

Annex 1

West Midlands Combined Authority Draft Governance Review

Introduction

This report has been prepared by the West Midlands Combined Authority in consultation with the Leaders of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton Local Authorities. The report sets out the findings of the governance review undertaken across the whole geography of the WMCA area in accordance with section 111 of the Local Democracy, Economic Development and Construction Act 2009 (the 2009 Act).

Executive Summary

The West Midlands has been at the forefront of devolution in England. In November 2015, the government and WMCA agreed an ambitious devolution deal, including a directly elected mayor and powers to improve transport, skills, housing and to drive growth in the region. In 2017, devolution was deepened, and new funding agreed, including significant further investment in transport. The West Midlands has seized these opportunities, demonstrating what local leaders can achieve when empowered with the tools they need. Local leaders have increased investment in transport from £38 million in 2016/17 to £363 million in 2021/22, pioneered new approaches to brownfield development and net zero homes and delivered the c. £130 million Adult Education Budget, securing an over 10% increase in 2020 alone in the portion of the population with Level 3 skills.

The West Midlands is now embarking on a new phase by bringing greater investment, control over investment and powers to the region.

The new deal is estimated to be worth in the region of £1.5bn and it is hoped that this will reboot the economy, provide vital housing, jobs and skills, bolster our existing strengths in transport and Smart City Region innovation, and drive our net zero ambitions. The deal looks to create a more prosperous and better-connected West Midlands which is fairer, greener and healthier.

In February 2022, Government announced, in its Levelling Up White Paper, new devolution deals for the West Midlands, along with Greater Manchester. Since then, the region and its partners have been working closely with Government to secure the best deal for the region, its economy and its communities.

The Deal recognises that the WMCA currently lacks the key levers and flexibility to 'unleash the potential of devolution' and goes on to address this through a range of new powers, responsibilities and resources.

WMCA Leaders agree that in order to fulfil local economic priorities and provide the best services for the citizens of the West Midlands, there is a need to draw down significant additional powers and funding from the Government through a deeper devolution deal. There is consensus that powers and funding should sit at the lowest feasible level of governance and that they should be drawn down from government and not drawn up from local authorities.

The WMCA has therefore commissioned this review to look at whether the proposed new functions contained in the deal will be the best way of achieving the WMCA's ambitions to create a more prosperous and better-connected West Midlands which is fairer, greener and healthier.

This Review seeks to evidence how the deal will deliver significant new responsibilities and investment that will benefit our communities and businesses across the region.

When referring to WMCA as the decision-making body in this document, it means those members appointed by the seven constituent councils and the Mayor.

Section 1: Purpose of the review

The purpose of this governance review, undertaken in accordance with Section 111 of the 2009 Act is to look at the exercise of statutory functions in the West Midlands with a view to deciding whether the new functions contained in the deal would be likely to

- Improve the exercise of statutory functions in the area of the WMCA;
- Secure more effective and convenient local government for the area; and
- have a positive or neutral impact on the identities and interests of our local communities

If the Review demonstrates that new functions and powers would be beneficial, the WMCA will prepare and publish a scheme with new functions and changed constitutional arrangements. Under section 112 of the 2009 Act, the review needs to conclude that the exercise of the power to make Orders under sections 104-107 in the West Midlands area would be likely to improve the exercise of statutory functions in relation to the West Midlands area.

<https://www.legislation.gov.uk/ukpga/2009/20/section/112>

A public consultation will then be carried out on the proposals set out in the scheme. The Secretary of State will be provided with a summary of consultation responses and will need to consider whether a new order should be made under the 2009 Act to provide the WMCA with the new powers and duties suggested by the deal.

To give effect to certain elements of the Deal, it is necessary for the WMCA to comply with the requirements of sections 111, 112 and 113 of the 2009 Act which sets out the procedure to be followed in order to make changes to existing combined authority arrangements.

