

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

17 SEPTEMBER 2018

1. ROUTE MAP TO MAYORAL COMBINED AUTHORITY GOVERNANCE: DRAFT STATUTORY ORDER TO ENABLE TRANSFER OF GOVERNANCE

Report of the Chief Fire Officer.

RECOMMENDED that the Authority:

- 1.1 note the Home Office response to the key asks of the seven West Midlands Local Authorities set out in the Scheme document and the proposed options to progress the key asks locally (paragraph 3.14 - 3.15);
- 1.2 note the local feedback on the proposals to secure the key asks (paragraph 3.18/9) and the changes required to the West Midlands Combined Authority's (WMCA) constitution to secure the key asks locally (paragraph 3.20);
- 1.3 note the revised timeline and next stages in this direction (paragraph 3.23);
- 1.4 note the detail in the draft Order received from the Home Office, which has been written in consultation with the Authority and the WMCA (Appendix D).

2. PURPOSE OF REPORT

This report is submitted to provide an update for Members on the progress and developments made in the transfer of the governance of the West Midlands Fire Service (the Service), to the Mayoral WMCA since the last report presented to the Authority in April 2018, and to present the draft Statutory Order received from the Home Office.

3. BACKGROUND

- 3.1 In response to the Government direction on fire sector reform and the high level duty placed on emergency services for greater collaboration, WMFRA commissioned an

independent review and appraisal of future governance options that would best support the delivery of services. Subsequently, as part of WMFRA's legal requirement to consult upon its Integrated Risk Management Plan (IRMP) every three years, WMFRA engaged with local communities, partners and businesses between 1 December 2016 and 10 January 2017, to understand views and opinions about the provision of services and how this could continue within the Authority's three year rolling strategy. Accordingly, this presented the opportunity to obtain views on governance and finance.

- 3.2 Both the independent review and the outcomes of public IRMP consultation, identified a Mayoral WMCA model of governance for WMFS as a strong option. Subsequently in February 2017, the Authority approved the route required for the transfer of governance of the Service to the Mayoral WMCA.
- 3.3 The Authority's broad proposal for the transfer of its functions to the Mayoral WMCA received support from the WMCA in March 2017, initiating discussions between the Mayor, WMCA, the Authority and the Home Office for this proposed route.
- 3.4 On the 8th September 2017, the WMCA Board noted an indicative timeline for the proposed governance route and approved the development of a Governance Review and Scheme for Mayoral WMCA governance of WMFS, pursuant to Sections 111 and 112 (1d) of Local Democracy, Economic Development and Construction Act 2009.
- 3.5 The Governance Review provided a review of existing governance arrangements and functions, and outlined the new model under the Mayoral WMCA and its benefits. The Scheme detailed the roles, accountabilities and powers required by each individual and body in the proposed governance model.
- 3.6 Both documents were formally considered and consulted upon by all constituent councils between October and November 2017, in adherence to section 112 of the Local Democracy, Economic Development and Construction Act

2009.

3.7 Unanimous support for the Scheme and approval to proceed to consultation was received from all seven local authorities, with the proviso of securing the following key asks:

- that WMFS budget, precepts and reserves be ring-fenced,
- that the Mayor appoint the Chair of the Mayoral Fire Advisory Committee (MFAC) in consultation with the seven local authority Leaders,
- that the MFAC be composed of no fewer than 15 members to ensure sufficient representation from all seven local authorities,
- As part of the support provided for the accountabilities of the Chief Fire Officer (CFO) to include operational independence of the Service.

The Scheme was subsequently revised to reflect the areas raised (see Appendix A).

3.8 The Governance Review and Scheme were considered at the WMCA Board on 8 December 2017. The outcomes of the seven local authority meetings were presented and in accordance with the requirement for the making of an order, approval was provided to proceed to a formal public consultation of the Scheme, pursuant to section 113 (3) of the Local Democracy, Economic Development and Construction Act 2009.

3.9 An eight-week public consultation was subsequently undertaken by the WMCA on behalf of the Secretary of State between 11 January and 8 March 2018 and was closely supported by the local authorities and the Service.

3.10 The consultation sought views on the detail of the proposed Scheme, which included the roles of the Mayor and the WMCA, the proposed MFAC and the CFO. It also sought the views of the communities of the WMCA's area on the benefits of the proposed governance change and the transfer of powers to the WMCA. In April 2018, the Authority considered and were satisfied with the outcomes of the public consultation.

- 3.11 The Authority approved amendments to be made to its constitution articles 4, 15 and part 3 scheme of delegations, to enable the widening of CFO and officer accountabilities on 16 April 2018 (please see section 5 1.3 of the report), which were considered necessary against the context of the changing governance landscape. The full report is provided in Appendix B. It is these CFO accountabilities that are being sought to be secured in the Mayoral WMCA governance model.
- 3.12 In May 2018, the WMCA Board considered the outcomes of the public consultation and agreed to formally submit proposals to the Home Office to initiate the process of drafting the required Statutory Order to enable changes to the governance arrangements.
- 3.13 Following the submission to the Home Office, extensive discussions between Home Office officials, the WMCA and the Service continue to take place. This supports comprehensive understanding of the proposals in order that the key asks are appropriately reflected in the Statutory Order, to enable effective transfer of governance from the Authority to the WMCA in April 2019.

Home Office Response to key asks

- 3.14 The Home Office has responded to the Scheme and confirmed its position with respect to the key asks as follows:
- a) Ring fencing of finances and reserves:
The Home Office confirmed that it was unachievable to ring fence the fire budget and reserves within the Statutory Order. To do so would require a change to primary legislation and making a submission for a change in primary legislation would significantly delay the timeline, as the Home Office expects legislation relating to BREXIT to dominate the Parliamentary timetabling. It was also stated that it was not Treasury policy to hypothecate or ring fence public funding.
 - b) Composition of MFAC:

The scheme proposes a 'minimum' of 18 members to

be appointed to the MFAC. The Home Office has expressed concern with the potential to allow the composition of the committee to be increased.

- c) The CFO as Head of Paid Service for the Service and operational independence:

The Home Office confirmed that it would be unachievable to provide for the CFO to be the head of paid service of the Service within the Statutory Order due to the need for primary legislation to enable this. This is because the Local Government and Housing Act 1989 only provides for one Head of Paid Service role within a local authority structure. Pleasingly, however, the draft Order continues to recognise the operational independence and technical responsibilities of the CFO.

Proposed Solutions from the Home Office to achieving key asks

3.15 As there was a clear local will to secure the key asks, the below proposals were identified in discussion with the Home Office as a means to enable these to be met locally:

- a) The ringfencing of budget, precept and reserves can be provided for through agreement of the WMCA Board. Transparency can be provided through a public commitment and scrutiny via the Service's Section 151 Officer and the WMCA Overview and Scrutiny Committee. The WMCA's annual budget setting process requires the agreement of all its constituent councils, this provides an additional check and balance for such an arrangement. Levels of assurance can be provided locally, along with an accountability for the CFO to be designated a clear budget in order to be able to lead and deliver the strategy of the Fire and Rescue Service through appropriate resources.
- b) MFAC composition: It is proposed that a minor change be made to the Scheme, setting the committee as being composed of a 'maximum' of 18 members; with 15 elected members and three co-optees. The PCC would retain the voting member status as is currently in place on the reformed

Authority as a co-optee, reflective of the representative model set out in the Policing and Crime Act 2017. This proposal from the Home Office will not present a risk to the local authority representation on the MFAC.

