mayor in this Order for the use of the Section 31 power in respect of highways functions, and the overwhelming positive consultation responses.

3.1.3 Having had regard to the governance review, scheme and the summary of consultation responses, the Secretary of State considers that the transfer of the function of the Secretary of State to pay grants to local authorities, will lead to an improvement in the exercise of these statutory functions, by providing the Mayor of the WMCA with the power to pay grants across the area for transport functions and grants for any future budgets which may be devolved.

3.2 Land acquisition and disposal

3.2.1 Chapter 1 of the Housing and Regeneration Act 2008 ("the 2008 Act") establishes the Homes and Communities Agency (HCA), and provides that the HCA will operate across England, with a view to meeting the needs of people in England, by:

- improving the supply and quality of housing;
- securing the regeneration or development of land or infrastructure;
- supporting in other ways the creation, regeneration, or development of communities or their continued well-being; and
- contributing to the achievement of sustainable development and good design.

3.2.2 Chapter 2 of the 2008 Act gives the HCA powers:

- to provide housing or other land;
- for regeneration;
- for the development or effective use of land; and
- in relation to infrastructure.

3.2.3 The WMCA have requested that the Secretary of State makes provision for certain functions of the HCA to be exercisable in relation to the WMCA's area, and for those to be functions of the WMCA (with the exception that compulsory purchase functions will be exercised solely by the Mayor). The functions are to be exercised concurrently with the HCA.

3.2.4 The consultation was broadly supportive of the WMCA receiving functions to support "*more and better homes*" in the West Midlands; 893 (69 per cent) of respondents agreed that

the WMCA should get functions to deliver housing and economic growth strategies. The HCA included the following in their representations: “*we would reiterate our strong support for WMCA devolution and our continued commitment to partnership working to achieve shared objectives to maximise housing growth*”, and the University of Warwick stated that “*‘More and Better Homes’ is crucial to the region’s ability to attract investment and secure economic growth for the benefit of all*”. However, 48 respondents (9 per cent) commented that they did not want the Mayor/WMCA to have these power, with a further 15 (3 per cent) comments negative about housing numbers increasing, and 25 (5 per cent) respondents expressed concerns/uncertainty around the abuse of compulsory purchase powers. With regards to the abuse of compulsory purchase powers we are satisfied that appropriate checks and balances are in place given that that a WMCA member appointed by the constituent council whose council area is affected by such a decision must consent to the use of such powers, and the Secretary of State must also approve the use of compulsory purchase powers.

3.2.5 Having had regard to the governance review, scheme and the summary of consultation responses, the Secretary of State considers that conferral on the WMCA of functions corresponding to the land acquisition and disposal functions of the HCA, to be exercised concurrently with the HCA, will lead to an improvement in the exercise of these statutory functions by providing the WMCA, and the Mayor, with powers to act strategically across local government areas to enable housing and other development.

3.3 Mayoral Development Corporations (MDCs)

3.3.1 Part 8, Chapter 2 of the Localism Act 2011 (“the 2011 Act”) provides the Mayor of London with powers to designate mayoral development areas leading to the creation of MDCs. These include powers in relation to:

- the designation of mayoral development areas;
- the exclusion of land from mayoral development areas;
- the transfer of property etc to mayoral development corporations;
- the functions in relation to Town and Country Planning;
- the removal or restriction of planning functions;
- discretionary relief from non-domestic rates;
- reviews;
- the transfers of property, rights and liabilities;
- dissolution: final steps;
- guidance by the Combined Authority; and
- directions by the Combined Authority.

3.3.2 Schedule 21 to the 2011 Act provides the Mayor of London with functions in relation to mayoral development corporations, including:

- to provide for the membership of mayoral development corporations;
- for the terms of appointment of members;
- for staff;
- for remuneration of members and staff;
- for committees of mayoral development corporations; and
- for proceedings and meetings.

3.3.3 As part of the West Midlands local growth strategy, with particular reference to the High Speed 2 (HS2) Growth Strategy, the Devolution Deal agreed between local leaders and

the Government stated that the new WMCA would exercise the function of designating Combined Authority led development corporations for the area.

3.3.4 The WMCA consultation did not address MDCs as a standalone point, but 836 (65 per cent) of respondents agreed that the WMCA should get functions to ensure HS2 benefits the whole region (the question was linked directly to MDCs). The HCA in their representation stated that they “*support the WMCA having the power to set up a mayoral development corporation*”. The free text responses to the WMCA’s consultation yielded no specific comment on MDCs, and this appears to indicate that the proposal is not controversial with local people and partners.

3.3.5 Having had regard to the governance review, scheme and the summary of consultation responses, the Secretary of State considers that it is appropriate to confer functions corresponding to Part 8 of the 2011 Localism Act on the WMCA, and that these functions will allow the mayoral WMCA to take control of the regeneration of a particular area and drive local growth in a way which benefits the wider area and contributes to the HS2 Growth Strategy.

4 Consultation

4.1 The WMCA undertook a consultation, delivered in conjunction with the seven constituent local authorities, on the proposals contained in their scheme and governance review from 4 July to 21 August 2016, aligned with a promotional campaign to raise awareness of the proposals. Following this a summary of the consultation responses⁴ compiled by the WMCA was submitted to the Secretary of State. The Secretary of State considers that the WMCA’s consultation on its scheme was sufficient in terms of its length, in that it ran for 7 weeks; the mechanisms used, in that the WMCA offered digital and paper copies of the consultation, and welcomed both electronic and hard copy responses; the WMCA’s promotional activity included press releases, features in Coventry and Warwickshire LEP newsletter, social media, posters in public buildings and significant stakeholders engagement; and the summary provided demonstrates a robust analysis undertaken.

4.2 The new directly elected Mayor of the WMCA would be required to conduct a further statutory consultation before a mayoral development area could be designated and an MDC established.

5 Material considered by the Secretary of State

- Governance Review⁵ submitted by the WMCA
- Scheme⁶ submitted by the WMCA
- Consultation document⁷ submitted by the WMCA
- Summary of consultation responses submitted by the WMCA
- Stakeholder representations submitted by the WMCA

⁴ <https://westmidlandscombinedauthority.org.uk/media/1354/mayoral-wmca-consultation-report-for-upload.pdf>

⁵ <https://westmidlandscombinedauthority.org.uk/media/1237/mayoral-wmca-governance-review.pdf>

⁶ <https://westmidlandscombinedauthority.org.uk/media/1236/mayoral-wmca-scheme.pdf>

⁷ <https://westmidlandscombinedauthority.org.uk/media/1355/summary-of-consultation-responses-appendix-a-consultation-documents.pdf>