

## **West Midlands Combined Authority Draft Governance Review**

**The Transfer of functions in relation to Bus Service Operator's Grant under section 154 (1) of the Transport Act 2000 to WMCA as a Mayoral function**

**The Transfer of functions in relation to Bus Service Operator's Grant under sections 154 (3) & (4) of the Transport Act 2000 to WMCA**

**Proposal for the Making of an Order under sections 105A of the Local Democracy, Economic Development and Construction Act 2009 as amended by the Cities and Local Government Devolution Act 2016**

### **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 as amended by the Cities and Local Government Devolution Act 2016 (the 2009 Act) to consider how the transfer of the following Bus Service Operators Grants (BSOG) functions would impact on the effectiveness of service delivery:

1. Powers for the payment of grants to bus service operators to WMCA as a Mayoral function - section 154(1) of the Transport Act 2000.
2. A power corresponding to the function in sections 154(3) & (4) of the Transport Act 2000 that enables grants to 'be of such amount and subject to such conditions' (referred to in this document as BSOG policy powers). This function would be exercisable by the WMCA subject to national guidance to which the WMCA must have regard in relation to making policy for its area.

The Secretary of State will continue to hold powers to make grants to bus service operators in the area.

The Governance Review has been undertaken as part of the overall review of functions which was carried out by WMCA to support the Trailblazer Deeper Devolution Deal (the Deal) negotiated between the WMCA and the Government.

## **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.

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 the WMCA Board made up of those members appointed by the seven constituent councils, the ten Non-Constituent Councils and the Mayor, taking decisions in accordance with statutory voting rights.

## **Section 1: 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 mechanisms set out in 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.

Administration of grants to bus service operators would be treated as a part of the normal business operations of the Combined Authority and would be subject to the same accounting, auditing and transparency requirements as other income and expenditure.

BSOG policy powers will be exercisable by the WMCA in line with national guidance to which the WMCA must have regard in relation to making policy for its area.

Policy for the award of Bus Service Operator's Grant would be developed through WMCA's usual policy development procedures and usual governance arrangements including review and Scrutiny in accordance with the Constitution and the Scrutiny Protocol and would be subject to approval and adoption by the WMCA Board.

### **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:

- Devolution of grants to bus service operators and a commitment to work with the WMCA to finalise the design of a national reform package for the bus service operator grant and implement these reforms by 2025;
- 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), which the government will explore sponsorship of;
- Establish the UK's first transport sandbox to test new innovations and inform national policy, while boosting global investment and cluster growth;
- A new partnership with Great British Railways, once established, to deliver a rail service closer to the standards of London;
- Additional £60m to Wednesbury-Brierley Hill Metro extension, subject to a subsidy control assessment and business case approval.
- Supporting the 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').

## **Section 2: 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
- Reflect the identities and interests of our local communities

If the Review demonstrates that the transfer of the new functions to WMCA would improve service delivery, the WMCA will prepare and publish a scheme with the new functions and changed constitutional arrangements. Under section 105B of the 2009 Act, the review needs to demonstrate that the exercise of the power to make an Order under section 105A in the West Midlands area would be likely to improve the exercise of statutory functions in relation to the West Midlands area.

Given that the grant of the new functions will be under Section 105A of the 2009 Act, a public consultation will not be required. The Secretary of State will be provided with a copy of the agreed scheme and governance review and will need to consider whether a new Order should be made under the 2009 Act to provide the WMCA with the new functions suggested by the Deal.

Only the new powers 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/614212/West_Midlands_Combined_Authority_-_Trailblazer_deeper_devolution_deal_-_GOV.UK.pdf)

The new functions requiring the making of an Order under the requirements of the 2009 Act relate to the paying of grants to bus service operators under sections 154(1) and 154(3) & (4) of the Transport Act 2000.

### **Background to BSOG**

Under section 154(1) of the Transport Act 2000 the Secretary of State may pay grants to eligible Bus Service Operators towards their cost of operating those services.

Sections 154(3) & (4) provides that the grants may be of such amount and subject to such conditions as may be determined by the Secretary of State.

Commercial BSOG is existing funding which Government currently pays directly to operators. Under existing arrangements BSOG is directly linked to bus fuel consumption. Circa £26m per annum was paid to bus operators across the WMCA area (pre-pandemic).

With a unique bus market, with one commercial operator operating over 95% of the West Midlands bus network, ensuring that value for money is achieved locally from public subsidy and planning an effective recovery for bus services post pandemic is difficult. This has been further exacerbated by a reduction in local bus market competition, with five local bus operators ceasing operations since March 2020, and ongoing bus industry pressures such as driver shortages, wage, and fuel cost inflation.

## **Proposal objectives**

The devolution of powers under section 154(1) of the Transport Act 2000 will enable WMCA to pay grants including BSOG to bus service operators. This will support WMCA's early engagement with bus operators in the West Midlands. This may mitigate against unpredictable and potentially disruptive market behaviour and may act to encourage high levels of professional conduct in the market being maintained during this period of transition. These powers would assist WMCA to gain valuable insight into the market and the additional scrutiny provided by WMCA may be able to encourage more efficient practices by the operators.

The WMCA is directly managing two additional bus support funding grants, which are Network Stability Fund and Network Planning Fund (Bus Recovery Grant extension). The local management of this grant (on behalf of DfT) has delivered a stable bus network throughout 2022, supporting the most successful Commonwealth Games ever, and allowed for close working with bus operators to plan and improves services from January 2023. Administering the BSOG will build on the successful management of these grants.

