

GOVERNANCE AND TRANSFORMATION COMMITTEE

8 OCTOBER 2018

1. SCOPING THE ROLE OF THE MAYORAL FIRE ADVISORY COMMITTEE (MFAC)

Report of the Clerk.

RECOMMENDED

- 1) THAT members consider the background and proposed approach to considering the governance arrangements for West Midlands Fire and Rescue Service (WMFS) within the Mayoral West Midlands Combined Authority (WMCA)
- 2) THAT members approve the purpose, scope and key assumptions as detailed in paragraph 3.8.

2. PURPOSE OF REPORT

This report is submitted to set out a programme of work for the committee to consider the role of the Mayoral Fire Advisory Committee (MFAC) pursuant to the proposed transfer of the governance of WMFS to the Mayoral WMCA and how the governance requirements will align to the WMCA governance framework and constitutional arrangements.

3. BACKGROUND

- 3.1 On 14 September 2018, the WMCA Board received a report detailing progress of the journey to transfer the governance of the WMFS to the Mayoral WMCA. The report referenced the key 'asks' detailed in the Scheme, the response of the Home Office to these 'asks'; and the proposal to address the key 'asks' within the Order and constitution. The Board also received a draft of the Statutory Order developed between the Home Office, WMFS and the WMCA, developed from the Scheme.
- 3.2 The Fire Authority (the Authority) were appraised of this progress at the Authority meeting on 17 September 2018.

- 3.3 The WMCA Board agreed to accept the proposals to progress the key 'asks' which could not be achieved through the Order to instead be achieved locally; and confirmed delegation to the Chief Executive and Monitoring Officer of the WMCA to consent to the laying of the Order in Parliament, subject to the outcome of the final local constituent council cabinet meeting held by Sandwell MBC. The Cabinet for Sandwell MBC convened on 19 September 2018 and agreed to support the proposals to locally progress the key 'asks', which could not be secured by way of Statutory Order.
- 3.4 This represents significant progress since members of the Authority were presented with the outcomes of the Future Governance Working Group. These outcomes provided an evidence base and outlined the route to the Mayoral WMCA, in early 2017. These proposals were formed against the backdrop of understanding Government expectations of reform and the consideration of a future governance model, which provided effective and efficient delivery of services, increased potential for wider 'blue light' collaboration and public safety.
- 3.5 The draft Order has now entered the Parliamentary process and will follow the affirmative procedure to successful approval.
- 3.6 In line with the terms of reference for this Committee, the Committee will continue to have oversight of the development of the Statutory Order to support the Authority's alignment of expectations with respective local constituent councils.
- 3.7 A key 'ask' within the Scheme submitted to the Home Office in June 2018 was the constitution and composition of the MFAC. Accordingly, a specific focus of this Committee will be to develop the role of the MFAC in order to realise the vision articulated in paragraph 5.4 and Appendix 8 of the Governance Review, which set out the proposed future governance framework for the Mayoral WMCA model. This is captured in Appendices 1 and 2 of this paper. In doing so, the MFAC will add value to the Mayoral portfolio, by supporting the effective and efficient governance of WMFS through the established WMCA governance framework.

Purpose, scope and key assumptions:

- 3.8 The Committee will develop proposals which define the roles and responsibilities of the MFAC, aligned to those defined and approved by all local constituent councils through the Governance Review,

Scheme and subsequent draft Order. The MFAC will form part of the WMCA governance framework.

- 3.9 The Committee's considerations will also take into account those governance requirements which exist for the WMFS, but are not reflected in the current WMCA governance structure.
- 3.10 The proposals of the Committee will be provided as recommendations to the Authority and subsequently provided to the WMCA for consideration as part of the revision to the WMCA governance structure.
- 3.11 The following areas will be out of scope of the committee to make recommendations on:
- The role and responsibilities of the CFO for WMFS as set out in the Statutory Order
 - The accountability of the Mayor in exercising WMFS functions as set out in the Statutory Order.
- 3.12 It is recognised that the outcomes of this review may highlight interdependencies, connections or impacts on these roles and accountabilities.
- 3.13 It is a key assumption that the established WMCA governance framework and committee structure will provide a basis for effective governance of WMFS and the Mayor in exercising their Statutory duties as set out in the Statutory Order.
- 3.14 Aligned to paragraph 3.7 the MFAC roles and responsibilities will be as proposed in the Governance Review and reflected in the draft Order. This is captured in Appendices 1, 2 and 3.