- c) CFO as Head of Paid Service for the Service: Whilst the Statutory Order cannot assign this role to the CFO, it can detail those accountabilities which must only be 'designated accountabilities' to the CFO for exercise. These can align to the key asks proposed in the Scheme. Locally, assurance can be provided through constitutional revisions that designate all organisational and operational matters to the CFO.

3.16 In May 2018, the WMCA Board was informed that all local authorities had agreed to delegate authority to the Leader and Chief Executive/Managing Director of the council to approve the draft Order received from Government. This is in order for it to be laid before parliament and to enable the changes for the Mayoral WMCA to assume governance of the Service. Furthermore, it was stated that all local authorities including the WMCA would be formally consulted should there be any major changes to the proposals in the Scheme made in the draft Order.

3.17 Due to the nature of the changes required as outlined above, a formal consultation with the WMCA and all seven local authorities would have been normal course of action, however, the tight timeline received from the Home Office rendered this unachievable. Consequently, an urgent letter was issued to constituent council Leaders requesting a decision on the proposed solutions to achieving the key asks (paragraph 3.15). The Chair of the Authority and the Chair of the Governance and Transformation Committee were also kept informed of these developments.

Constituent Council Responses

3.18 Six Leaders have agreed to the proposed way forward with two qualifications received in relation to:

- Corresponding amendments to the Constitution of the WMCA to be brought forward for approval alongside the Statutory Order process.
- The ring-fencing of budget and reserves to be considered by the WMCA Board during its budget setting processes and included in the revised WMCA constitution.

3.19 One local authority has sought further clarification regarding the difficulty in securing the ring fencing of the Services finances and reserves in the Statutory Order, as well as querying the impact this would have on meeting the outcomes of the public consultation. In recognition of the validity of the clarifications raised and their technical nature, these points were raised with the Home Office for further exploration. A response received from the Home Office confirmed that it had liaised with HM Treasury and Ministry of Housing, Communities and Local Government officials in producing a composite reply. The technical nature of the response is set out in appendix C and gives a clear picture of the central Government viewpoint. This local authority also asked to be assured of the revised constitutional provisions required to achieve this local ring fence. To support the reporting of local progress this local authority will present a report to its Cabinet on 19 September 2018 and is expected to be the final local level review before the draft Order can enter the parliamentary process.

Progressing key asks and finalising the Order

3.20 Consent will be requested from the WMCA on 14 September for the following proposals to progress this direction.

a) The ring fencing of budget, precept and reserves:

Further to the intention set out paragraph 3.15, assurances will be provided through ring-fencing of the Service's budget, precept and reserves in the WMCA constitution. The proposed wording is set out in the Legal implications section below.

b) MFAC:

- Paragraph 3.15 has also confirmed how the issues relating to the MFAC's composition will be overcome.
- Following discussions in relation to the functions of the MFAC it was confirmed at WMCA Board on the 25 May 2018 that the function of reviewing decisions made by the Mayor of the WMCA in relation to the Service should sit with the WMCA Overview and Scrutiny Committee. This was subsequently made clear in the letter of submission to the Home Office and is now reflected in the draft Order in Appendix D.
- It is also noteworthy that the draft Order permits the payment of allowances to members of the MFAC. Allowances will therefore become a local determination. An independent review of Members' remuneration would be required in order to give effect to any scheme of Member's allowances.

c) CFO as Head of Paid Service for the Service:

- Whilst the Statutory Order cannot assign this role to the CFO, it can detail those areas which must only be 'designated accountabilities' for the CFO to exercise and these can align to the key asks proposed in the Scheme and will be strengthened to align to the proposals in point 1 above. Locally, assurance can be provided through revisions to the WMCA's constitution to designate all organisational and operational matters to the CFO.
- The letter of submission to the Home Office also clarified the point in relation to the appointment and dismissal of the CFO and Principal Officers. Within the Governance Review it was clear that the CFO should be accountable to the Mayor for their actions. However, within the Scheme this was extended in error to include other Principal Officers. The draft Order (Appendix D) rectifies this to the CFO only.

3.21 Also of consideration is the WMCA's Devolution deals I and II have made a strategic commitment to this governance change. Implementing this governance model in 2019 allows the Service to be in the best possible shape when moving under the WMCA as opposed to a delay. A delay to 2020 for example, would not only push back the wider benefits of this governance transfer for the Service and other WMCA public services commitments, it would also delay the value that can be realised through more transformational delivery of services to local communities.

3.22 Early planning for implementation has already begun although it is acknowledged that final approval is yet to be obtained. The changes continue to represent a significant piece of work in terms of planning and implementing the changes in governance and ensuring robust arrangements are in place to deliver an orderly transfer and secure the changes set out in the scheme and governance review. A

joint implementation team has been convened to enable delivery of the proposals over the coming months, aligned to the strategic intent of the governance change as identified in the governance review and scheme. The team will also carry out due diligence work in regard to financial issues. There will be resource implications for staff from both the Service and WMCA, as Officers lead the transfer process through project management disciplines.

Revised timeline and next steps:

3.23 The indicative timeline previously presented to the Authority has been reviewed to reflect the timeline received from the Home Office:

DETAILS	DATE	Amendment
WMCA approved a governance review and scheme to be developed	8 September 2017	
Development of governance review and scheme, which considered the business case for the change in governance.	September 2017	
Constituent Council approval of the content of the governance review and scheme.	October-November 2017	
WMCA approval of the content of the governance review and scheme and approval to proceed to public consultation.	8 December 2017	
Consultation of proposals set out in the scheme on behalf of the Secretary of State	January-March 2018	
Analysis of consultation responses locally	March 2018	
Constituent councils and WMCA consider outcomes of the public consultation. Seek consent to submit proposal to Secretary of State.	March - May 2018	
Governance review, scheme and analysis of consultation reviewed by Secretary of State (4-12 weeks).	June 2018	

Government development of order required to give effect to the proposed changes.	July - September 2018	Received August 2018. Local response required by end of September
Constituent council and WMCA approval of detail of order	October - November 2018	September 2018
Order enters Parliamentary process	December 2018 - January 2019	This process requires three months.
Home Secretary approves order	February 2019	March 2019
The West Midlands Fire and Rescue Authority functions transfer to the WMCA	1 st April 2019	Target transfer date remains

3.24 The laying of the draft Order in Parliament is subject to the outcome of the final local authority cabinet meeting on 19 September.

3.25 A report will be tabled at the WMCA Board on 14 September, seeking consent to proceed with the laying of the order and agreement to constitutional amendments to enable the key asks locally. A verbal update of the outcomes of the WMCA Board meeting will be provided to Members with this report.

3.26 Subject to approval being provided to proceed with the laying of the order, the Authority's Governance and Transformation Committee will begin to consider, within the structures already approved for the proposed governance arrangements, the detailed roles and responsibilities of the MFAC. The outcomes of which will be considered by the WMCA Board prior to the implementation of the transfer.

4. **EQUALITY IMPACT ASSESSMENT**

In preparing this report an initial Equality Impact Assessment is not required and has not been carried out.

5. **LEGAL IMPLICATIONS**

- 5.1 The legal implications have been included in previous reports to Board. The specific issue that has arisen at this stage is in relation to a number of points that were raised by the Home Office following formal submission of the Governance Review and Scheme.
- 5.2 The Home Office have referred to some points that cannot be delivered through the Order due to the prevailing legislation covering those issues. These points are set out elsewhere in the report together with proposals which will mitigate the impact of these changes. Consultation with the Constituent Authorities has resulted in a request for sight of the proposed amendment to the Constitution which would deal with the issue of a “local” ring-fence for Fire Service budgets, reserves and assets.