Only the new powers and duties contained within the deal require consideration as part of the statutory process. However, in order to provide the context within which these powers and duties will be exercised, a summary of all the proposals, has been included. The full Deal text can be accessed here [West Midlands Combined Authority: "Trailblazer" deeper devolution deal - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/414447/West_Midlands_Combined_Authority_-_Trailblazer_deeper_devolution_deal_-_GOV.UK.pdf)

The new functions requiring agreement under the requirements of the 2009 Act relate to **improving the public's health** and the paying of the **Bus Service Operators Grant**.

Section 2: New Statutory Responsibilities

This section sets out the formal statutory process of the governance review in relation to the three new statutory functions that will be taken on by the WMCA.

Legal context

The Government and the WMCA have reached agreement in relation to the devolution to the WMCA of a further range of powers.

To give effect to certain elements of the Deal, it is necessary for the WMCA to comply with the requirements of sections 111, 112 and 113 of the 2009 Act which set out the procedure to be followed in order to make changes to existing combined authority arrangements.

However, it should be noted that many aspects of the Deal do not require legislative change to implement. The powers outlined below are those that are expected to require legislative or regulatory change before they can be exercised by the WMCA or Mayor and therefore follow the process outlined:

1. **Health** - The WMCA has a key role to play through exercising its transport, housing, skills and economic growth functions, which constitute the wider determinants of health and have a key impact on health outcomes. The government and WMCA will agree a new formal duty on WMCA to improve the public's health, concurrent with local authorities as set out in the NHS Act 2006. This will neither supersede existing duties of partners nor be subservient to them, rather it will be a supportive addition to bring about systemic change and will enable WMCA to act to improve health through its wider responsibilities. The new Health duty formally recognises the impact that the existing statutory functions of the WMCA can have in improving health outcomes for our communities and will in no way impact, other than in a supportive way, the existing functions carried out by Local Authority Public Health teams or NHS England.

2. **Bus Service Operators Grant** - The government will devolve powers for the payment of the bus service operators grant to the Mayor. This is in line with the commitment in the National Bus Strategy and the government is currently working on the reform of the grant. WMCA will provide support to identify the funding for bus services entirely within the WMCA boundary that is paid to commercial operators and would be suitable to be devolved to WMCA, both currently and following national reform.

The reform, and subsequent devolution to the WMCA, will enable the grant to support the government's and WMCA's shared priorities to support important local bus services and reduce environmental impacts through facilitating the transition to zero emission buses. This devolution will also be supported by the WMCA delivering

commitments set out on in its adopted Enhanced Bus Partnership (EP) Plan and Bus Service Improvement Plan (BSIP).

Process to be followed

Section 111 of the 2009 Act

Section 111 of the 2009 Act allows combined authorities to undertake, in relation to an existing combined authority (such as the WMCA), a review of one or more “combined matters”. For the purposes of section 111 of the 2009 Act a “combined matter” is defined at subsection 111(3) as being:

- a. a matter in relation to which an order may be made under any of sections 104 to 107;
- b. in relation to the combined authority or any executive body of the combined authority, where that body exists at the time of the review, a matter concerning the combined authority or the executive body that the combined authority has power to determine.

Insofar as sub-section 111(3)(a) of the 2009 Act is concerned, sections 104 to 107 of the 2009 Act set out the range of matters that the Secretary of State may include within an order concerning a combined authority. These include power for the Secretary of State to:

- make in relation to a combined authority any provision that may be made in relation to an Integrated Transport Authority under certain provisions of the Local Transport Act 2008;
- make in relation to a combined authority any provision that may be made in relation to an Economic Prosperity Board (EPB) in relation to the exercise of local authority functions;
- make provision for a function of a public authority that is exercisable in relation to a combined authority’s area to be a function of a combined authority;
- make provision for conferring on a combined authority in relation to its area a function corresponding to a function that a public authority has in relation to another area;
- make provision for any function of a combined authority which has an elected mayor (a “mayoral combined authority”) to be a function only exercisable by the elected mayor;
- make provision for the costs of an elected mayor for the area of a combined authority that are incurred in, or in connection with, the exercise of “mayoral functions” to be met from precepts issued by the authority under section 40 of the Local Government Act 1992.