Timeline of work:

3.15 The below is an indicative timeline and aligns to progress of the Order:

G&T meeting dates	Detail
8 October 2018	Commissioning of work
12 November 2018	Committee review of current and future governance committee structure for WMFS, as well as gaps and role of MFAC
10 December 2018	Committee review outcomes and propose recommendations for role of MFAC.
28 January 2019	Committee review recommendations
18 February 2019	Authority reporting

Key stakeholders:

3.16 The below listed represent key stakeholders as part of this work:

WMCA
Chief Fire Officer
Strategic Enabling Team
Mayor and Mayors office
Representative Bodies
Home Office

4. EQUALITY IMPACT ASSESSMENT

In preparing this report an initial Equality Impact Assessment is not required and has not been carried out. The matters contained in this report will not lead to and do not relate to a policy change at this stage.

5. LEGAL IMPLICATIONS

Overall legal implications in relation to the Governance Review and Scheme have been included in previous Authority reports. There are, however, no immediate direct legal implications arising from this report.

6. FINANCIAL IMPLICATIONS

- 6.1 The financial implications have been included in previous reports to the Authority, namely, 17 September 2018. The draft Order has identified MFAC member expenses and paragraph 5(6) of the Order is referred to. The draft Order is set out in Appendix 3.

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](#)

[WMCA 14 SEPTEMBER 2018 GOVERNANCE OF WEST MIDLANDS FIRE SERVICE APPROVAL OF STATUTORY ORDER](#)

[WMFRA 17 SEPTEMBER 2018 ROUTE MAP TO MAYORAL COMBINED AUTHORITY GOVERNANCE](#)

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CHIEF FIRE OFFICER

Appendix 1

The Mayoral Fire Advisory Committee as set out in the Governance Review

Paragraph 5.4 of the Governance Review detailed the proposed scope of the MFAC, which is captured below. It should be noted that 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 was reflected in the report to the Authority on 17th September 2018.

1. *Enable leadership for the Service and Mayoral priorities across each of the seven local constituent councils of the WMCA.*

It is proposed that through the Committee arrangements the philosophy of collective representation across all seven constituent councils remain and that the Committee reflects the membership and balance derived from the approved arrangements for the West Midlands Reformed Fire Authority. This will enable proportionality across each of the constituent councils, as well as enabling continuity and equitable spread in roles and responsibilities.

It is proposed that lead members will represent the priorities and strategy of the Mayor and the Service in their respective constituent authority and will report on performance in relation to fire functions.

Committee members will also support their local community fire stations in engaging with the community through providing a link into respective constituent councils.

2. *Composition*

It is proposed the committee appointed should consist of a minimum of fifteen elected members from the WMCA constituent councils, the PCC (in accordance with the PACA 2017) and three further co-opted members from health, WMAS and the WMCA to promote greater challenge, transparency and further collaboration.

Existing political balance will be applied to the Committee.

The Chair of the committee will be appointed by the Mayor in consultation with constituent authority leaders.

It is recognised within this proposed model that the Mayor will gain greater accountabilities and this will need to be balanced effectively with both existing and future roles and responsibilities. It is proposed that the Committee members will support the Mayor in providing advice around fire related issues and exercising fire functions to ensure the right level of detail and understanding is provided to inform the Mayor's role as the Authority.

3. *Keep under review decisions made by the Mayor*

It is proposed that the role of reviewing decisions made by the Mayor is delegated to the Committee. Such reviews will be aligned to the National Framework for the Fire and Rescue Service and through prepared reports, will inform the WMCA about decisions made in relation to the exercising of fire and rescue functions. This will enable a retention and continuation of knowledge and expertise in relation to fire at the outset of transferring the role of fire into the WMCA.