It is proposed that the power to determine the amount and conditions of payment shall be devolved to the WMCA subject to a duty to have regard to any national guidance to be issued by the Secretary of State. In this Governance Review this is referred to as the policy making power.

Devolution to WMCA of powers under sections 154(3) & (4) of the Transport Act 2000 would enable WMCA to set policy for the award of BSOG, subject to having regard to national guidance. Through greater local control and design of policy, the WMCA would look to incentivise bus operators to use the grant to ensure investment in bus services aligns with WMCA policy outcomes. WMCA priorities for BSOG would seek to target:

- Incentivising greener vehicle fleet investment and maximising our position as the UK investment leader in decarbonising bus fleets, further boosting over £150m of fleet investment between public and private partners.
- Incentivising and working with private bus operators to expand bus services into areas of poor accessibility. This would place greater focus on where bus route mileage is delivered, compared to the current approach focused on total quantum. This would help to tackle the issue of 'overbussing' on certain routes to maintain a dominate commercial position at the expense of more marginal, socially beneficial services, thus helping to deliver greater benefits with the same level of public funding.

These policy outcomes would be subject to boundaries set by the national guidance, to which WMCA must have due regard.

## **Section 3: New Statutory Responsibilities**

This section sets out the formal statutory process of the governance review in relation to the new statutory function 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 further powers, most of which do not require legislative change to implement.

To give effect to the BSOG elements of the Deal legislative change is required and it is necessary for the WMCA to comply with the requirements of sections 105B. The WMCA has chosen to carry out this Governance Review under sections 111 and 112 of the 2009 Act which set out the procedure to be followed in order to make changes to existing combined authority arrangements.

## New Statutory Functions

**1 Administration of Bus Service Operators Grant** - The government will devolve powers for the payment of the BSOG under section 154(1) of the Transport Act 2000 to WMCA as a general function of the Mayor, such funding to be administered in accordance with current government policy.

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 subject to national reform.

**2 Policy Making Powers** – The government will devolve to WMCA a power corresponding to the function under sections 154(3) & (4) to make policy as to the award of Bus Service Operators Grant.

This function will be exercisable by the WMCA Board subject to national guidance, to which it must have regard in relation to making policy for its area.

The devolution to the WMCA Board of policy powers, subject to a duty to have regard to national guidance, could enable WMCA to direct 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.

In parallel, the government will work with the WMCA to finalise the design of a national reform package for the BSOG, in line with the trailblazer commitment, with the possibility of increased flexibility in how the WMCA uses the policy powers.

The devolution of these powers 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**

### **105B - Section 105A orders: procedure**

Section 105A(1)(a), (1) (b), (2) and (3)(b) of the 2009 Act (other public authority functions): provides for the Secretary of State to make provision by order for a function of a public authority that is exercisable in relation to a combined authority's area to be a function of the combined authority and to make provision by order 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.

The Secretary of State may make an order under section 105A only if a proposal for the making of the order in relation to the combined authority has been made to the Secretary of State by the appropriate authorities, or the appropriate consent is given and the Secretary of State considers that the making of the order is likely to improve the exercise of statutory functions in the area or areas to which the order relates.

For the purposes of subsection (1)(b), the appropriate consent is given to the making of an order under section 105A only if:

- in the case of an order in relation to an existing combined authority, each appropriate authority consents;
- in any other case, each constituent council consents.

### **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.

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 4: Governance options, Conclusions and Recommendation**

- Option 1 – To endorse the findings of the governance review and proceed with the scheme.
- 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.

As previously stated, the BSOG powers 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.

In particular the Review demonstrated that devolving the new statutory functions to WMCA would improve the effectiveness and efficiency of local service delivery for these functions.

### **Recommendations:**

1. To improve the effective exercise of statutory functions across the area of the WMCA, adopting the new power under Section 154(1) is considered optimal for the reasons detailed below.
2. To improve the effective exercise of statutory functions across the area of the WMCA, adopting the new power under Sections 154(3) & (4) subject to national guidance, is considered optimal for the reasons detailed below.
3. That a governance scheme is published (attached) 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. Grants to Bus Service Operators**

##### **Section 154 (1) of the Transport Act 2000:**

Devolving administration of the Bus Service Operators Grant to WMCA as a Mayoral function will support WMCA's early engagement with bus operators in the West Midlands, this may mitigate against unpredictable and potentially disruptive market behaviour and may act to encourage high levels of professional conduct in the market being maintained during this period of transition. These powers would assist WMCA to gain valuable operator data and insight, and the additional scrutiny provided by WMCA may be able to encourage more efficient practices by the operators.

##### **Sections 154 (3) & (4) of the Transport Act 2000:**

Devolving the policy making powers under sections 154 (3) & (4) of Bus Service Operators Grant to WMCA, subject to having regard to national guidance, could improve the exercise of this statutory function in the West Midlands by enabling WMCA to deploy the grant to incentivise a move to zero emission vehicles and also an expansion of services to areas which are underprovided for. 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. The proposals will build on established regional governance arrangements which represent the views of local communities.

d. The proposals will secure more effective and convenient local government by reducing complexity and streamlining the delivery of public services within the area.

e. The statutory criteria for preparing and publishing a scheme are met, i.e., the making of an order under S104 and S105A 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.

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

- **have a positive impact on the interests and identities of local communities** by securing environmental benefits through low emission vehicles and by expanding bus services to areas with low accessibility.
- **secure more effective and convenient local government** by reducing complexity and streamlining the delivery of public services within the area.