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DRAFT STATUTORY INSTRUMENTS

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**2017 No.**

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

PART 1

General

**Citation and commencement**

1.—(1) This Order may be cited as the West Midlands Combined Authority (Functions and Amendment) Order 2017.

(2) Save as provided in paragraph (3) this Order comes into force on 8th May 2017.

(3) Article 24(3)(d)(ii) comes into force on the day after the day on which this Order is made.

**Interpretation**

2. In this Order—

“the 1980 Act” means the Highways Act 1980(1);

“the 1988 Act” means the Road Traffic Act 1988(2);

“the 1989 Act” means the Local Government and Housing Act 1989(3);

“the 1991 Act” means the New Roads and Street Works Act 1991(4);

“the 1997 Act” means the Road Traffic Reduction Act 1997(5);

“the 1999 Act” means the Greater London Authority Act 1999(6);

“the 2000 Act” means the Transport Act 2000(7);

“the 2003 Act” means the Local Government Act 2003(8);

“the 2004 Act” means the Traffic Management Act 2004(9);

“the 2008 Act” means the Housing and Regeneration Act 2008(10);

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

“the 2011 Act” means the Localism Act 2011(11);

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(1) 1980 c. 66.

(2) 1988 c. 52.

(3) 1989 c. 42.

(4) 1991 c. 22.

(5) 1997 c. 54.

(6) 1999 c. 29.

(7) 2000 c. 38.

(8) 2003 c. 26.

(9) 2004 c. 18.

(10) 2008 c. 17.

(11) 2011 c. 20.

- “the 2016 Order” means the West Midlands Combined Authority Order 2016(12);
- “combined area” means the combined area of the Combined Authority;
- “the Combined Authority” means the West Midlands Combined Authority, a body corporate established by the 2016 Order(13);
- “Combined Authority roads” means the highways specified in Schedule 1;
- “constituent council” means the councils for the local government areas of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton;
- “Corporation” means a corporation established by the Secretary of State in accordance with the provisions in section 198 of the 2011 Act, with the modifications made by Schedule 4, following the designation of an area of land by the Combined Authority;
- “the HCA” means the Homes and Communities Agency(14); and
- “the Mayor” means the mayor for the combined area, except where the context otherwise requires(15).

## PART 2

### Transport

#### Power to pay grant

3.—(1) The functions of a Minister of the Crown(16) specified in section 31 of the 2003 Act (power to pay grant) are functions of the Combined Authority that are exercisable in relation to the combined area.

(2) The functions are exercisable by the Combined Authority concurrently with a Minister of the Crown.

(3) Paragraph (4) applies where, in exercising functions referred to in paragraphs (1) and (2), the Combined Authority determines an amount of grant to be paid towards expenditure incurred or to be incurred by a constituent council in relation to the exercise of its highway functions.

(4) In determining that amount, the Combined Authority must have regard to the desirability of ensuring that the constituent council has sufficient funds to facilitate the effective discharge of those functions.

(5) To comply with paragraph (4), the Combined Authority must take into account any other sources of funding available to the constituent council for expenditure incurred or to be incurred in relation to the exercise of its highway functions.

(6) For the purposes of the exercise by the Combined Authority of the functions referred to in paragraphs (1) and (2), section 31 of the 2003 Act has effect as if—

- (a) in subsection (1)—
  - (i) the reference to a Minister of the Crown were a reference to the Combined Authority;
  - (ii) the reference to a local authority in England were a reference to a constituent council;
- (b) subsection (2) were omitted;

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(12) [S.I. 2016/653](#).

(13) See article 3(2) of the 2016 Order.

(14) The HCA is a body corporate established under section 1 of the 2008 Act.

(15) Article 3 to S.I 2016/933 provides for there to be a mayor for the combined area of the Combined Authority.

(16) See section 105A(9) of the 2009 Act for the definition of “Minister of the Crown”.

(c) in subsections (3) and (4), the references to the person paying it (the grant) were references to the Combined Authority;

(d) subsection (6) were omitted.

(7) In this article “highway functions” means the functions which are exercisable by a constituent council (in whatever capacity) in relation to the highways for which it is the highway authority.

### **Agreements between authorities and strategic highways companies**

4.—(1) The functions of the constituent councils specified in section 6 of the 1980 Act (powers to enter into agreements with the Minister or strategic highways companies relating to the exercise of functions with respect to trunk roads etc)(17) are exercisable by the Combined Authority in relation to the combined area.

(2) The functions of the constituent councils as local highway authorities specified in section 8 of the 1980 Act (power to enter into agreements with local highway authorities and strategic highways companies for the doing of certain works)(18) are exercisable by the Combined Authority in relation to Combined Authority roads.

(3) The functions referred to in paragraphs (1) and (2) are exercisable by the Combined Authority concurrently with the constituent councils.

(4) In this article “local highway authority” has the meaning given by section 329(1) of the 1980 Act(19).

### **Promoting road safety**

5.—(1) The functions of the constituent councils specified in section 39(2) and (3) of the 1988 Act (duties of local authorities in relation to measures designed to promote road safety and studies into vehicular accidents arising, etc)(20) are exercisable by the Combined Authority in relation to the combined area.

(2) The functions are exercisable by the Combined Authority concurrently with the constituent councils.

### **Bus lane contraventions**

6.—(1) The functions of the constituent councils in relation to each of their civil enforcement areas are exercisable by the Combined Authority in relation to the Enforcement Area.

(2) The functions are exercisable by the Combined Authority (in relation to the Enforcement Area) concurrently with each constituent council (in relation to its civil enforcement area).