Section 112 of the 2009 Act

Where a combined authority that has undertaken a review under section 111 of the 2009 Act concludes that the exercise of the power by the Secretary of State to make an order under any one or more of sections 104, 105, 105A, 106 and 107 would be

likely to improve the exercise of statutory functions in relation to an area of a combined authority, it may prepare and publish a 'scheme' relating to the exercise of the power or powers in question.

Section 113 of the 2009 Act

The Secretary of State may make an order under section 104, 105, 105A, 106 or 107 of the 2009 Act only if:

- a. the Secretary of State considers that to do so is likely to improve the exercise of statutory functions in the area or areas to which the order relates, and
- b. any consultation required by section 113 (2) of the 2009 Act has been carried out.

If a scheme has been prepared and published under section 112 of the 2009 Act the secretary of State must have regard to that scheme in making the order.

The Secretary of State must carry out a public consultation unless:

- (a) a scheme has been prepared and published under section 112,
- (b) the authorities that prepared and published the scheme carried out a public consultation in connection with the proposals contained in the scheme and provided the Secretary of State with a summary of the consultation responses, and
- (c) the Secretary of State considers that no further consultation is necessary.

In making the order, the Secretary of State must under s113(3) have regard to the need:

- a) to reflect the identities and interests of local communities, and
- b) to secure effective and convenient local government.

In addition to the above requirements, the Secretary of State cannot make an order under sections 104, 105 or 105A of the 2009 Act without the consent of the constituent councils or the WMCA.

Section 3: Summary of the Wider Deal

This section sets out the wider deal including those non-statutory powers that do not require formal consultation, but which provide the wider context for the deeper devolution deal.

Governance and Accountability

The WMCA will be held accountable through the Local Government Accountability Framework, English Devolution Accountability Framework and enhanced scrutiny measures. The Mayor and WMCA will be expected to present to Parliamentary Select Committees as requested, in conjunction with Mayor's Question Time and quarterly engagement with West Midlands MPs.

Fiscal Devolution, Funding and the Single Settlement

The commitment to 10-year Business Rates Retention across the region is estimated to be worth £450m over the period and will drive confidence in public sector borrowing, de-risk investment modelling and accelerate delivery. It will also remove the uncertainty of the current pilot scheme, boosting public financial sustainability and local authority spending power.

Through its 'Single Settlement', the Government commits to giving WMCA single capital and revenue funding certainty, equivalent to government departments – increasing regional autonomy and the ability to prioritise decisions locally in the areas of:

- local growth and place
- local transport
- housing and regeneration
- adult skills
- housing retrofit

These settlements will cover an entire spending review period.

In addition, Government has committed to a £25m capital fund to support business decarbonisation, culture, environmental programmes and the West Midlands' Smart City Region initiative.

Transport

Building on the West Midlands' strengths in transport innovation, as the country's first future transport zone, and its close partnership working with Government, the Deeper Devolution Deal provides:

- A pioneering Local Transport Plan approach which embeds 'quantifying carbon reductions' (QCR);
- Leading a collaborative research and learning programme through an 'influencing transport lab' (ITL);
- Establish the UK's first transport sandbox to test new innovations and inform national policy, while boosting global investment and cluster growth;
- Devolution of the Bus Service Operators Grant to improve services and incentivise net zero transition;
- Closer partnership with Great British Railways to deliver a rail service closer to the standards of London;
- Additional £60m to Wednesbury-Brierley Hill Metro extension
- Supporting development of the region's ambitious Very Light Railway scheme in Coventry.

Housing, Land and Regeneration

A £100m Single Regeneration Fund will be deployed flexibly across the region, and for the first time, brownfield land funding will support commercial, employment land and mixed-use development, as well as delivering 4,000 homes.