5.3 There will be a more significant number of amendments that will be needed to the WMCA Constitution when the transfer of governance completes. As we do not yet have the final Order in place this drafting has not yet been completed however in order to provide some assurance of the way in which the ring-fence would be achieved, the following drafting will be proposed to be included in the WMCA Constitution along with the other changes mentioned above but yet to be completed. The purpose of the arrangement would be to keep the budget and reserves of the Service entirely separate from any of the other function of the WMCA:

A. The Combined Authority will maintain a separate budget known as the Fire Service budget “the budget”. All receipts due to the Combined Authority in relation to the discharge of Fire Service operations and functions as set out in the Statutory Order West Midlands Combined Authority (Fire and Rescue Functions Order 2019), must be paid into “the budget” and all expenditure related to the same matters, must be paid out of “the budget”.

B. All assets relating to the discharge of Fire Service operations and functions will be owned by the WMCA as set out in the Order, but ring fenced for use in relation to Fire Service Operations. Any receipts, income or proceeds of sale in relation to Fire Service Assets will be retained within “the budget”.

C. Any reserves associated with the Fire Service at the point of transfer should be purely for the use of the Fire Service. Future movement in the Fire Service reserves need to be directly linked to the budgetary arrangements set out in A and B above.

D. The CFO together with the officer responsible for the proper administration of financial affairs of the WMCA under section 151 Local Government Act 1972(11), will propose and be accountable for an annual budget for the fire and rescue service which will ensure the most effective and efficient delivery of services to local communities as set out in the Fire Service Strategy.

E. Nothing in these provisions shall be taken as precluding any shared services, shared use of assets or other forms of joint working involving assets, personnel or services maintained by “the budget” with the consent of the Mayor and the Chief Fire Officer.

6. **FINANCIAL IMPLICATIONS**

- 6.1 The financial implications have been included in previous reports to Board. Specific issues have arisen at this stage in relation to a number of points that were raised by the Home Office following formal submission of the Governance Review and Scheme.
- 6.2 Due Diligence work is currently being carried out by the Joint Implementation Team.
- 6.3 The Home Office have referred to some points that cannot be delivered through the Order due to the prevailing legislation covering those issues. This section therefore closely correlates with section 5. These points are set out in paragraph 3.14 in the report together with proposals which will mitigate the impact of these changes. Additionally, the draft Order has identified MFAC member allowances and paragraph 3.20 is referred to.

7. **ENVIRONMENTAL IMPLICATIONS**

There are currently no environmental implications.

BACKGROUND PAPERS

[WMFRA 20 FEBRUARY 2017 ROUTE MAP TO A WEST MIDLANDS COMBINED AUTHORITY MAYORAL WMCA GOVERNANCE REPORT](#)
[WMFRA 20 FEBRUARY 2017 OUTCOMES OF THE FUTURE GOVERNANCE WORKING GROUP](#)
[WMCA 3 MARCH 2017 ROUTE MAP TO MAYORAL WMCA GOVERNANCE](#)
[AGM June 2017](#)
[WMCA 8 SEPTEMBER 2017](#)
[Governance Review and WMCA Scheme Report to Local Authorities](#) (17 October 2017 Sandwell Metropolitan Borough Council example)
[Scheme](#)
[Governance Review](#)
[WMFRA 20 NOVEMBER 2017](#)
WMCA Board 8 December 2017 [Mayoral WMCA Governance of West Midlands Fire Service - Governance Review and Scheme](#)

[CONSULTATION OUTCOMES REPORT TO LOCAL
AUTHORITIES](#) (21 March 2018 Sandwell Metropolitan Borough
Council example)
[WIDENING CFO Accountabilities 16 April 2018](#)
[ROUTE MAP TO MAYORAL COMBINED AUTHORITY](#)
[GOVERNANCE: CONSULTATION OUTCOMES AND SCHEME](#)
[SUBMISSION TO SECRETARY OF STATE 16 APRIL 2018](#)

APPENDICES

Appendix A – SCHEME

West Midlands Combined Authority Scheme

This scheme is prepared and published following the decision of the West Midlands Combined Authority (WMCA) on 8 September 2017.

The proposals in this scheme will be subject to a further public consultation.

The scheme provides as follows:

- 1.1 It is proposed that the functions exercisable by the West Midlands Fire and Rescue Authority (WMFRA) across the area that the WMCA covers, should become functions of the WMCA pursuant to sections 105 A of the Local Democracy, Economic Development and Construction Act 2009.

These functions are those as set out in the following acts and other relevant identified sections:

- Local Government Act 1985 (including Part IV, schedule 10).
- Local Government in Housing Act 1989.
- Fire and Rescue Service Act 2004.
- Fire and Rescue Order 2007.
- National Framework for Fire and Rescue Services in England 2012.
- Regulatory (Fire) Reform Order 2005.
- Civil Contingencies Act 2014.

The requirements for change are set in 1.16 of this scheme.

- 1.2 It is proposed that the properties, rights and liabilities of the WMFRA

would become functions of the WMCA.

- 1.3 It is proposed that the functions relating to fire and rescue referred to in 1.1 should become WMCA functions.
- 1.4 It is proposed that the fire and rescue functions once they become functions of the WMCA are exercisable only by the Mayor (section 107D (1) Cities and Local Government Devolution Act 2009).
- 1.5 For the purposes of the exercise of the fire and rescue functions, the Mayor may do anything that the WMCA may do under section 113A of the LDEDC Act 2009 (general power of EPB or combined authority) (1).
- 1.6 It is proposed that the WMCA has the same borrowing powers in respect to its functions, relating to fire and rescue as are currently exercised by the WMFRA.
- 1.7 It is proposed that the WMCA retain the same core grant and precept funding arrangements in respect to its functions relating to fire and rescue, as currently exercised by the WMFRA.
- 1.8 It is proposed that both the funding and reserves for fire are ring fenced within the Mayoral WMCA.
- 1.9 Any decisions or acts made before abolition of the WMFRA should have effect as if agreed by, or, in relation to the Mayoral WMCA. For example, the setting of the precept for, under section 40 Local Government Finance Act 1988 to the constituent councils in respect of the financial year beginning before transfer in governance, should have effect as if issued by the Mayoral WMCA.
- 1.10 It is proposed that Members of the WMCA may assist the Mayor in the exercise of the fire and rescue functions in line with delegations, provided that the functions may not include:

- Functions relating to the budget and setting of the precept,
- Functions relating to statutory plans such as the Integrated Risk Management Plan (IRMP)

and strategies,

- Functions relating to all properties, rights and liabilities,
- The appointment of the Chief Fire Officer and Principal officers.

Mayoral Fire Advisory Committee

1.11 It is proposed that the Order should contain provision for the Mayor to arrange for a committee of the WMCA (the Mayoral Fire Advisory Committee), consisting of members appointed by the constituent councils, to advise and support the Mayor in relation to West Midlands Fire Service (WMFS).

1.12 It is proposed the committee appointed should consist of a minimum of fifteen elected members from across the constituent councils, the Police and Crime Commissioner (in accordance with the Policing and Crime Act 2017) and two further co-opted members from Health and Ambulance to promote greater challenge, transparency and further collaboration.

1.13 The following additional provisions are proposed to apply to the Mayoral Fire Advisory Committee (the Committee):

Governance

- Appointment of elected members from each of the constituent councils will be made so that the members of the committee taken as a whole, reflect as far as reasonably practicable, the overall balance of political parties prevailing amongst the constituent councils.
- The majority of members of the committee must be members of the constituent councils, all of those members have one vote.