(3) For the purposes of this article, the Combined Authority is to be treated as an approved local authority(21) for the Enforcement Area, and references in the 2005 Regulations to an approved local authority or to the combined area of such an authority are to be construed accordingly.

(4) In this article—

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(17) Section 6 was amended by sections 8 and 102 of, and Schedules 4 and 17 to, the Local Government Act 1985 (c. 51), section 22 of, and Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19), section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7), and S.I. 1995/1986.

(18) Section 8 was amended by section 8 of, and Schedule 4 to, the Local Government Act 1985, section 22 of, and Schedule 7 to, the Local Government (Wales) Act 1994, and section 1 of, and Schedule 1 to, the Infrastructure Act 2015.

(19) This definition in section 329(1) of the 1980 Act was amended by section 1 of, and Schedule 1 to the Infrastructure Act 2015.

(20) Section 39 was amended by section 168 of, and Schedule 8 to, the 1991 Act, and by section 279 of the 1999 Act.

(21) Under section 144(3) of the 2000 Act an authority is an approved local authority if an order has been made designating the whole or any part of its area as a civil enforcement area for parking contraventions, and the Secretary of State has made an order specifying it as an approved local authority.

- (a) “the 2005 Regulations” means the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005<sup>(22)</sup>;
- (b) “civil enforcement area” means an area falling within Schedule 8 to the Traffic Management Act 2004 (civil enforcement areas and enforcement authorities)<sup>(23)</sup> and which falls within a constituent council’s area;
- (c) “Enforcement Area” means the area comprising the civil enforcement areas of the constituent councils.

### **Road traffic reduction**

7.—(1) The functions of the constituent councils as principal councils specified in section 2 of the 1997 Act (duty of principal councils to make reports) are exercisable by the Combined Authority in relation to Combined Authority roads.

(2) Subject to paragraph (3), the functions are exercisable by the Combined Authority instead of by the constituent councils.

(3) The Combined Authority must consult the constituent councils before exercising the functions mentioned in paragraph (1).

(4) In this article “principal council” has the meaning given by section 1 of the 1997 Act<sup>(24)</sup>.

### **Permit schemes**

8.—(1) The functions of the constituent councils as local highway authorities specified in the following provisions of the 2004 Act are exercisable by the Combined Authority in relation to Combined Authority roads—

- (a) section 33 (preparation of permit schemes)<sup>(25)</sup>;
- (b) section 33A (implementation of permit schemes of strategic highways companies and local highway authorities in England)<sup>(26)</sup>; and
- (c) section 36 (variation and revocation of permit schemes)<sup>(27)</sup>.

(2) The functions of the constituent councils as permit authorities specified in the 2007 Regulations are exercisable by the Combined Authority in relation to Combined Authority roads.

(3) The functions mentioned in paragraph (1) and (2) are exercisable by the Combined Authority concurrently with the constituent councils.

(4) Part 3 of the 2004 Act (permit schemes) applies in relation to the preparation, implementation, variation and revocation of permit schemes by the Combined Authority as it applies in relation to the preparation, implementation, variation and revocation of permit schemes by a constituent council, subject to the modifications in Schedule 2.

(5) The 2007 Regulations apply in relation to the content, preparation, operation, variation and revocation of permit schemes by the Combined Authority as they apply in relation to the content, preparation, operation, variation and revocation of permit schemes by a constituent council.

(6) For the purposes of paragraph (5), references in the 2007 Regulations to a Permit Authority are to be read as including references to the Combined Authority.

(7) In this article—

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(22) [S.I. 2005/2757](#).

(23) [2004 c. 18](#).

(24) Section 1 was amended by section 280(1) of the 1999 Act.

(25) Section 33 was amended by section 51 of, and Schedule 10 to, the Deregulation Act 2015 (c. 20).

(26) Section 33A was inserted by section 51 of, and Schedule 10 to, the Deregulation Act 2015.

(27) Section 36 was substituted by section 51 of, and Schedule 10 to, the Deregulation Act 2015.

- (a) “permit scheme” is to be construed in accordance with section 32 of the 2004 Act; and
- (b) “the 2007 Regulations” means the Traffic Management Permit Scheme (England) Regulations 2007<sup>(28)</sup>;

### **Apparatus affected by highway, bridge or transport works**

**9.**—(1) The functions of the constituent councils as highway authorities specified in the following enactments are exercisable by the Combined Authority in relation to Combined Authority roads—

- (a) sections 83 (works for road purposes likely to affect apparatus in the street), 84 (measures necessary where apparatus affected by major works)<sup>(29)</sup> and 85 (sharing of cost of necessary measures) of the 1991 Act; and
- (b) the 2000 Regulations.

(2) The functions mentioned in paragraph (1) are exercisable by the Combined Authority concurrently with the constituent councils.

(3) The 2000 Regulations apply in relation to the sharing of costs of diversionary works between the Combined Authority and undertakers as they apply in relation to the sharing of costs of diversionary works between a constituent council and undertakers.

(4) For the purposes of paragraph (3), references in the 2000 Regulations to an authority are to be read as including references to the Combined Authority.

(5) In this article—

- (a) “the 2000 Regulations” means the Street Works (Sharing of Costs of Works) (England) Regulations 2000<sup>(30)</sup>;
- (b) “undertaker” has the same meaning as in sections 48(4) and (5) (streets, street works and undertakers) and 89(4) (public sewers, sewer authorities and related matters) of the 1991 Act<sup>(31)</sup>; and
- (c) “diversionary works” has the meaning given by regulation 2(1) of the 2000 Regulations.