The commitment of up to £400m Affordable Housing Programme ('AHP') funding to the region, and greater influence over affordable housing delivery and strategy acts a precursor to full devolution of the AHP, worth billions of pounds in funding, to the region from 2026, this is the first time this has happened outside Greater London.

The WMCA will be involved in decisions on major UK government land disposals and reconfiguration, this will help in driving regeneration and unlocking private investment through repurposing and redeveloping publicly owned land.

The region will also be able to designate 'Levelling Up Zones': priority areas that would benefit from enhanced and targeted fiscal measures. These 'growth zones' will attract 25 year Business Rates Retention (with no reset).

Skills and Employment Support

Further areas of post-19 education and skills will be devolved to WMCA along with greater oversight of post-16 technical education and skills, and careers, including a crucial role to ensure the local skills system responds to the Local Skills Improvement Plan ('LSIP'). This will include, from the next Spending Review, greater devolution of non-apprenticeship adult skills functions and funding, and greater freedoms around Free Courses for Jobs and Bootcamps. WMCA will also become the 'central convenor' for careers advice in the region, working closely with Government to ensure provision meets the economic needs of the West Midlands.

Alongside establishing a Regional Labour Market Partnership Board, WMCA will be able to co-design contracted employment support programmes with DWP to ensure they are the aspirations of the region, supported by enhanced data-sharing agreements and in the longer term may commission such services on behalf of the DWP.

Business Productivity and Innovation

WMCA will adopt a new role in integrating and promoting business support services across the region, this will be powered by a new Strategic Productivity Partnership with departments across Government, greater involvement in the governance of the British Business Bank's UK funds, and collaboration with the UK Investment Bank on commercial arrangements for infrastructure finance.

Building on the West Midlands' participation in the £100m Accelerator funding, through a Strategic Innovation Partnership WMCA will be able to present regional innovation opportunities to inform UKRI's future funding strategies. This will include working collaboratively to bolster regional R&D growth and pilot new initiatives, such as the UK Further Education Innovation Fund, place-based knowledge transfer programmes, and public procurement flexibilities.

Trade and Investment

The Department for Business and Trade ('DBT') will recognise the West Midlands Growth Company as the lead agency for investment in the region and work with them to develop a WM International Strategy, enhance data sharing routes and undertake a review of key account management with the region's major employers.

DBT will also support WMCA to boost West Midlands' presence in trade missions and dedicate support from the UK Export Academy to increase trade opportunities.

Net Zero and Environment

From 2025, Government will pilot with the West Midlands the devolution of housing retrofit funding. This will remove uncertainty and inefficiencies in the existing funding system and inform future models for Government net zero funding.

There is recognition of the region's involvement in wider energy system management and planning, and responsibility for heat zone designation, energy efficiency advice and attracting private sector finance. In addition, funding from the £25m capital pot is anticipated for industrial decarbonisation programmes for regional businesses, natural environment finance models and air quality monitors to support the region's wider environment and net zero ambitions.

Digital and Data

The Department of Science and Technology ('DSIT') will work proactively with WMCA through a Digital Infrastructure Leadership Group to accelerate broadband roll-out and connectivity, and through a £4m fund, provide 20,000 devices to boost digital inclusion.

Government will agree a new Data Partnership with WMCA, which will streamline WMCA's negotiations with individual government departments over access to specific datasets and support timely access to data particularly around: skills, careers and labour markets; business support, trade and investment; and energy and climate resilience.

Alongside this, Government will work with WMCA and its public body partners across the region to improve routes for data-sharing to enable WMCA to undertake regional analysis of data to better inform strategic decision-making locally.

Culture, Social Economy and Tourism

To maximise the Commonwealth Games Legacy Fund, a new Regional Culture and Heritage Framework will seek to align and maximise funding from arm's length bodies, including opportunities for co-investment and greater collaboration. Local authorities will be closely involved in the development of the Framework and continue to engage directly with funding bodies.

