

THE WEST MIDLANDS COMBINED AUTHORITY (BUSINESS RATE SUPPLEMENTS FUNCTIONS AND AMENDMENT) ORDER 2018

1. About this report

- 1.1. 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.
- 1.2. This report accompanies the West Midlands Combined Authority (Business Rate Supplements Functions and Amendment) Order 2018 which is to be made, subject to Parliament’s approval, under section 105A of the 2009 Act.

2. Description of the Combined Authority

- 2.1. This Order confers functions corresponding to the business rate supplements functions that the Greater London Authority has in relation to Greater London on the West Midlands Combined Authority (“the WMCA”) in relation to its area. The Order provides that the functions are exercisable only by the mayor of the Combined Authority.
- 2.2. The WMCA was established by the West Midlands Combined Authority Order 2016 (S.I. 2016/653); the position of elected Mayor for the WMCA was established by the West Midlands Combined Authority (Election of Mayor) Order 2016 (S.I. 2016/933); and the West Midlands Combined Authority (Functions and Amendment) Order 2017 (S.I. 2017/510) conferred further functions on the WMCA, some of which are exercisable individually by the Mayor.

3. Conferral on the Combined Authority of public authority functions: powers

- 3.1. 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.
- 3.2. 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.
- 3.3. 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.
- 3.4. 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.

- 3.5. 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 Business Rate Supplements Act 2009.

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

Business Rate Supplement

- 4.1. The Government committed in its 2015 manifesto to “devolve powers and budgets to boost local growth in England [...] to large cities which choose to have elected mayors”. The Government considers that such devolution will boost economic growth, increase public service efficiency, improve Britain’s productivity, and rebalance the economy, including contributing to the Midlands Engine and the Northern Powerhouse.
- 4.2. The Government, working with the WMCA and the councils for the local government areas of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton, which form the area of the WMCA, has made significant progress with implementing the commitments in the first Devolution Deal, agreed with the West Midlands on 17 November 2015.¹ The WMCA was established on 15 June 2016,² additional functions were conferred on 30 March 2017³ and then on 4 May 2017 the first Mayor of the WMCA was elected.
- 4.3. This Order is a step in the implementation of the second Devolution Deal⁴ that the Government agreed with the West Midlands and announced at the Autumn Budget on 22 November 2017. This agreement committed that Government would “subject to the agreement of Parliament, provide for the Mayor of the WMCA to have the power to introduce a business rate supplement, which would be subject to a ballot of affected businesses.”
- 4.4. Conferring the power to levy a BRS on to the combined authority mayor will ensure the mayor has the appropriate powers to develop projects that promote economic growth and regeneration in their area, benefiting both business and the wider community. It is local areas that are often best placed to take decisions relating to the area about the use of public money and assets, support for business and infrastructure investment.

¹ <https://www.gov.uk/government/publications/west-midlands-devolution-deal>

² S.I. 2016/653

³ S.I. 2017/510

⁴ <https://www.gov.uk/government/publications/a-second-devolution-deal-for-the-west-midlands>

- 4.5. The Order provides for the conferral of the Greater London Authority function under the 2009 Act to levy a supplement of up to two pence in the pound of a business property's rateable value on business rates bills. The purpose of any such levy is to raise money for expenditure on a project that will promote economic development in the levying authority's area, and which would not have happened without the supplement. The money raised cannot go towards day-to-day costs, defined in the BRS Act as costs relating to housing, social services, education services, services for children, health services and services that the authority provides in the discharge of functions imposed by or under the Planning Acts (as defined by the Town and Country Planning Act 1990 (c. 8)) – services that levying authorities have existing obligations to provide.
- 4.6. The process for introducing a BRS ensures that businesses have the opportunity to shape and ultimately approve any proposal. The levying authority is required to consult upon and publish a prospectus setting out the benefits of the proposed project, and this is then subject to a ballot of affected businesses. Both a majority of affected individual rate-payers must approve it and the aggregate rateable value of those businesses in favour must exceed those against. Smaller businesses are protected – and therefore not eligible to vote in a ballot – as the levy cannot be applied to business properties with a rateable value of less than £50,000. The combined authority mayors will also have the flexibility to increase this threshold, and to apply any other reliefs as they may set out in the prospectus describing the proposal.
- 4.7. An order can be made to 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 if the 'appropriate' consent is given and the Secretary of State considers that the making of the order is likely to improve the exercise of statutory functions in the relevant area(s). The appropriate consent is that of the mayor, combined authority and constituent councils of each combined authority. Before laying this Order, the Government sought and obtained the consent of the Mayor, Combined Authority and constituent council in relation to the Order, and considers that the Order is likely to improve the exercise of statutory functions in the area of the Combined Authority.
- 4.8. The Secretary of State is satisfied that the statutory conditions for the Order, provided for in the 2009 Act, have been met. These conditions include that the appropriate consent – from the Mayor, the Combined Authority and its constituent councils – is given to the making of the Order, and the Secretary of State considers that the making of the Order is likely to improve the exercise of statutory functions in the area to which the Order relates.
- 4.9. Further to the announcement of the second Devolution Deal for the West Midlands, the Government decided to offer the power to introduce a business rate supplement to other mayors of combined authorities. Three additional mayoral combined authorities – Cambridgeshire and Peterborough, Liverpool City Region, and West of England, accepted the offer, subject to the consent of the relevant authorities in the area of their combined authority and the agreement of Parliament. Orders to implement that offer, with similar aims to the mayoral infrastructure supplement that was part of the Devolution Deals made with those mayoral combined authorities, have also been laid,