## **PART 3**

### **Housing and regeneration**

#### **Conferral of functions corresponding to functions that the HCA has in relation to the combined area**

**10.**—(1) The functions of the HCA which are specified in the following provisions in the 2008 Act that are exercisable in relation to the combined area are to be functions of the Combined Authority—

- (a) section 5 (powers to provide housing or other land);
- (b) section 6 (powers for regeneration, development or effective use of land);
- (c) section 7 (powers in relation to infrastructure);
- (d) section 8 (powers to deal with land etc);

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<sup>(28)</sup> [S.I. 2007/3372](#), amended by [S.I. 2015/958](#).

<sup>(29)</sup> Section 83 was amended by section 40 of, and Schedule 1 to the Traffic Management Act 2004 (c. 18).

<sup>(30)</sup> [S.I. 2000/3314](#).

<sup>(31)</sup> Section 48 was amended by section 124 of the Local Transport Act 2008 (c. 26) and section 89 was amended by Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991 (c. 60) and section 57 of the Traffic Management Act 2004 (c. 18).

- (e) section 9 (acquisition of land);
- (f) section 10 (restrictions on disposal of land);
- (g) section 11 (main powers in relation to acquired land)<sup>(32)</sup>; and
- (h) section 12 (powers in relation to, and for, statutory undertakers).

(2) The Combined Authority is to exercise the functions contained in the provisions specified in paragraph (1) for the purposes of or for purposes incidental to the following objects—

- (a) to improve the supply and quality of housing in the combined area;
- (b) to secure the regeneration or development of land or infrastructure in the combined area;
- (c) to support in other ways the creation, regeneration or development of communities in the combined area or their continued well-being; and
- (d) to contribute to the achievement of sustainable development and good design in the combined area,

with a view to meeting the needs of people living in the combined area.

(3) The functions contained in the provisions specified in paragraph (1) are—

- (a) exercisable concurrently with the HCA; and
- (b) subject to Schedules 2 and 3 to the 2008 Act.

(4) In paragraph (2) “good design” and “needs” have the meanings given by section 2(2) of the 2008 Act and the reference to improving the supply of housing includes a reference to improving the supply of particular kinds of housing.

(5) Section 23(3) of the Land Compensation Act 1961 (compensation where planning decision made after acquisition)<sup>(33)</sup> applies in relation to an acquisition by the Combined Authority as it applies in relation to the HCA.

#### **Application of provisions of the 2008 Act**

11.—(1) This article has effect in consequence of article 10.

(2) Chapters 1 and 2 of Part 1 of the 2008 Act apply in relation to the powers of the Combined Authority to acquire land for housing and infrastructure under the functions specified in article 10(1) and land acquired by the Combined Authority under those functions as they apply to the HCA and land acquired by the HCA, with the modifications made by Schedule 3.

## PART 4

### Mayoral Development Corporations

#### **Conferral of functions corresponding to functions that the Mayor of London has in relation to Greater London to designate Mayoral development areas**

12.—(1) The Combined Authority shall have in relation to the combined area functions corresponding to the following functions specified in the provisions in the 2011 Act, that the Mayor of London has in relation to Greater London—

- (a) section 197 (designation of Mayoral development areas);

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<sup>(32)</sup> Section 11 was amended by section 32(1) and (2) of the Infrastructure Act 2015.

<sup>(33)</sup> 1961 c. 33. Section 23 was amended by section 66 of, and Schedule 14 to, the Planning and Compensation Act 1991 (c. 34), sections 181 and 187 of, and Schedule 22 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28) and by section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008 (c. 17). There are other amendments which are not relevant.

- (b) section 199 (exclusion of land from Mayoral development areas);
- (c) section 200 (transfers of property etc to a Mayoral development corporation);
- (d) section 202 (functions in relation to town and country planning);
- (e) section 204 (removal or restriction of planning functions);
- (f) section 214 (powers in relation to discretionary relief from non-domestic rates);
- (g) section 215 (reviews);
- (h) section 216 (transfers of property, rights and liabilities);
- (i) section 217 (dissolution: final steps);
- (j) section 219 (guidance by the Mayor);
- (k) section 220 (directions by the Mayor);
- (l) section 221 (consents);
- (m) paragraph 1 of Schedule 21 (membership);
- (n) paragraph 2 of Schedule 21 (terms of appointment of members);
- (o) paragraph 3 of Schedule 21 (staff);
- (p) paragraph 4 of Schedule 21 (remuneration etc: members and staff);
- (q) paragraph 6 of Schedule 21 (committees); and
- (r) paragraph 8 of Schedule 21 (proceedings and meetings).

(2) The exercise by the Combined Authority of the functions corresponding to the functions specified in section 197 (designation of Mayoral development areas) of the 2011 Act requires the consent of at least one member of the Combined Authority appointed by each of the constituent councils, or a substitute member acting in place of one of those members, whose local government area contains any part of the combined area to be designated as a Mayoral development area.

(3) The exercise by the Combined Authority of the functions corresponding to the functions specified in section 199 (exclusion of land from Mayoral development areas) of the 2011 Act in respect of any Mayoral development area requires the consent of at least one member of the Combined Authority appointed by each of the constituent councils, or a substitute member acting in place of one of those members, whose local government area contains any part of the combined area to be excluded from a Mayoral development area.

(4) The exercise by the Combined Authority of the functions corresponding to the functions specified in section 202(2) to (4) of the 2011 Act (functions in relation to town and country planning) in respect of any Mayoral development area requires the consent of at least one member of the Combined Authority appointed by each of the constituent councils, or a substitute member acting in place of one of those members, whose local government area contains the whole or any part of the combined area in respect of which the Combined Authority proposes to exercise the functions.

(5) For the purposes of paragraphs (2), (3) and (4), the consent must be given at a meeting of the Combined Authority.