Recognising WMCA's commitment to double the size of the social economy, Government will work with the Combined Authority to develop a pioneering Social Economy Accelerator Programme and Growth Fund.

DCMS and Visit England will work with WMCA and WMGC to create England's second Destination Development Partnership pilot and the associated merits of establishing WMGC as a Local Visitor Economy Partnership ('LVEP').

Public Service Reform

Government and WMCA will agree a new formal duty on WMCA to improve public health. This will be a concurrent arrangement with local authorities and neither superseding, nor being subservient to, existing duties. Through this, both parties will explore how best to use their collective resources and expertise to develop and test innovative solutions to shared prevention and population health priorities. This would include the development of AI labs, predictive analytics and machine learning, and shared care records, building on the West Midlands' Smart City Region strengths, and supported by in principle funding through the identified £25m allocation mentioned above. This will need further development at the implementation stage before being finally approved.

Section 4: Governance options, Conclusions and Recommendation

- Option 1 – To endorse the findings of the governance review and proceed with the scheme and consultation.
- Option 2 – Not to endorse the findings of the governance review and only implement those parts of the deal that do not constitute new powers or duties.
- Option 3 – Not to proceed with any of the Devolution Deal.

As previously stated, any new powers or functions would need to be devolved to the Combined Authority via secondary legislation, and therefore would require Government (and local) approvals to make the relevant order.

Conclusion

The review has found that the evidence shows that the Deeper Devolution Deal will maximise the WMCA's current role and responsibilities and revolutionise how Government funding is implemented leading to more effective delivery of statutory functions. The deal represents a significant step forward in delivering more and better jobs to the area. It delivers significant new responsibilities and investment that will benefit our communities and businesses across the region. It means that decisions previously taken centrally can now be taken closer to the people affected and gives the area greater financial freedom and flexibility to manage our investment choices according to local priorities.

Recommendations:

1. To improve the effective exercise of statutory functions across the area of the WMCA, adopting the new powers and duty contained within the deal (Option 1) is considered optimal for the reasons detailed below.

2. That a governance scheme is published (a draft scheme is included at Appendix A) that confirms the adoption of the new powers and duties detailed in this report.

The reasons are summarised below:

a. The deal delivers significant new responsibilities and investment that will benefit our communities and businesses across the region.

b. Bus Service Operators Grant

The new statutory functions in relation to Bus Service Operator's Grant will enable the WMCA to provide support to identify the funding for bus services entirely within the WMCA boundary that is paid to commercial operators and would be suitable to be devolved to WMCA, both currently and following national reform. This will help to improve the WMCA statutory functions in relation to transport within the area. This new function will support the government's and West Midlands' shared priorities to support important local bus services and reduce environmental impacts through assisting the change to zero emission buses.

c. Health Improvement Duty

In relation to the new Health duty, it was recognised through WMCA's Health of the Region report (2020) that a disproportionate number of people in the West Midlands had worse health outcomes from preventable causes than the national average. In addition, two of the three integrated care systems areas in the West Midlands had a higher percentage of deprived neighbourhoods than anywhere else in the country. Health inequalities, poor health and economic inactivity cannot be tackled in isolation and require greater join up between local partners to improve outcomes for people in the WMCA region. The new Health duty will provide WMCA with a duty to consider the steps it needs to take to improve health in the delivery of its functions and also to take steps to improve the health of residents within the WMCA area through providing help, advice, facilities and services to enable them to achieve a healthy lifestyle and to improve their health outcomes. The new Health duty will also seek to ensure that when new funding streams relating to population health improvement and prevention are under consideration, government will engage with WMCA and its constituent local authorities to discuss whether the WMCA's allocation could be included as part of the department-style single settlement.