- Where a member is not from a constituent council (a co-opted member) they will not have voting powers.
- Two-thirds of members must be present for a meeting to be quorate.
- The Chair of the Committee will be appointed by the Mayor in consultation with

constituent council leaders.

Functions

- The Committee will not be a decision-making committee this responsibility will remain with the Mayor and Chief Fire Officer, as appropriate.
- The Committee will advise the Mayor, support the Mayor and review decisions made by the Mayor.
- Where decisions are reviewed, the Committee will submit a report to the WMCA Overview and Scrutiny Committee.
- The Committee will support the Mayor in providing advice around exercising fire functions, to ensure the right level of detail and understanding is provided to inform the Mayor's role as the Authority.
- The Committee will represent the priorities and strategy of the Mayor and WMFS in their respective local authorities and will report on performance in relation to fire functions.
- The Committee will represent the priorities and strategy of the Mayor and West Midlands Fire Service (WMFS) within the seven constituent councils, regionally with other Fire and Rescue Services, and nationally through the National Joint Council and Local Government Association.
- The Committee will seek to influence the Government on behalf of the Mayor in matters related to the delivery of fire and rescue services locally, regionally and nationally.
- The Committee will enable the development of partnerships and services to the community through constituent council engagement.

A member's allowance scheme for the committee will be payable by the WMCA.

- 1.14 The Chief Fire Officer (CFO) as head of paid service will be accountable to the Mayor in the operation of their duties.

1.15 It is proposed that the CFO maintains full accountability for the operational functions of the Fire Service. This will include:

- The management of the Fire and Rescue Service,
- The appointment and development of staff,
- The delivery of WMFS Strategy (including matters relating to exercising functions of the Fire and Rescue Services Act 2004 and other relevant legislation),
- The delivery of staffing structures and models which support current and future Strategy,
- The deployment of resources to meet risk,
- The transformation of services and reform of the workforce to meet WMFS and Mayoral/WMCA priorities.

1.16 Modification requirements of enactments in their application to the WMCA as a Fire and Rescue Authority.

Primary Legislation

Local Government Act 1972

1. In section 138(5) of the Local Government Act 1972 (powers of principal councils with respect to emergencies or disasters) (a), the reference to “metropolitan county fire and rescue authority” is to apply as if it included “the WMCA as a fire and rescue authority”.

Local Government in Housing Act 1989

2. (1) The Local Government and Housing Act 1989(c) is modified as follows.
 - (2) In section 67 (application of provisions about companies in which local authorities have interests), subsection (3)(k) applies as if the reference to “joint authority established by Part IV of that Act” included a reference to “the WMCA as a fire and rescue authority”.

- (3) In section 155 (emergency financial assistance to local authorities) subsection (4)(g) applies as if the reference to a “joint authority established by Part IV of the Local Government Act 1985” included a reference to “the WMCA as a fire and rescue authority”.

Crime and Disorder Act 1998

- 3. (1) The Crime and Disorder Act 1998(d) is modified as follows.
- (2) In the definition of “fire and rescue authority” in section 5(5) (authorities responsible for strategies), the reference in paragraph (b) to a “metropolitan county fire and rescue authority” is to apply as if it included a reference to “the WMCA as a fire and rescue authority”.
- (3) In the definition of “relevant authority” in section 115(2), the reference in paragraph (j) to a “metropolitan county fire and rescue authority” is to apply as if it included a reference to “the WMCA as a fire and rescue authority”.

Local Government Act 2003

- 4. Section 23(1) of the Local Government Act 2003 (meaning of “local authority” for purposes of Part 1) (a) the reference in paragraph (k) to “a joint authority established by Part IV of that Act” is to apply as if it included a reference to “the WMCA as a fire and rescue authority.”

Fire and Rescue Services Act 2004

- 5. (1) The FRS Act 2004(b) is modified as follows.

(2) Section 4A (power to provide for police and crime commissioner to be fire and rescue authority) has effect as if at the end of subsection

(3)(b) there were inserted—

“, and (c) outside the Area.”;

(3) Section 4B (1) (changes to existing fire and rescue authorities) has effect as if the reference to fire and rescue authorities in England outside Greater London did not include the WMCA.

Secondary legislation

6. In section 1 of the FRS 2004 Act(1), after subsection (4) insert—
“(5) This section is also subject to an order under Part 6 of the Local Democracy, Economic Development and Construction Act 2009 which transfers the functions of a fire and rescue authority to a combined authority established under section 103 of that Act”.
7. In paragraph (a) of the definition of “local authority” in regulation 2(1) of the Pipelines Safety Regulations 1996 (interpretation)(c) the reference to a “metropolitan county fire and rescue authority” is to apply as if it included a reference to “the WMCA as a fire and rescue authority”.
8. In article 1(2) of the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 (application of order to best value authorities) (d) the reference in paragraph (c) to a “metropolitan county fire and rescue authority” is to apply as if it included a reference to “the WMCA as a fire and rescue authority”.
9. In regulation 3 of the Community Right to Challenge (Fire and Rescue Authorities and Rejection of Expressions of Interest) (England) Regulations 2012 (relevant authorities) (e) the reference in paragraph (a) to a “metropolitan county fire and rescue authority established under section 26 of the Local Government Act 1985” is to apply as if it included a reference to “the WMCA as a fire and rescue authority”.
10. (1) The Local Government Pension Scheme Regulations 2013(f) are

modified as follows. (2) After regulation 64(8), insert—
“(8A) Paragraph (8B) applies where the exiting employer is the WMFRA and the liabilities of the fund in respect of benefits due to the WMFRA’s current and former employees (or those of any predecessor authority) have been or are to be transferred to the WMCA by virtue of this Order. (8B) Where this paragraph applies, no exit payment is due under paragraph (1) and paragraph (2) does not apply.”.

11. In regulation 2(1) of the Explosives Regulations 2014 (interpretation)(g) in the definition of “local authority”, the reference in paragraph (c) to “a metropolitan county fire and rescue authority” is to apply as if it included a reference to “the WMCA as a fire and rescue authority”.
12. In regulation 2(1) of the Control of Major Accident Hazards Regulations 2015(a) in paragraph (b) of the definition of “local authority”, subparagraph (ii) is to apply as if there were substituted for that subparagraph— “(ii) the Area, the WMCA as a fire and rescue authority;”.

Appendix B – Widening CFO Accountabilities Report 16 April 2018

<http://94.236.33.181/Cmis5/Document.ashx?czJKcaeAi5tUFL1DTL2UE4zNRBcoShgo=Epxbw1uAC4obEFPf5XDUzmL9fVK0rD%2bLH4dbkO9LdbAz5PDnLuoRyA%3d%3d&rUzwRPf%2bZ3zd4E7lkn8Lyw%3d%3d=pwRE6AGJFLDNIh225F5QMaQWCtPHwdhUfCZ%2fLUQzgA2uL5jNRG4jdQ%3d%3d&mCTIbCubSFfXsDGW9IXnlg%3d%3d=hFfIUdN3100%3d&kCx1AnS9%2fpWZQ40DXFvdEw%3d%3d=hFfIUdN3100%3d&uJovDxwdjMPoYv%2bAJvYtyA%3d%3d=ctNJFf55vVA%3d&FgPIIEJYlotS%2bYGoBi5olA%3d%3d=NHdURQburHA%3d&d9Qjj0ag1Pd993jsyOJqFvmyB7X0CSQK=ctNJFf55vVA%3d&WGewmoAfeNR9xqBux0r1Q8Za60lavYmz=ctNJFf55vVA%3d&WGewmoAfeNQ16B2MHuCpMRKZMwaG1PaO=ctNJFf55vVA%3d>

Word report to be included

Appendix C – Home Office Advice

The Home Office has liaised with HM Treasury and Ministry of Housing, Communities and Local Government (MHCLG) officials and confirmed that there is no primary legislation presently in existence that would allow for the ring fencing of fire and rescue service central funding. The same applies to locally raised funding as council tax is un-hypothecated income to allow precepting authorities to deliver its functions. In the case of a mayoral precept that will include all mayoral functions and as such the Government has said that it cannot ring-fence the fire and rescue service allocation, although it is traceable.