### **Application of provisions in the Localism Act 2011**

**13.**—(1) Chapter 2 of Part 8 (Mayoral development corporations) of the 2011 Act applies in relation to the Combined Authority as it applies in relation to the Mayor of London with the modifications made by Schedule 4.

(2) Chapter 2 of Part 8 of the 2011 Act applies in relation to a Corporation as it applies in relation to a Mayoral development corporation, with the modifications made by Schedule 4.

(3) Subject to paragraph (6), in any enactment passed or made on or before 8th May 2017—

(a) any reference to a Mayoral development corporation; or  
 (b) any reference which falls to be read as a reference to a Mayoral development corporation,  
 is to be treated as including a reference to a Corporation.

(4) For the purposes of any transfer scheme under any provisions of the 2011 Act applied with modifications by this Order, paragraph 9 of Schedule 24 to the 2011 Act (transfers under scheme under section 200(1) or (4) or 216(1)) applies in relation to—

- (a) any property, rights or liabilities transferred to or from a Corporation in accordance with a transfer scheme, or
- (b) anything done for the purposes of, or in relation to, or in consequence of, the transfer of any property, rights or liabilities to or from a Corporation in accordance with such a transfer scheme,

as it applies in relation to a Mayoral development corporation.

(5) For the purposes of establishing a Corporation, giving the Corporation a name, giving effect to any decisions notified to the Secretary of State (under sections 199(4) (exclusion of land from Mayoral development areas), 202(8) (decisions about planning functions), 214(6) (powers in relation to discretionary relief from non-domestic rates) of the 2011 Act) or making provision for varying the way in which a relevant tax has effect from time to time in relation to the transfer of land to or from a Corporation under any provision of the 2011 Act, applied with modifications by this Order, the provisions in section 235 of the 2011 Act (orders and regulations) apply in relation to—

- (a) the power of a Minister of the Crown to make an order under sections 198(2) (mayoral development corporations: establishment) and 200(6) (transfers of property etc to a Mayoral development corporation) of that Act; and
- (b) the power of the Treasury to make regulations under paragraph 9(2) of Schedule 24 to that Act,

as they apply in relation to the establishment of a Mayoral development corporation, giving the corporation a name, giving effect to any decisions notified to the Secretary of State (under sections 199(4), 202(8) and 214(6) of the 2011 Act) and making provision for varying the way in which a relevant tax has effect from time to time in relation to a transfer of land to or from a Mayoral development corporation.

(6) Paragraph (3) does not apply to—

- (a) paragraph 9(8)(a) of Schedule 2 to the Channel Tunnel Rail Link Act 1996<sup>(34)</sup>;
- (b) section 31(1A) of the 1999 Act<sup>(35)</sup>;
- (c) section 38 of the 1999 Act<sup>(36)</sup>;
- (d) section 60A(3) of the 1999 Act<sup>(37)</sup>;
- (e) section 68(6) of the 1999 Act<sup>(38)</sup>;
- (f) section 73 of the 1999 Act<sup>(39)</sup>;

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<sup>(34)</sup> 1996 c. 61. Paragraph 9(8) of Schedule 2 was amended by section 222 of, and Schedule 22 to, the 2011 Act.

<sup>(35)</sup> Section 31(1A) was inserted by section 22 of, and Schedule 22 to, the 2011 Act, section 33 of the Infrastructure Act 2015 (c. 7) and article 2 of S.I. 2012/1530.

<sup>(36)</sup> Section 38 was amended by S.I. 2001/2237, section 224 of the Planning Act 2008 (c. 29), sections 195, 222 and 237 of, and Schedules 19, 20, 22 and 25 to, the 2011 Act, and by section 28 of the Growth and Infrastructure Act 2013 (c. 27).

<sup>(37)</sup> Section 60A was inserted by section 4 of the Greater London Authority Act 2007 (c. 24) and subsection (3) was amended by S.I. 2008/2038, section 20 of the Police Reform and Social Responsibility Act 2011 (c. 13), and Schedules 22 and 25 to the 2011 Act.

<sup>(38)</sup> Section 68(6) was amended by sections 222 and 237 of, and Schedules 22 and 25 to, the 2011 Act.

<sup>(39)</sup> Section 73 was amended by S.I. 2000/1435, sections 7 and 9 of, and Schedule 2 to, the Greater London Authority Act 2007, section 182 of, and Schedule 12 to, the Local Government and Public Involvement in Health Act 2007 (c. 28), and by sections 195, 222 and 237 of, and Schedules 22 and 25 to the 2011 Act.



- (g) section 424 of the 1999 Act(40);
- (h) section 24(4) of the Planning and Compulsory Purchase Act 2004(41); and
- (i) paragraph 8(8)(a) of Schedule 2 to the Crossrail Act 2008(42).

### Incidental provisions

14. The following provisions of the 1989 Act shall apply in relation to a Corporation as if the Corporation were a local authority—

- (a) section 1 (disqualification and political restriction of certain officers and staff)(43); and
- (b) sections 2 and 3A (politically restricted posts and exemptions from restriction)(44) so far as they have effect for the purposes of that section.

15. Section 5 of the 1989 Act (designation and reports of monitoring officer)(45) applies in relation to the Combined Authority as if a Corporation were a committee of the Authority.

16. Section 32 of the 2003 Act applies in relation to expenditure of a Corporation but as if—

- (a) each reference to a functional body were a reference to a Corporation;
- (b) each reference to the Greater London Authority were a reference to the Combined Authority;
- (c) each reference to the Mayor of London were a reference to the Combined Authority; and
- (d) subsection (7) were omitted.