The Committee will review decisions made by the Mayor.

The proposed role of the Committee would be to report back to the WMCA on decisions made.

The Committee will not be a decision-making committee this responsibility will remain with the Mayor and Chief Fire Officer, as appropriate.

4. *Act as the 'voice' of the fire service within the seven constituent councils, regionally with other FRSs, and nationally through the National Joint Council and Local Government Association.*

The Committee will support the Mayor by continuing with the strategic engagements cited in paragraph 1 thereby adding value to and influencing local, regional and national engagements through its sector expertise.

5. *Engage with and influence government policy on behalf of the Mayor in matters such as the impact of CSR on the ability to provide continuity of services to the West Midlands communities.*

Working regionally and nationally with the Fire Sector to engage with and influence issues such as flooding, funding, and so on.

The Committee will continue to be a key resource in enabling a wider awareness of the challenges faced locally both from a fire-fighting and community perspective. It will continue to represent the Service through bodies such as those listed in paragraph 1.

6. *Enable the development of collaboration, partnerships and services to the community through engagement with constituent councils, emergency services and beyond, thereby fulfilling the requirements of the duty to collaborate.*

The Committee will provide the support required to fulfil the legislative obligations prescribed by the PACA 2017.

Appendix 2 – Proposed Future Governance Framework for Mayoral model set out in the Governance Review

The proposed framework in of the Governance Review, which is captured below, has been amended following the consultation and engagement with constituent councils. Further to the information set out in Appendix 1, this detail is reflected in the current draft of the Order, which is contained in Appendix 3.

ROLES & RESPONSIBILITIES

WHAT WILL THIS MEAN?

<p>Mayor Single elected accountable figure</p>	<ul style="list-style-type: none"> • Governance (supervisory body) for the Service, guided by LGA and LGiH Acts • Exercises all 'fire and rescue' functions – FRS Act 2004 and enabling: • Accountable for the: <ul style="list-style-type: none"> • Integrated Risk Management Plan (National Framework)* • the Corporate Strategy – The Plan* • Budgets (Capital and revenue)* • Raises precept* • Responsible for Senior & Statutory Officer appointments* 	<ul style="list-style-type: none"> • The WMCA owns all properties rights and liabilities of the former Authority and all functions • The WMCA employ all staff including the CFO • The Mayor only can exercise all fire and rescue functions and can delegate these to a committee and/or officers other than roles and responsibilities marked with * • The Mayor is accountable figure to the communities for services provided, as set out in the FRS Act and other enabling legislation • The Mayor provides strategic policy direction • The Mayor oversees the efficiency and effectiveness of the Service
<p>WMCA (governing body)</p>	<ul style="list-style-type: none"> • Owns all functions, properties, rights and liabilities, including employment contracts of the Service staff 	
<p>Mayoral Fire Advisory Committee (Specialist review and advice to Mayor)</p>	<ul style="list-style-type: none"> • Leadership for WMFS priorities across seven constituent councils • Enabling development of local authority and health care partnerships • Review functions - i.e. reviewing decisions made against the local risk plan and the corporate strategy (statutory functions) • Enabling regional fire and local government relationships • Lobbying functions with other FRSs through AMFRA • A voice and representation within LGA and NJC working with alongside NFCC • Ceremonial support for Mayor for the Service 	<p>The Committee has clear delegations around scrutiny of Mayoral decisions, providing reports to the WMCA</p> <p>Supports the Mayor both locally and nationally as the political 'voice' for the Service</p>
<p>Chief Fire Officer/Officers Accountable to the Mayor</p>	<p>Head of Paid Service for the Service</p> <p>Accountable to the Mayor for the delivery of services within a balanced budget:</p> <ul style="list-style-type: none"> • the delivery of the Service Strategy (incl. matters relating to exercising functions of the Fire and Rescue Services Act 2004, etc) • the delivery of a staffing structure & models supporting current and future Strategy • the deployment of resources to meet risk • the transformation of services to meet the Service's and the Mayor's/WMCA's priorities. 	<p>Accountability for the delivery of Strategy and Integrated Risk Management Plan, enabled through robust decision making at the right level. Delivering operational effectiveness through the right:</p> <ul style="list-style-type: none"> • Allocation of resources • Recruitment and management of staff • Workforce reform & development

Appendix 3 – Draft statutory Order to enter Parliamentary process

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 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⁾.