for Cambridgeshire and Peterborough⁵, Liverpool City Region⁶, and West of England⁷ combined authorities..

5. Consultation

- 5.1. Unlike the legislation surrounding the establishment of a combined authority, or the conferral of local authority functions on a combined authority, a consultation is not required to confer public authority functions, such as functions of the Mayor of London, on a combined authority.
- 5.2. Further consultation at this time is not considered necessary. Should a combined authority mayor choose to exercise the BRS functions conferred, they would be required to conduct a statutory consultation on proposals and then secure agreement to a prospectus from a ballot of affected businesses, in accordance with section 4 of the BRS Act. However, as consultations have been undertaken in combined authority areas that have referred to proposals for supplements on business rates, they are described below.
- 5.3. The WMCA undertook a consultation in relation to proposals contained in a scheme⁸ that the WMCA prepared and published under provisions in the 2009 Act. The WMCA prepared this scheme following agreement of the first devolution deal with the Government.
- 5.4. The consultation ran for seven weeks from 4 July to 21 August 2016. This consultation has already been the subject of the Explanatory Memorandum to S.I. 2017/510, as most of the proposals consulted on have already been provided for in legislation. That Explanatory Memorandum also set out that for proposals that required legislation including those related to business rates, the Government would seek Parliament's approval to further legislation.
- 5.5. The scheme proposed that the WMCA would be a levying authority for the purposes of the BRS Act and the constituent councils would be deemed to be acting jointly through the WMCA in accordance with Section 2(3) of the BRS Act. The scheme also proposed that the Mayor would have the ability, in consultation with businesses, and with agreement of the relevant Local Enterprise Partnership Board(s), and the Combined Authority, to raise a BRS, up to a specified cap for investment in specified projects, aiding the delivery of the investment programme driven by the Combined Authority Strategic Economic Plan.
- 5.6. The WMCA led the consultation, which was delivered in conjunction with the seven constituent councils. 1309 digital responses were received and 19 paper responses. Of the 1328 responses received, 63 per cent were from local residents and seven per cent from businesses; in addition 23 stakeholder representations were received. The WMCA's summary of responses⁹ to the consultation includes analysis of two profile based questions, analysis of responses to each of the nine multiple choice questions and analysis of the additional free text responses.

⁵ <http://www.legislation.gov.uk/id/ukdsi/2018/9780111170113>

⁶ <http://www.legislation.gov.uk/id/ukdsi/2018/9780111170120>

⁷ <http://www.legislation.gov.uk/id/ukdsi/2018/9780111170106>

⁸ <https://www.wmca.org.uk/media/1367/mayoral-wmca-scheme.pdf>

⁹ <https://www.wmca.org.uk/media/1357/mayoral-wmca-consultation-report-for-upload.pdf>

- 5.7. In relation to the BRS proposals, the consultation asked “To what extent do you agree or disagree that [the Combined Authority] should get the functions highlighted above, and detailed in the ‘finance section’ of Mayoral WMCA Functions Scheme, to deliver these ambitions?”, which included the two BRS proposals. Of the 1,302 responses to this section, 54 per cent agreed or strongly agreed, 35 per cent disagreed or strongly disagreed, and 11 per cent did not know. Of all functions consulted on, this was the area where fewest respondents agreed the functions should be granted. However, 68 per cent of businesses and 66 per cent of employees that responded to this question agreed the WMCA should have all finance functions in the scheme. Specifically, 55 free text responses (10 per cent) raised concerns relating to business rate increases, protection for smaller businesses, interference with businesses and discouraging businesses from operating in the West Midlands area.
- 5.8. In accordance with the requirements at section 113(2) of the 2009 Act, the Secretary of State has reviewed the Combined Authority’s consultation, and is of the view that no further consultation is necessary. The Secretary of State is satisfied that the consultation was sufficient in terms of its length (seven weeks); the mechanisms used (online and paper versions and responses); the promotional activity (press releases, features in Coventry and Warwickshire LEP newsletter, social media, posters in public buildings and significant stakeholders engagement); and the analysis undertaken.

6. Material considered by the Secretary of State

Extracts from summaries of consultation responses supplied by the WMCA.