## PART 5

### Air quality; smoke-free premises, places and vehicles; culture and anti-social behaviour

#### Air quality

17.—(1) The functions of the constituent councils specified in the following provisions in the Environment Act 1995(46) are exercisable by the Combined Authority in relation to the combined area—

- (a) section 82 (local authority reviews);
- (b) section 83 (duty to designate air quality management areas);
- (c) section 84 (duties in relation to designated area)(47); and

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(40) Section 424 was amended by sections 11, 12, 21 and 22 of the Greater London Authority Act 2007, S.I. 2009/1941, section 3 of the Police Reform and Social Responsibility Act 2011, and sections 222 and 237 of, and Schedules 22 and 25 to, the 2011 Act.

(41) 2004 c. 5. Section 24(4) was amended by section 222 of, and Schedule 22 to, the 2011 Act.

(42) 2008 c. 18. Paragraph 8 of Schedule 2 was amended by section 222 of, and Schedule 22 to, the 2011 Act.

(43) Section 1 was amended by section 80 of the Local Government Act 1972 (c. 70), section 31 of the Local Government (Scotland) Act 1973 (c. 65), Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24), and section 99 of, and Schedule 16 to the Police Reform and Social Responsibility Act 2011.

(44) Section 3A was inserted by section 202 of the Local Government and Public Involvement in Health Act 2007 and amended by Schedule 7 to the 2009 Act and Schedules 4 and 25 to the 2011 Act.

(45) Section 5 was amended by Part I of Schedule 4 to the Police and Magistrates Courts Act 1994 (c. 29), Schedule 7 to the Police Act 1996 (c. 16), section 132 of the 1999 Act, Schedule 5 to the Local Government Act 2000 (c. 22), Schedules 12 and 18 to the Local Government and Public Involvement in Health Act 2007, section 184 of, and Schedules 14 and 22 to, the Marine and Coastal Access Act 2009 (c. 23), section 99 of, and Schedule 16 to, the Police Reform and Social Responsibility Act 2011 (c. 23) and S.I. 2001/2237.

(46) 1995 c. 25.

(47) Section 84 was amended in relation to England and Wales by section 59 of, and Schedule 13 to, the Deregulation Act 2015.

(d) section 113 (disclosure of information)(**48**).

(2) The functions are exercisable concurrently with the constituent councils.

### **Smoke-free premises, places and vehicles**

**18.**—(1) The functions of the constituent councils specified in the following provisions are exercisable by the Combined Authority in relation to the combined area—

(a) section 10(3) (duty to enforce) and (5) (power to authorise officers) of the Health Act 2006(**49**);

(b) paragraphs 13 and 16 (functions relating to fixed penalty notices) of Schedule 1 to the Health Act 2006(**50**);

(c) regulation 3(5) of the Smoke-free (Premises and Enforcement) Regulations 2006 (power to transfer enforcement functions to another enforcement authority)(**51**); and

(d) regulation 3(4) of the Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007 (form of fixed penalty notice)(**52**).

(2) The functions are exercisable concurrently with the constituent councils.

(3) For the purposes of paragraph (1) the Combined Authority is to be treated as an enforcement authority(**53**).

### **Culture**

**19.**—(1) The functions of the constituent councils specified in section 145 of the Local Government Act 1972 (provision of entertainments)(**54**) are exercisable by the Combined Authority in relation to the combined area.

(2) The functions are exercisable concurrently with the constituent councils.

(3) Any requirement in any enactment for a constituent council to exercise such functions may be fulfilled by the exercise of that function by the Combined Authority.

### **Anti-social behaviour**

**20.**—(1) The functions of the constituent councils specified in the following provisions in the 2014 Act are exercisable by the Combined Authority in relation to the combined area—

(a) section 5 (applications for injunctions); and

(b) section 104 (review of response to complaints).

(2) The functions are exercisable concurrently with the constituent councils.

(3) Part 1 of the 2014 Act (injunctions) applies in relation to an application for an injunction by a Combined Authority as it applies in relation to an application for an injunction by a constituent council, but as if the following provisions were omitted—

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(48) Section 113 was amended in relation to England and Wales by paragraphs 14 and 18 of Schedule 2 and Schedule 3 to the Pollution Prevention and Control Act 1999 (c. 24) and paragraphs 361 and 384 of Part 1 of Schedule 2 to S.I. 2013/755.

(49) 2006 c. 28. Section 10 was amended by section 95 of the Children and Families Act 2014 (c. 6).

(50) Schedule 1 was amended by section 95 of the Children and Families Act 2014 (c. 6).

(51) S.I. 2006/3368. Regulation 3 was amended by S.I. 2015/286.

(52) S.I. 2007/760. Regulation 3 was amended by S.I. 2015/939.

(53) Section 10(1) (enforcement) of the 2006 Act permits regulations to be made designating persons who are to be enforcement authorities for the purposes of Chapter 1 of that Act. Regulation 3(1)(a) and (b) of the Smoke-free (Premises and Enforcement) Regulations (S.I. 2006/3368) provide that a unitary authority and a district council insofar as it is not a unitary authority is designated as an enforcement authority for the purposes of Chapter 1 of Part 1 of the 2006 Act.

(54) 1972 c. 70. Section 145 was amended by section 198 of, and Schedule 6 to, the Licensing Act 2003 (c. 17).

- (a) in section 2 (meaning of anti-social behaviour), subsections (1)(b) and (c), (2), (3) and (4); and
  - (b) section 13 (power to exclude person from home in cases of violence or risk of harm).
- (4) Section 101 of the 2014 Act (the community remedy document) has effect in relation to the Combined Authority as if it were a local authority.
- (5) The Combined Authority shall be a relevant authority for the purposes of section 115 of the Crime and Disorder Act 1998 (disclosure of information)(55).
- (6) In this article “the 2014 Act” means the Anti-Social Behaviour, Crime and Policing Act 2014(56).