The position is different where a Mayor has Police and Crime Commissioner (PCC) functions. Section 107G of the Local Democracy, Economic Development and Construction Act 2009 as added by s.5(3) of the Cities and Local Government Devolution Act 2016 allows a separate precept component where a mayor has PCC functions. The legislation is cited below.

Cities and Local Government Devolution Act 2016 - legislation

www.legislation.gov.uk

(1)In section 39 of the Local Government Finance Act 1992 (precepting and precepted authorities), in subsection (1) after paragraph (aa) insert— (a)a precept may be issued under this section only in relation to expenditure incurred by the mayor for the authority's area in, or in connection with ...

The Government officials have commented on section 31 grants, which are made to support local authority expenditure, but are not in themselves ring-fenced. Example referred to are the Council Tax freeze grant to local authorities through a section 31 grant and the adult social care precept. The s.31 grant does not require local authorities to spend the grant on a particular function and the adult social care precept is not formally ring-fenced, although it is monitored through a reporting mechanism.

Further, the MHCLG has also confirmed that it presently has no plans to alter its policy in order to enable Fire and Rescue Service funding to be ring fenced under a Mayoral WMCA model via the introduction of primary legislation.

Furthermore, the timetable the Home Office are working to would require draft Order sign off by 24-28th September 2018 to enable the legal drafting scrutiny required, in order that it may be laid before parliament in late November to December 2018 to meet the proposed April 2019 transfer date.

Finally, the Home Office has advised that it expects legislation relating to Brexit will dominate Parliamentary timetabling and therefore, should the proposed timeline be compromised, the prospect of re-entering the parliamentary timetable in the immediate future would be slim.

Appendix D – Draft Order received from the Home Office

Draft Order laid before Parliament under section 117(2) of the Local Democracy, Economic Development and Construction Act 2009, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No. 0000

LOCAL GOVERNMENT, ENGLAND

FIRE AND RESCUE, ENGLAND

The West Midlands Combined Authority (Fire and Rescue Functions) Order 2019

Made - - - - [2019]

Coming into force in accordance with article 1

The Secretary of State makes the following Order in exercise of the powers conferred by sections 105A(1)(a), (3)(a) and (4)(b), 107D(1), (3)(c)(ii), (4), (5)(b), (7)(b) and (c), and (8), 114, 115 and 117(5) of the Local Democracy, Economic Development and Construction Act 2009⁽¹⁾ (the “LDEDC Act 2009”). A proposal for making this Order has been made to the Secretary of State by the West Midlands Combined Authority and the district councils whose areas

⁽¹⁾ 2009 c. 20. Section 105A was inserted by section 7 of the Cities and Local Government Devolution Act 2016 (c. 1) (“the CLGD Act 2016”). Section 107D was inserted by section 4 of the CLGD Act 2016 and amended by section 8(3) of the Policing and Crime Act 2017 (c. 3). Section 114 was amended by section 23 of, and paragraphs 17 and 26 of Schedule 5 to, the CLGD Act 2016 and by S.I. 2016/997. Section 115 was amended by section 23(1) of, and paragraphs 17 and 27 of Schedule 5 to, the CLGD Act 2016. Section 117(2), (2A) and (3) were substituted by section 13 of the Localism Act 2011 (c. 20) and section 117(5) was inserted by section 23(1), and paragraphs 17 and 29 of Schedule 5 to, the CLGD Act 2016.

are comprised in the area of that Combined Authority in accordance with section 105B(1)(a) of the LDEDC Act 2009 by inclusion in a scheme prepared and published under section 112 of the LDEDC Act 2009⁽²⁾.

In accordance with section 107D(9) of the LDEDC Act 2009 the West Midlands Combined Authority and the district councils whose areas are comprised in the area of that Combined Authority have consented to the making of this Order.

In accordance with section 105B(9) of the LDEDC Act 2009, the Secretary of State has laid before Parliament a report explaining the effect of this Order and explaining why the Secretary of State considers it appropriate to make this Order.

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 117(2) of the LDEDC Act 2009.

PART 1

Introduction

Citation and commencement

1. This Order may be cited as the West Midlands Combined Authority (Fire and Rescue Functions) Order 2019 and comes into force on 1st April 2019.

Interpretation

2. In this Order—

“the FRS Act 2004” means the Fire and Rescue Services Act 2004⁽³⁾;

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

“the Area” means the area of the WMCA;

“Chief Fire Officer” means the person with the designated responsibilities for managing the fire and rescue service as set out in the body of this Order;

“constituent councils” means the councils for the local government areas of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton;

“excluded function” has the meaning given in article 6(1);

“fire and rescue declaration” means a document which—

(a) is prepared and published by the Chief Fire Officer, and approved by the Mayor, in accordance with the Fire and Rescue National Framework, and

⁽²⁾ Section 112 was amended by sections 6 and 23 of, and paragraphs 17 and 23 of Schedule 5 to, the CLGD Act 2016. Section 105B was inserted by section 7 of the CLGD Act 2016.

⁽³⁾ 2004 c. 21.

- (b) contains a statement of the way in which the Mayor and the WMCA have had regard, in the period covered by the document, to the Fire and Rescue National Framework and to any integrated risk management plan prepared by the Chief Fire Officer for that period;

“fire and rescue functions” means functions conferred on the WMCA as a fire and rescue authority⁽⁴⁾ by, or by virtue of, any enactment;

“Fire and Rescue National Framework” means the document prepared by the Secretary of State under section 21 of the FRS Act 2004⁽⁵⁾;

“the fire and rescue service” means the personnel, finances, reserves, estate, fleet, equipment and services secured by the WMCA for the purposes of carrying out the WMCA’s functions under—

- (a) section 6 of the FRS Act 2004 (fire safety),
- (b) section 7 of that Act (fire-fighting),
- (c) section 8 of that Act (road traffic accidents),
- (d) any order under section 9 of that Act (emergencies) which applies to the WMCA,
- (e) section 2 of the Civil Contingencies Act 2004⁽⁶⁾ and any regulations under that Act applying to a fire and rescue authority,
- (f) any other provision of or made under an enactment which confers functions on a fire and rescue authority;

“integrated risk management plan” means a document which—

- (a) is prepared and published by the Chief Fire Officer, in accordance with the Fire and Rescue National Framework, and
- (b) sets out for the period covered by the document in accordance with the requirements of the Fire and Rescue National Framework—
 - (i) the fire and rescue service’s priorities and objectives, and
 - (ii) an assessment of all foreseeable fire and rescue related risks that could affect its community,

in connection with the discharge of the WMCA’s functions as a fire and rescue authority;

“the Mayor” means the mayor for the Area;

“the Mayoral FireAdvisory Committee” has the meaning given in article 4(3);

⁽⁴⁾ By virtue of section 120 of the Local Democracy, Economic Development and Construction Act 2009, “fire and rescue authority” means a fire and rescue authority under the Fire and Rescue Services Act 2004.