⁽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.

⁽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.

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 responsibility for managing the fire and rescue service;

“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

(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⁾;

⁽³⁾ 2004 c. 21.

⁽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.

“the fire and rescue service” means the personnel, assets, finances, reserves 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 Fire Committee” has the meaning given in article 4(3);

“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.

⁽⁶⁾ 2004 c. 36.

⁽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).

Exercise of fire and rescue functions

4.—(1) are exercisable only by the Mayor. are exercisable only by the Mayor. 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 Committee”) to advise the mayor on the exercise of fire and rescue functions.

(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.

The Mayoral Fire Committee

5.—(1) The Mayoral Fire 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—
 - (aa) the Mayor must notify that constituent council, giving reasons, and
 - (bb) that constituent council may nominate a further person from that council’s elected members who must be appointed by the Mayor,
- (b) the police and crime commissioner in relation to the Area,
- (c) two co-opted members 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 in accordance with paragraph (1)(a), 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).

⁽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.

(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 allowances to members of the Committee in accordance with its scheme of allowances.

(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) are “excluded functions”—are “excluded 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.

Delegation of functions to the Chief Fire Officer

7.—(1) The following functions are exercisable only by the Chief Fire Officer in relation to the fire and rescue service—

- (a) the operational and technical leadership 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 priorities and objectives,
- (f) the functions of the WMCA under—
 - (i) sections 6, 7, 8, 13, 16 and 17 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) the Regulatory Reform (Fire Safety) Order 2005⁽¹²⁾,
 - (iv) 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 assets, finances and reserves,
- (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 functions of the Chief Fire Officer, and
- (b) the functions of persons under the direction and control of the Chief Fire Officer.

⁽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.

⁽¹¹⁾ 1972 c. 70.

⁽¹²⁾ S.I. 2005/1541.

PART 3

Transitional arrangements and asset transfers

Transfer of property, rights and liabilities

8.—(1) were property, rights and liabilities of the WMFRA are transferred to, and 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 Mayor.

(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).

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

Address
Date

Name
Minister of State
Home Office

SCHEDULE

Article 12

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)⁽¹³⁾, 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)~~(OBJ)~~14 is modified as follows. 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)~~(OBJ)~~15 is modified as follows. is modified as follows.

⁽¹³⁾ 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.

⁽¹⁴⁾ 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 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.

⁽¹⁵⁾ 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

(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)⁽¹⁶⁾ 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)(~~OBJ~~~~10~~)17 is modified as follows. 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)⁽¹⁸⁾ 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”.

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.

⁽¹⁶⁾ 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.

⁽¹⁷⁾ 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.

⁽¹⁸⁾ 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

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)⁽¹⁹⁾ 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”.

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)⁽²⁰⁾ 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)~~OBJ~~21) is to be read as if, after paragraph (8), there were inserted—
“~~OBJ~~22).

(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)⁽²³⁾ 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⁽²⁴⁾ 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)MCA as a fire and rescue ~~OBJ~~~~OBJ~~~~OBJ~~”.

Contingencies Act 2004 (c.36) .

⁽¹⁹⁾ S.I. 2009/2393.

⁽²⁰⁾ S.I. 2012/1647.

⁽²¹⁾ 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.

⁽²²⁾ S.I. 2019/[tba].

⁽²³⁾ S.I. 2014/1638; to which there are amendments not relevant to this Order.

⁽²⁴⁾ 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)⁽²⁵⁾ 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 [*to be competed*] 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, 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.

⁽²⁵⁾ 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.

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.