## PART 6

### Funding

#### Funding

**21.**—(1) The constituent councils must meet any reasonably incurred costs of the Combined Authority, other than the costs mentioned in paragraph (4) to the extent that the Combined Authority has not decided to meet these costs from other resources available to the Combined Authority.

(2) Any amount payable by each of the constituent councils to ensure that the costs of the Combined Authority referred to in paragraph (1) are met is to be determined by apportioning such costs between the constituent councils in such proportions as they may agree or, in default of such agreement, in proportion to the total resident population of the Combined Authority which resides in that council at the relevant date as estimated by the Statistics Board(57).

(3) The functions mentioned in article 6 may be funded out of the levy issued by the Combined Authority to the constituent councils under section 74 of the Local Government Finance Act 1988(58) and in accordance with the Transport Levying Bodies Regulations 1992(59).

(4) Subject to paragraph (5), the constituent councils must meet the costs of the expenditure reasonably incurred in, or in connection with, the exercise of the functions specified in articles 3, 4, 5, 7, 8 9, 10 (only in relation to the function specified in section 9(2) of the 2008 Act) and 23, to the extent that the Mayor has not decided to meet these costs from other resources available to the Combined Authority.

(5) In relation to the expenditure mentioned in paragraph (4)—

- (a) to the extent to which such expenditure is met by amounts payable under arrangements made under paragraph (2)—

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(55) 1998 c. 37. Section 115 was amended by S.I. 2000/90, section 74 of, and Schedule 7 to, the Criminal Justice and Court Services Act 2000 (c. 43), section 97 of the Police Reform Act 2002 (c. 30), S.I. 2469/2002, S.I. 2003/602, section 219 of the Housing Act 2004 (c. 34), section 22 of, and Schedule 9 to the Police and Justice Act 2006 (c. 48 ), section 29 of the Transport Act 2008 (c. 26), S.I. 2008/912, the Police Reform and Social Responsibility Act 2011 (c. 13), section 55 of, and Schedule 5 to, the Health and Social Care Act 2012 (c. 7), and S.I. 2010/886.

(56) 2014 c. 12.

(57) Section 25 of the Statistics and Registration Service Act 2007 (c. 18) provides that the Statistics Board is responsible for the functions in section 19 of the Registration Service Act 1953 (c. 37) in relation to the annual abstract of number of births, deaths and marriages.

(58) 1988 c. 41. Section 74 was amended by Schedule 13 to the Local Government Finance Act 1992 (c. 14); section 20 of, and Schedule 6 to, the Local Government (Wales) Act 1994 (c. 19); section 120 of, and Schedule 24 to, the Environment Act 1995 (c. 25); section 105 of the 1999 Act; section 109 of, and Schedule 8, to the Courts Act 2003 (c. 39); section 53 of, Schedule 1 to, the Fire and Rescue Services Act 2004 (c. 21); section 22 of, and Schedule 1, to the Local Government and Involvement in Public Health Act 2007 (c. 28); sections 119 and 146 of, and Schedules 6 and 7 to, the 2009 Act; section 99 of, and Schedule 16 to, the Police Reform and Social Responsibility Act 2011 (c. 13); section 69 of, and Schedule 7 to, the 2011 Act; section 9 of, and Schedule 5 to, the 2016 Act; and by S.I. 1994/2825.

(59) S.I. 1992/2789, amended by S.I. 2012/213 and S.I. 2015/27.

- (i) the Mayor must agree with the Combined Authority the total expenditure mentioned in paragraph (4) in advance of incurring this expenditure; and
  - (ii) in the absence of the agreement specified in paragraph (i), no such expenditure may be incurred;
- (b) any precept issued in relation to such expenditure under section 40 of the Local Government Finance Act 1992<sup>(60)</sup> is to be disregarded from any calculation of the costs of the expenditure.
- (6) For the purposes of this article the relevant date in relation to a payment for a financial year is 30th June in the financial year which commenced two years prior to the financial year in which such payment is made.

## PART 7

### Functions of the Combined Authority exercisable only by the Mayor; political advisers

#### **General functions of the Combined Authority exercisable only by the Mayor**

- 22.—**(1) The following functions are general functions exercisable only by the Mayor<sup>(61)</sup>—
- (a) the functions of the Combined Authority in the following enactments—
    - (i) section 31 of the 2003 Act (power to pay grant);
    - (ii) sections 33 (preparation of permit schemes), 33A (implementation of permit schemes of strategic highways companies and local highway authorities in England) and 36 (variation of permit schemes) of the 2004 Act;
    - (iii) sections 83 (works for road purposes likely to affect apparatus in the street), 84 (measures necessary where apparatus affected by major works) and 85 (sharing of cost of necessary measures) of the 1991 Act;
    - (iv) sections 6 (powers to enter into agreements with the Minister or strategic highways companies relating to the exercise of functions with respect to trunk roads etc) and 8 (power to enter into agreements with local highway authorities and strategic highways companies for the doing of certain works) of the 1980 Act;
    - (v) section 39(2) and (3) of the 1988 Act (duties of local authorities to prepare and carry out a programme of measures designed to promote road safety, and carry out studies into accidents arising out of the use of vehicles on certain roads within their areas);
    - (vi) section 2 of the 1997 Act (duty of principal councils to make reports); and
    - (vii) the 2000 Regulations;
  - (b) the functions of the Combined Authority corresponding to the functions specified in section 9(2) of the 2008 Act.
- (2) The Mayor must seek the assistance of members and officers of the Combined Authority in the exercise of the functions mentioned in paragraph (1).