⁽⁵⁾ Section 21 was amended by paragraph 9 of Schedule 1 to the Policing and Crime Act 2017.

⁽⁶⁾ 2004 c. 36.

“the transfer date” means 1st April 2019;

“the WMCA” means the West Midlands Combined Authority, a body corporate established by the West Midlands Combined Authority Order 2016⁽⁷⁾;

“the WMFRA” means the West Midlands Fire and Rescue Authority⁽⁸⁾.

PART 2

Transfer of functions

Transfer of functions of the WMFRA to the WMCA

3.—(1) The functions of the WMFRA that were exercisable in relation to the Area immediately before the transfer date are functions of the WMCA.

(2) The WMCA is the fire and rescue authority for the Area for the purposes of the FRS Act 2004, subject to paragraph 5 of the Schedule.

(3) The WMFRA is abolished.

Exercise of fire and rescue functions

4.—(1) Subject to paragraphs (3) and (4), and article 7(1), the fire and rescue functions are exercisable only by the Mayor.

(2) For the purposes of the exercise of the fire and rescue functions, the Mayor may do anything that the WMCA may do under section 113A of the LDEDC Act 2009 (general power of economic prosperity board or combined authority)⁽⁹⁾.

(3) The Mayor may arrange for a committee of the WMCA (“the Mayoral Fire Advisory Committee”) to advise the mayor on the exercise of fire and rescue functions other than any excluded function.

(4) The Mayor may not make any arrangement under section 107D(3) of the LDEDC Act 2009 (functions of mayors: general) that authorises the exercise of any excluded function.

(5) Members and officers of the WMCA may assist the Mayor in the exercise of the fire and rescue functions.

(6) The Mayor may, for the purposes of the exercise of the fire and rescue functions, do anything that the WMCA may do by virtue of—

(a) section 113A of the LDEDC Act 2009,

(b) any order made under section 113D of the LDEDC Act 2009, other than borrow money.

⁽⁷⁾ S.I. 2016/653, as amended by S.I. 2017/510.

⁽⁸⁾ The West Midlands Fire and Rescue Authority was established under section 26 of the Local Government Act 1985 (c. 51) and the words “fire and rescue authority” were substituted by section 32 of, and paragraph 10 of Schedule 2 to, the Civil Contingencies Act 2004 (c. 36).

⁽⁹⁾ Section 113A was inserted by section 13 of the Localism Act 2011 and amended by section 23 of, and paragraph 25 of Schedule 5 to, the Cities and Local Government Devolution Act 2016.

The Mayoral Fire Advisory Committee

5.—(1) Committee (“the Committee”) must consist of no more than 18 members, appointed by the Mayor as follows—

- (a) no more than 15 members on the nomination of the constituent councils, provided that—
 - (i) each member must be nominated by a constituent council from one of that council’s elected members,
 - (ii) at least one member must be appointed on the nomination of each of the constituent councils,
 - (iii) the Mayor and the constituent councils must, when appointing or nominating members, ensure so far as is reasonably practicable that the number of members appointed on the nomination of each constituent council is proportionate to the number of electors of each of the constituent councils, and
 - (iv) where the Mayor decides not to appoint a person who has been nominated by a constituent council, that council may nominate a further person from that council’s elected members who will be appointed by the mayor without further veto,
- (b) the Police and Crime Commissioner in relation to the Area,
- (c) two co-opted members to support wider collaboration to be determined by the Mayor in consultation with the chair of the Committee.

(2) The Mayor and the constituent councils must, when appointing or nominating members, ensure that the members taken as a whole reflect so far as reasonably practicable the balance of the political parties for the time being prevailing among the constituent councils when taken together.

(3) The Mayor must ensure that the majority of the members are members appointed in accordance with paragraph (1)(a).

(4) The Mayor must, after consultation with the leaders of the constituent councils, appoint one of the members of the Committee to serve as chair of the Committee.

(5) On a vote at a meeting of the committee, each member appointed under paragraph (1)(a) or (b) has one vote.

(6) The WMCA may pay basic allowances, allowances for travel and subsistence to members of the Committee in accordance with a scheme drawn up by the WMCA.

(7) A member of the committee appointed in accordance with paragraph (1)(a) ceases to be a member if they cease to be an elected member of the relevant constituent council.

(8) A member may resign by written notice served on the proper officer of the constituent council of which they were a member of at the time of their

appointment to the committee and the resignation is to take effect on receipt of the notice by the proper officer.

(9) The Mayor may at any time terminate the appointment of a member where they have not attended scheduled meetings of the committee throughout a period of six consecutive months from the date of that member's last attendance.

(10) Where a person appointed in accordance with paragraph (1)(a) ceases to be a member by virtue of paragraph (7), (8) or (9), the constituent council that nominated that member must, as soon as practicable, give written notice to the Mayor and nominate another person from that council's elected members.

(11) Where a person appointed in accordance with paragraph (1)(b) or (c) ceases to be a member, the Mayor must appoint another person to be a member in accordance with paragraph (1)(b) or (c) (as the case may be).

Excluded fire and rescue functions

- 6.—**(1) The following fire and rescue functions are “excluded functions”—
- (a) the fire and rescue functions specified in the following provisions of the FRS Act 2004—
 - (i) section 13 (reinforcement schemes),
 - (ii) section 15 (arrangements with other employers of fire-fighters), and
 - (iii) section 16 (arrangements for discharge of functions by others),
 - (b) the functions of—
 - (i) appointing, or dismissing, the chief fire officer,
 - (ii) approving the terms of appointment of the chief fire officer, and
 - (iii) holding the chief fire officer to account for managing the fire and rescue service in accordance with article 7(2) and (3),
 - (c) the functions of approving—
 - (i) the integrated risk management plan, and
 - (ii) the fire and rescue declaration,
 - (d) the function of approving plans, modifications to plans and additions to plans for the purpose of ensuring that—
 - (i) so far as is reasonably practicable, the WMCA is able to continue to perform its fire and rescue functions if an emergency occurs,
 - (ii) the WMCA is able to perform its functions so far as necessary or desirable for the purpose of preventing an emergency, or reducing, controlling or mitigating the effects of an emergency, or taking other action in connection with it, and
 - (e) the function of approving any arrangements for the co-operation of the WMCA in relation to its fire and rescue functions and other general Category 1 responders and general Category 2 responders in respect of the performance of the WMCA's duty as a fire and rescue authority

under section 2 of the Civil Contingencies Act 2004⁽¹⁰⁾ and any duties under regulations made in exercise of powers under that Act.

(2) In subparagraphs (d) and (e), “emergency” has the meaning given in section 1 of the Civil Contingencies Act 2004 for Part 1 of that Act.

⁽¹⁰⁾ 2004 c.36. Category 1 responders general are listed in Part 1, and category 2 responders general are listed in Part 2 of Schedule 1 to the Civil Contingencies Act 2004. There are amendments to section 2 and Schedule 1 which are not relevant to this Order.