The health improvement duty will give the WMCA a more formal responsibility to consider matters related to health of the population as it exercises its wider responsibilities for transport, housing, skills, economic growth and net zero. It will do this primarily by adopting a 'health in all policies' (HIAP) approach. One

of the major opportunities for achieving HIAP is taking a whole system approach across multiple governance frameworks and settings, and this is where the WMCA is well placed to facilitate and enable members through its core responsibilities and their interconnections with local authority, NHS and Police responsibilities and leadership.

There is important evidence that adopting the HIAP approach can bring significant health benefits and generate a good return on investment, both for health and for economic sustainability. For example:

- Some Department for Transport behaviour change programmes which have encouraged people to use buses, walking or cycling have been demonstrated to have a cost-benefit ratio of 4.5:1.
- Kings Fund analysis of housing interventions to keep people warm, safe and free from cold and damp show that for every £1 spent on home improvements saves the NHS £70 over 10 years.

International evaluation of HIAP demonstrates that it requires senior level commitment and can be effective as a framework for co-financing and co-ownership. HIAP can be applied at local, regional and national government levels and while this is being developed in local authorities, and worked on at a national level by OHID, it is limited without similar application at the WMCA level.

Adopting a 'health in all policies' (HIAP) approach will require existing WMCA officers to adapt their existing activity to address health issues in their day-to-day work. This might mean, for example, a greater attention to accessibility provisions for disabled people in the design of transport projects; including health criteria more explicitly in business case appraisal; or monitoring and evaluating the mental health benefits of environmental programmes.

The health improvement duty will enable the WMCA to facilitate co-ordination and collaboration on health improvement issues across a wider regional footprint around key issues of mutual concern and advocate on behalf of the region with government and other stakeholders. The Devolution Deal text suggests a number of priority areas where such collaboration could be beneficial: "to enhance the provision of and access to a healthier food environment for children and young people, establish a regional tobacco alliance with local public health and integrated care boards and pilot vaping as a quit tool to reduce smoking rates in the region; and drive forward the ambition to be an exemplar region for disabled people."

There is a risk that such a convening role may add further complexity and confusion in relation to the newly formed Integrated Care Board (ICBs) in the region as there are overlapping geographies and it is very important to be clear that the WMCA would have no role in commissioning health or social care services. There is also a risk of confusion between regional health agencies: it is important to recognise the difference between the more limited role of the WMCA in relation to NHS Midlands and the Office for Health Improvement and Disparities (OHID) which also operates on a Midlands-wide

footprint. These agencies support the adoption of a health improvement duty for the WMCA and do not feel this is a significant risk, rather they have reinforced that the duty would support the whole system approaches needed to tackle embedded inequalities.

Any funding that the WMCA receives to pursue its responsibilities must be new and additional to the region to support its work in tackling the wider determinants of ill health. By adopting a health improvement duty, the WMCA may find it easier to attract new funding to the region and avoid some of the challenges it currently faces in drawing down government funding.

The health duty might also enable better access for the WMCA to access global development funds and enable the region to join global partnerships like the Healthy City Partnership, as a city region, which currently only allows public authorities with populations of more than one million to join, similar to the way that London has been able to join through the GLA.

d. The proposals will either build on established regional governance arrangements which represent the views of local communities or in the case of health, seek to harness the existing powers and functions to supplement and support the work already being carried out at local authority level

e. The proposals will secure more effective and convenient local government by reducing complexity and streamlining the delivery of public services within the area. This will be greatly enhanced by the commitment to 10-year Business Rates Retention across the region and the 'Single Settlement'.

f. The statutory criteria for preparing and publishing a scheme are met, i.e., the making of an order under S104 and S105 to enable the adoption of the new powers and duties for the area of the WMCA is the best option and will be likely to improve the exercise of statutory functions in that area.

g. In addition, adoption of the new powers and duty will:

- **have a positive impact on the interests and identities of local communities** – these proposals build on established regional governance arrangements which cover a coherent functional economic area and which represent the views and interests of local communities; and
- **secure more effective and convenient local government** by reducing complexity and streamlining the delivery of public services within the area.