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<sup>(60)</sup> 1992 c. 14. Section 40 was amended by section 83 of the 1999 Act, section 79 of, and paragraph 7 of Schedule 17 to, the Localism Act 2011 and section 5 of the 2016 Act.

<sup>(61)</sup> Section 107D(2) of the 2009 Act provides that in Part 6 of that Act references to “general functions”, in relation to a mayor for the area of a combined authority, are to any functions exercisable by the mayor other than police and crime commissioner functions.

(3) The Mayor may do anything that the Combined Authority may do under section 113A of the 2009 Act (general power of EPB or combined authority)(62).

(4) The Mayor must not make arrangements under section 107D(3)(b) of the 2009 Act (functions of mayors: general) in relation to the functions specified in paragraph (1), in relation to a political adviser appointed under article 23(1).

(5) The exercise of the general functions mentioned in paragraph (1)(b) requires the consent of—

- (a) at least one member of the Combined Authority appointed by each of the constituent councils whose local government area contains any part of the land subject to the proposed compulsory acquisition; or
- (b) substitute members acting in place of those members,

to be provided at a meeting of the Combined Authority.

### **Political advisers**

**23.**—(1) The Mayor may appoint one person as the Mayor’s political adviser.

(2) Any appointment under paragraph (1) is an appointment as an employee of the Combined Authority.

(3) No appointment under paragraph (1) shall extend beyond—

- (a) the term of office for which the Mayor who made the appointment was elected; or
- (b) where the Mayor who made the appointment ceases to be the Mayor before the end of the term of office for which the Mayor was elected, the date on which the Mayor ceases to hold that office.

(4) A person appointed under paragraph (1) is to be regarded for the purposes of Part 1 of the 1989 Act (political restriction of officers and staff) as holding a politically restricted post under a local authority.

(5) Subject to paragraph (6), section 9(1), (8), (9) and (11) of the 1989 Act (assistants for political groups)(63), shall apply in relation to an appointment under paragraph (1) as if—

- (a) any appointment to that post were the appointment of a person in pursuance of that section; and
- (b) the Combined Authority were a relevant authority for the purposes of that section.

(6) Subsection (3) of section 9 of the 1989 Act shall apply in relation to an appointment under paragraph (1) as if the words from and including “and that the appointment terminates” to the end of that subsection were omitted.

## **PART 8**

### **Amendment of the West Midlands Combined Authority Order 2016; incidental provisions**

#### **Amendments of the West Midlands Combined Authority Order 2016**

**24.**—(1) The 2016 Order is amended as follows—

(2) In article 2 (interpretation)—

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(62) Section 113A was inserted by section 13 of the Localism Act 2011 and amended by paragraphs 17 and 25 of Schedule 5 to the 2016 Act.

(63) Section 9 was amended by sections 61 and 204 of, and paragraph 2 of Schedule 2 to, the Local Government and Public Involvement in Health Act 2007 (c. 28) and by S.I. 2001/2237.

- (a) after the definition of “constituent councils” insert—
  - ““deputy Mayor” means the member of the Combined Authority appointed by the Mayor as the Mayor’s deputy;”;
- (b) at the end of the definition of “Local Enterprise Partnership” omit “and”;
- (c) after the definition of “Local Enterprise Partnership” insert—
  - ““Mayor” means the mayor for the combined area of the Combined Authority;”;
- (d) for the definition of “non constituent council” substitute—
  - ““non-constituent councils” means the councils for the local government areas of Cannock Chase, North Warwickshire, Nuneaton and Bedworth, Redditch, Rugby, Shropshire, Stratford-on-Avon, Tamworth, Telford and Wrekin and Warwickshire.”.
- (3) In Schedule 1 (constitution)—
  - (a) in paragraph 1 (membership)—
    - (i) sub-paragraph (1) is omitted;
    - (ii) for sub-paragraph (4) there is substituted—
      - “(4) Each constituent council must appoint another of its elected members to act as a member of the Combined Authority (“the substitute member”) if a member appointed in accordance with the provisions in sub-paragraph (2)—
        - (a) is absent; or
        - (b) has been appointed as the deputy Mayor and is acting in place of the Mayor at a meeting.”<sup>(64)</sup>;
  - (b) omit paragraph 2 (chairman and vice-chairman); and
  - (c) for paragraph 3 (proceedings) there is substituted—

### “Proceedings

- 3.—**(1) Subject to the following sub-paragraphs, a decision on a question relating to any matter to be decided by the Combined Authority must meet each of the following requirements—
- (a) Requirement B;
  - (b) Requirement C.
- (2) A decision on a question relating to any matter to be decided by the Combined Authority which relates to any of the matters specified in articles 7 and 10 of this Order must meet each of the following requirements—
- (a) Requirement A;
  - (b) Requirement C.
- (3) A decision as to whether to consent to a Corporation submitting a compulsory purchase order, authorising the acquisition of land under section 207(2) of the Localism Act 2011, to the Secretary of State for confirmation must meet each of the following requirements—
- (a) Requirement C;
  - (b) Requirement D.

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<sup>(64)</sup> Section 107C(1) of the 2009 Act provides that the mayor for the combined area of a combined authority must appoint one of the members of the authority to be the mayor’s deputy.

(4) Subject to sub-paragraph (5), a decision on a question relating to any of the matters specified in sub-paragraph (7) must meet each of the following requirements—

- (a) Requirement C;
- (b) Requirement E.

(5) If a decision on a question relating to any of the matters specified in sub-paragraph (7) will affect the Mayor's exercise of any of the general functions exercisable only by the Mayor that are specified in article 22 of the West Midlands Combined Authority (Functions and Amendment) Order 2017 the decision must meet each of the following requirements—

- (a) Requirement C;
- (b) Requirement F.