Delegation of functions of to the Chief Fire Officer

7.—(1) The following functions must be delegated to the Chief Fire Officer in relation to the fire and rescue service—

- (a) the operational and technical management of the fire and rescue service,
- (b) the provision of operational and technical advice to the Mayor,
- (c) the preparation and publication of the integrated risk management plan,
- (d) together with the officer responsible for the proper administration of financial affairs of the WMCA under section 151 Local Government Act 1972⁽¹¹⁾, the proposal of an annual budget for the fire and rescue service,
- (e) the preparation and delivery of the fire and rescue service strategy,
- (f) the functions of the WMCA under—
 - (i) sections 6, 7 and 8 of the FRS Act 2004, and any order under section 9 of that Act which applies to the WMCA,
 - (ii) section 2 of the Civil Contingencies Act 2004, and any regulations under that Act applying to a fire and rescue authority,
 - (iii) any other provision of or made under an enactment which confers functions on a fire and rescue authority,
- (g) the appointment and development of all fire and rescue service staff, and the staffing structure,
- (h) the dismissal of fire and rescue service staff,
- (i) the management and allocation of the estate, finance and reserve, equipment, any other assets and the fleet,
- (j) the management and negotiation of trade union relations.

(2) The Chief Fire Officer must have regard to the Fire and Rescue National Framework in carrying out their functions.

(3) The Mayor must hold the Chief Fire Officer to account for the exercise of—
(a) the designated functions of the chief fire officer, and

PART 3

Transitional arrangements and asset transfers

Transfer of property, rights and liabilities

8.—(1) by virtue of this paragraph vest in, the WMCA on the transfer date.

(2) In relation to the property, rights and liabilities transferred by paragraph (1) and any property, rights and liabilities acquired in connection with the WMCA's fire and rescue functions on or after the transfer date—

- (a) all functions in relation to such property, rights and liabilities are to be exercised by the Mayor,
- (b) all decisions relating to such property, rights and liabilities are to be made by the CFO and Mayor as appropriate and as set out in the body of this Order.

(3) Subject to article 6, nothing in paragraph (2) prevents the Mayor from making arrangements under section 107D(3) of the LDEDC Act 2009 in relation to the matters mentioned in paragraph (2).

⁽¹¹⁾ 1972 c. 70.

Secondments

9. In the case of a person who, immediately before the transfer date is seconded to the WMFRA, the secondment is to have effect, after that time, as a secondment to the WMCA.

Continuity

10.—(1) The abolition of the WMFRA, the transfer or abolition of the WMFRA's functions, and the transfer of the WMFRA's property, rights and liabilities, do not affect the validity of anything done before the abolition or transfer.

(2) Paragraphs (3) to (5) apply where any functions, property, rights or liabilities are transferred by this Order from the WMFRA to the WMCA.

(3) There may be continued by or in relation to the WMCA anything (including legal proceedings) which—

(a) relates to any of the functions, property, rights or liabilities transferred, and

(b) is in the process of being done by or in relation to the WMFRA immediately before the transfer date.

(4) Anything which—

(a) was made or done by or in relation to the WMFRA for the purposes of, or otherwise in connection with, any of the functions, property, rights or liabilities transferred; and

(b) is in effect immediately before the transfer date, has effect as if made or done by or in relation to the WMCA.

(5) The WMCA is to be substituted for the WMFRA in any instruments, contracts or legal proceedings which—

(a) relate to any of the functions, property, rights or liabilities transferred, and

(b) are made or commenced before the transfer date.

(6) In this paragraph a reference to the transfer of a function includes a reference to the abolition of the function and the conferral of a corresponding function on another person.

Transfers: supplementary provision

11.—(1) All property, rights and liabilities transferred by this Order are to be transferred by that transfer, notwithstanding that they may be or include—

(a) property, rights and liabilities that would not otherwise be capable of being transferred, or

(b) rights and liabilities under enactments.

(2) No right of reverter, right of pre-emption, right of forfeiture, right of re-entry, right to compensation, option or similar right affecting any land or other property is to operate or become exercisable as a result of any transfer of land or other property by virtue of this Order (whether or not any consent required to the transfer has been obtained).

(3) No right to terminate or vary a contract or instrument is to operate or become exercisable, and no provision of a contract or relevant document, is to

operate or become exercisable or be contravened, by reason of the transfer made by this Order.

(4) Paragraphs (1) to (3) above have effect in relation to—

- (a) the grant or creation of an estate or interest in, or right over, any land or other property, or
- (b) the doing of any other thing in relation to land or other property, as they have effect in relation to the transfer made by this Order of land or other property.

(5) In this article, “relevant document” means—

- (a) any enactment, other than an enactment contained in the LDEDC Act 2009,
- (b) any subordinate legislation made otherwise than under that Act, or
- (c) any deed or other instrument.

PART 4

Modification of enactments and consequential repeal

Modification of enactments and consequential repeal

12. The modification of enactments in their application to the WMCA as a fire and rescue authority and the consequential repeal set out in the Schedule have effect.

	<i>Name</i>
Address	Minister of State
Date	Home Office
	Article 12
SCHEDULE	
Modification of enactments in their application to the WMCA as a fire and rescue authority and consequential repeal	
PART 1	
Modification of primary legislation	

Local Government Act 1972

1. In section 138(5) of the Local Government Act 1972 (powers of principal councils with respect to emergencies or disasters)⁽¹²⁾, the reference to “metropolitan county fire and rescue authority” is to apply as if it included “the WMCA as a fire and rescue authority”.

Local Government and Housing Act 1989

2.—(1)⁽¹³⁾ is modified as follows.

⁽¹²⁾ 1972 c.70. Subsection (5) was inserted by section 156(3) of the Local Government and Housing Act 1989 (c. 42) and the words “metropolitan county fire and rescue authority” were substituted by paragraph 10(2) of Part 1 of Schedule 2 to the Civil Contingencies Act 2004 (c. 36). Other amendments have been made to section 138 which are not relevant to this Order.

⁽¹³⁾ 1989 c.42. Section 67 has been repealed by sections 216(1) and 241 of, and Part 16 of Schedule 18 to, the Local Government and Public Involvement in Health Act 2007. The repeal has not yet been brought into force. Section 155(4) (g) has been amended by the substitution of

(2) In section 67 (application of provisions about companies in which local authorities have interests), subsection (3)(k) applies as if the reference to “joint authority established by Part IV of that Act” included a reference to “the WMCA as a fire and rescue authority”.

(3) In section 155 (emergency financial assistance to local authorities) subsection (4)(g) applies as if the reference to a “joint authority established by Part IV of the Local Government Act 1985” included a reference to “the WMCA as a fire and rescue authority”.

Crime and Disorder Act 1998

3.—(1) ~~(14)~~ is modified as follows.

(2) In the definition of “fire and rescue authority” in section 5(5) (authorities responsible for strategies), the reference in paragraph (b) to a “metropolitan county fire and rescue authority” is to apply as if it included a reference to “the WMCA as a fire and rescue authority”.

(3) In the definition of “relevant authority” in section 115(2), the reference in paragraph (j) to a “metropolitan county fire and rescue authority” is to apply as if it included a reference to “the WMCA as a fire and rescue authority”.

the words “an Integrated Transport Authority” by section 77(5) of, and Part 4 of Schedule 4 to, the Local Transport Act 2008. There are other amendments to section 155 which are not relevant to this Order.

⁽¹⁴⁾ 1998 c.37. In section 5(5) the definition of “fire and rescue authority” was substituted by section 53(1) of, and paragraph 89(1), (2)(b) of, Schedule 1 to, the Fire and Rescue Services Act 2004. In paragraph (b) of subsection (5) the words “metropolitan county fire and rescue authority” were substituted by virtue of paragraph 10(1), (2) of Part 1 of Schedule 2 to the Civil Contingencies Act 2004. There are other amendments to section 5 which are not relevant to this Order. Paragraph (j) of section 115(2) was inserted by section 22 of, and paragraphs 1 and 7(1), (2) of Schedule 9 to, the Police and Criminal Justice Act 2006 c. 48. Other amendments have been made to section 115 which are not relevant to this Order.

Local Government Act 2003

4. Section 23(1) of the Local Government Act 2003 (meaning of “local authority” for purposes of Part 1)⁽¹⁵⁾ the reference in paragraph (k) to “a joint authority established by Part IV of that Act” is to apply as if it included a reference to “the WMCA as a fire and rescue authority.”

Fire and Rescue Services Act 2004

5.—(1)⁽¹⁶⁾ is modified as follows.

(2) Section 4A (power to provide for police and crime commissioner to be fire and rescue authority) has effect as if at the end of subsection (3)(b) there were inserted—

“, and

(c) outside the Area.”.

(3) Section 4B(1)(changes to existing fire and rescue authorities) has effect as if the reference to fire and rescue authorities in England outside Greater London did not include the WMCA.

PART 2

Modification of secondary legislation

Pipelines Safety Regulations 1996

6. In paragraph (a) of the definition of “local authority” in regulation 2(1) of the Pipelines Safety Regulations 1996 (interpretation)⁽¹⁷⁾ the reference to a “metropolitan county fire and rescue authority” is to apply as if it included a reference to “the WMCA as a fire and rescue authority”.

Local Government (Best Value Authorities)(Power to Trade)(England) Order 2009

7. In article 1(2) of the Local Government (Best Value Authorities)(Power to Trade)(England) Order 2009 (application of order to best value authorities)⁽¹⁸⁾ the reference in paragraph (c) to a “metropolitan county fire and rescue authority” is to apply as if it included a reference to “the WMCA as a fire and rescue authority”.

⁽¹⁵⁾ 2003 c. 26. In section 23(1)(k), the words “(fire and rescue services and transport)” were substituted by section 32 of, and paragraph 10 of Schedule 2 to, the Civil Contingencies Act 2004.

⁽¹⁶⁾ 2004 c. 21. Sections 4A and 4B were inserted by paragraph 5 of Part 1 of Schedule 1 to the Policing and Crime Act 2017.

⁽¹⁷⁾ S.I. 1996/825, the words “metropolitan county fire and rescue authority” were substituted by virtue of paragraph 10(1), (2) of Part 1 of Schedule 2 to the Civil Contingencies Act 2004 (c.36).

⁽¹⁸⁾ S.I. 2009/2393.

Community Right to Challenge (Fire and Rescue Authorities and Rejection of Expressions of Interest) (England) Regulations 2012

8. In regulation 3 of the Community Right to Challenge (Fire and Rescue Authorities and Rejection of Expressions of Interest) (England) Regulations 2012 (relevant authorities)⁽¹⁹⁾ the reference in paragraph (a) to a “metropolitan county fire and rescue authority established under section 26 of the Local Government Act 1985” is to apply as if it included a reference to “the WMCA as a fire and rescue authority”.

Local Government Pension Scheme Regulations 2013

9.—(1) Regulation 64 of the Local Government Pension Scheme Regulations 2013⁽²⁰⁾ is to be read as if, after paragraph (8), there were inserted—

“(8B) 21).

(8B) Where this paragraph applies, no exit payment is due under paragraph (1) and paragraph (2) does not apply.”.

Explosives Regulations 2014

10. In regulation 2(1) of the Explosives Regulations 2014 (interpretation)⁽²²⁾ in the definition of “local authority”, the reference in paragraph (c) to “a metropolitan county fire and rescue authority” is to apply as if it included a reference to “the WMCA as a fire and rescue authority”.

Control of Major Accident Hazards Regulations 2015

11. In regulation 2(1) of the Control of Major Accident Hazards Regulations 2015⁽²³⁾ in paragraph (b) of the definition of “local authority”, sub-paragraph (ii) is to apply as if there were substituted for that sub-paragraph—

“(ii) [OBJ]”.

⁽¹⁹⁾ S.I. 2012/1647.

⁽²⁰⁾ S.I. 2013/2356; regulation 64(1) is substituted by regulation 22 of S.I. 2015/755, and paragraphs (8A) and (8B) were inserted by S.I. 2017/469.

⁽²¹⁾ S.I. 2019/[tba].

⁽²²⁾ S.I. 2014/1638; to which there are amendments not relevant to this Order.

⁽²³⁾ S.I. 2015/483; to which there are amendments not relevant to this Order.

PART 3
Consequential repeal

Local Government Act 1985

12. Part 6 of Schedule 10 to the Local Government Act 1985 (number of members of joint authorities: West Midlands)⁽²⁴⁾ is repealed.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the conferral of the functions of the West Midlands Fire and Rescue Authority (“the WMFRA”) on the West Midlands Combined Authority (“the WMCA”). It has been made following the publication, on 8th September 2017, of a scheme for the conferral of those functions on the WMCA. The scheme is available from the WMCA at [] or at [web address].

Part 6 of the Local Democracy, Economic Development and Construction Act 2009 (“the LDEDC Act 2009”) provides for the establishment of combined authorities for the areas of two or more local authorities in England. Combined authorities are bodies corporate which may be given power to exercise specified functions of a local authority or public authority under sections 104, 105 and 105A of the LDEDC Act 2009, and power to exercise specified functions of any other public authority under section 16 of the Cities and Local Government Devolution Act 2016 (“the 2016 Act”). The Secretary of State may provide for there to be a mayor for the area of the combined authority where the constituent councils of the combined authority (each district council or county council whose area is within the area of the combined authority) and any existing combined authority consent under section 107B(3) of the LDEDC Act 2009.

Article 3 of this Order transfers the functions of the WMFRA to the WMCA on 1st April 2019, and provides that the WMCA is the fire and rescue authority for the area of the combined authority for the purposes of the Fire and Rescue Services Act 2004. The article also abolishes the WMFRA.

Article 4 provides that the fire and rescue functions of the WMCA are to be exercised by the Mayor of the WMCA, and for this purpose the Mayor may exercise similar powers to the WMCA’s powers under section 113A of the LDEDC Act 2009. It provides for the Mayor to establish a Mayoral Fire Advisory Committee to advise the Mayor in the exercise of those functions,

⁽²⁴⁾ 1985 c.51. Column 2 of the table in Part 2 was repealed by section 93, and Part 1 of Schedule 9 to the Police and Magistrates’ Courts Act 1994. The words “Integrated Transport Authority” in the heading of column 4 were substituted by section 77(5) and paragraph 53 of Schedule 4 to the Local Transport Act 2008. The West Midlands Integrated Transport Authority was abolished by the WMCA Order 2011.

and also provides that members and officers of the WMCA may assist the Mayor in the exercise of those functions.

Article 5 makes provision about the membership and meetings of the Mayoral Fire Advisory Committee.

Article 6 sets out certain fire and rescue functions which may not be delegated by the Mayor.

Article 7 sets out the fire and rescue functions that must be delegated to the chief fire officer which include, in particular, the operational management of the fire and rescue service.

Articles 8, 9, 10 and 11 make transitional arrangements and supplementary provisions in relation to the transfer of functions, property, rights and liabilities from the WMFRA to the WMCA.

Article 12 and the Schedule make consequential amendments to primary and secondary legislation.

A full regulatory impact assessment has not been prepared as this instrument will have no impact on the costs of business and the voluntary sector.

KAREN GOWREESUNKER

Clerk to the Authority

Contact number: 0121 380 6678

PHIL LOACH
CHIEF FIRE OFFICER