(6) The requirements mentioned in sub-paragraphs (1) to (5) are—

- (a) Requirement A is a majority of at least two-thirds of the members appointed by the constituent councils present and voting on a question at a meeting of the Combined Authority;
- (b) Requirement B is that the Mayor and at least two-thirds of the members appointed by the constituent councils present and voting on a question at a meeting of the Combined Authority, vote for the same outcome;
- (c) Requirement C is that where members appointed by the non-constituent councils or appointed from the Local Enterprise Partnerships have been given voting rights by resolution of the Combined Authority, there is a simple majority of all members entitled to vote on the question to be decided present and voting on a question;
- (d) Requirement D is that—
  - (i) the requirements in Requirement B are met;
  - (ii) the majority of at least two-thirds of the members appointed by the constituent councils present and voting on that question, required by Requirement B, includes each member appointed by a constituent council whose local government area contains the whole or any part of the area in respect of which the Corporation proposes to acquire the land;
- (e) Requirement E is a unanimous vote in favour by all members of the Combined Authority appointed by the constituent councils, present and voting on that question at a meeting of the Combined Authority;
- (f) Requirement F is a unanimous vote in favour by the Mayor and all members of the Combined Authority appointed by the constituent councils, present and voting on that question at a meeting of the Combined Authority.

(7) The matters referred to in sub-paragraphs (4) and (5) are—

- (a) approval of borrowing limits, treasury management strategy including reserves, investment strategy and capital budget of the Combined Authority;
- (b) the conferral of further functions on the Combined Authority by the Secretary of State under sections 105 or 105A of the 2009 Act;
- (c) voting rights for members of the Combined Authority appointed otherwise than from among the elected members of the constituent councils;
- (d) the Combined Authority's exercise of its functions under section 113A of the 2009 Act;
- (e) amendments to the standing orders of the Combined Authority; and

(f) such other plans and strategies as may be determined by the Combined Authority and set out in its standing orders.

(8) No business is to be transacted at a meeting of the Combined Authority unless the Mayor and at least five members appointed by at least five of the constituent councils are present at the meeting.

(9) Each member is to have one vote and no member or substitute member is to have a casting vote.

(10) Members appointed by the non-constituent councils or appointed by the Local Enterprise Partnerships shall be non-voting members of the Combined Authority but may be given voting rights by resolution of the Combined Authority.

(11) The proceedings of the Combined Authority are not invalidated by any vacancy among its members or by any defect in the appointment or qualifications of any member.

(12) In this paragraph—

- (a) a reference to a member appointed by a constituent council includes a substitute member acting in that member's place;
- (b) a reference to a member appointed by a non-constituent council includes a substitute member acting in that member's place;
- (c) a reference to a member appointed from a Local Enterprise Partnership includes a substitute member acting in that member's place;
- (d) a reference to the Mayor includes the deputy Mayor acting in place of the Mayor.

(13) In sub-paragraphs (9) and (11), the reference to a member includes—

- (a) the Mayor or the deputy Mayor acting in place of the Mayor;
- (b) a constituent member or a substitute member acting in that member's place;
- (c) a non constituent member who has been given voting rights by resolution of the Combined Authority or a substitute member acting in that member's place; and
- (d) a member appointed from a Local Enterprise Partnership who has been given voting rights by resolution of the Combined Authority or a substitute member acting in that member's place.

(14) In this paragraph “Corporation” means a corporation established by the Secretary of State in accordance with the provisions in section 198 of the Localism Act 2011, as modified by Schedule 4 to the West Midlands Combined Authority (Functions and Amendment) Order 2017, following the designation of an area of land by the Combined Authority.”;

(d) in paragraph 4 (committees)—

(i) for sub-paragraph (2) there is substituted—

“(2) No business is to be transacted at a meeting of the overview and scrutiny committee unless at least two-thirds of the total number of members of the overview and scrutiny committee are present.”;

(ii) after paragraph (4) there is inserted—

**“Independent remuneration panel**

**4A.** The Combined Authority may establish an independent remuneration panel to recommend allowances payable to the Mayor and the deputy Mayor.

(2) An independent remuneration panel must consist of at least three members none of whom—



- (a) is also a member of the Combined Authority or is a member of a committee or sub-committee of the Combined Authority;
- (b) is disqualified from being or becoming a member of the Combined Authority.
- (3) The Combined Authority may pay the expenses incurred by an independent remuneration panel established under sub-paragraph (1) in carrying out its functions and may pay the members of the panel such allowances or expenses as the Combined Authority may determine.
- (4) An independent remuneration panel must produce a report in relation to the Combined Authority, making recommendations as to any allowances payable to the Mayor and deputy Mayor.
- (5) A copy of a report made under sub-paragraph (4) shall be sent to the Combined Authority.”;
- (e) for paragraph 7 (remuneration) there is substituted—
  - “7.—(1) Subject to paragraph (2), no remuneration is payable by the Combined Authority to its members, other than allowances for travel and subsistence paid in accordance with a scheme drawn up by the Combined Authority.
  - (2) The Combined Authority may pay the Mayor and deputy Mayor such allowances as it may agree, in accordance with any recommendations made by its independent remuneration panel.”.

### **Further incidental provisions**

**25.** In consequence of article 24(2)(e), for the purposes of section 104(1)(a) of the 2009 Act (constitution) section 85 of the Local Transport Act 2008 (provision that may be made in an order under section 84: membership of ITA) is to be applied without including the Mayor in any calculation of whether a majority of the members of the Combined Authority have been appointed by the constituent councils.

Signed by authority of the Secretary of State for Communities and Local Government

Date

*Name*  
Parliamentary Under Secretary of State  
Department for Communities and Local  
Government