



WMCA Board

Date	14 September 2018
Report title	Governance of West Midlands Fire Service - Approval of Statutory Order
Accountable Chief Executive	Deborah Cadman, Chief Executive, West Midlands Combined Authority email: Deborah.cadman@wmca.org.uk tel: (0121) 214 7200 Phil Loach, Chief Fire Officer to West Midlands Fire & Rescue Authority email: phil.loach@wmfs.net tel: (0121) 380 6909
Accountable Employees	Karen Gowreesunker, Clerk to the West Midlands Fire & Rescue Authority email: karen.gowreesunker@wmfs.net tel: (0121) 380 6678 Henry Kippin, Director of Public Service Reform email: henry.kippin@wmca.org.uk tel: (0121) 214 7880
Report to be/has been considered by	Programme Board - 31 August 2018

Recommendation(s) for action or decision:

The WMCA Board is recommended to:

- (1) Note the Home Office response to the key asks set out in the Scheme document.
- (2) Confirm acceptance of the proposals set out in this report to progress the key asks locally; and confirm 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.

1.0 Purpose

- 1.1 The purpose of this report is to progress the journey in relation to the transfer of the governance of the West Midlands Fire and Rescue Service (WMFS) to the Mayoral WMCA; and for WMCA Board agree to the draft Order to be laid before Parliament.
- 1.2 To provide detail on the key asks detailed in the Scheme, the response of the Home Office to these asks; and our proposal as to how these asks will be addressed within the Order and constitution. The Board is asked to approve these resulting constitutional changes.
- 1.3 To outline the timeline and next steps subject to this decision.

2.0 Background

- 2.1 In response to Government policy on fire sector reform and the high level duty placed on emergency services for greater collaboration, WMFRA commissioned an independent review and appraisal of future governance options that would best support the delivery of services. Subsequently, as part of WMFRA's legal requirement to consult upon its Integrated Risk Management Plan (IRMP) every three years, WMFRA engaged with local communities, partners and businesses between 1 December 2016 and 10 January 2017 to understand views and opinions about the provision of services and how this could continue within WMFRA's three year rolling strategy. Accordingly, this presented an opportunity to obtain the views of the public on governance and finance.
- 2.2 Both the independent review and the outcomes of public IRMP consultation identified a Mayoral WMCA model of governance for WMFS as a strong option.
- 2.3 Having reviewed the evidence base, the WMCA on the 3rd March 2017 supported the WMFRA's broad proposal for the transfer of its functions to the Mayoral WMCA, initiating discussions between the Mayor, WMCA, WMFRA and the Home Office for this proposed route.
- 2.4 On the 8 September 2017, the WMCA Board noted an indicative timeline for the proposed governance route and approved the development of a Governance Review and Scheme for a Mayoral WMCA governance of WMFS, pursuant to Sections 111 and 112 (1d) of the Local Democracy, Economic Development and Construction Act 2009.
- 2.5 The Governance Review provided a review of existing governance arrangements and functions, and outlined the new model under the Mayoral WMCA and its benefits. The Scheme detailed the roles, accountabilities, and powers required by each individual and body in the proposed governance model.
- 2.6 Both documents were formally considered and consulted upon by all constituent councils between October and November 2017, in adherence to section 112 of the Local Democracy, Economic Development and Construction Act 2009.
- 2.7 Unanimous support for the Scheme and approval to proceed to consultation was received from all constituent councils with the proviso of securing the following key asks:
 - that WMFS budget, precepts and reserves be ring-fenced,
 - that the Mayor appoint the Chair of the Mayoral Fire Advisory Committee (MFAC) in consultation with constituent council Leaders,

- that the MFAC be composed of no fewer than 15 members to ensure sufficient representation from all constituent councils,
- As part of the support provided for the accountabilities of the Chief Fire Officer (CFO) to include operational independence of WMFS.

The Scheme was subsequently revised to reflect these asks (see Appendix 1).

- 2.8 The Governance Review and Scheme were considered at the WMCA Board on 8 December 2017. The outcomes of constituent council meetings were presented and in accordance with the requirement for the making of an order, approval was provided to proceed to a formal public consultation of the Scheme, pursuant to section 113 (3) of the Local Democracy, Economic Development and Construction Act 2009.
- 2.9 An eight-week public consultation was subsequently undertaken by the WMCA on behalf of the Secretary of State between 11 January and 8 March 2018, and was closely supported by the constituent councils and WMFS.
- 2.10 The consultation sought views on the detail of the proposed Scheme, which included the roles of the Mayor and WMCA, the proposed MFAC and the Chief Fire Officer. It also sought the views of communities on the benefits of the proposed governance change and the transfer of powers to the WMCA.
- 2.11 In May 2018, the Board considered the outcomes of this consultation, and agreed to formally submit proposals to the Home Office to initiate the process of drafting the required Statutory Order that will enable changes to the governance arrangements.
- 2.12 Following submission to the Home Office, extensive discussions between Home Office officials, the WMCA and WMFS continue to take place. We have sought to understand the full implications of the proposals, and to ensure that the key asks are appropriately reflected in the Statutory Order (to enable effective transfer of governance from the WMFRA to the WMCA in April 2019).

Home Office Response to key asks

- 2.13 The Home Office has responded to the Scheme and confirmed its position with respect to the key asks as follows:
- a. Ring-fencing of finances and reserves:
The Home Office confirmed that it was unachievable to ring fence WMFS budget and reserves within the Statutory Order. To do so would require a change to primary legislation and making a submission for a change in primary legislation would significantly delay the timeline, as the Home Office expects legislation relating to BREXIT to dominate the parliamentary timetabling. It was also stated that it was not Treasury policy to hypothecate or ring fence public funding. Our proposed response to this position is outlined in section 2.14 (a) below.
 - b. Composition of MFAC:
The scheme proposed a 'minimum' of 18 members to be appointed to the MFAC. The Home Office expressed concern with the potential to allow the composition of the committee to be increased. Our proposed response to this position is outlined in section 2.14(b).
 - c. The CFO as Head of Paid Service for WMFS and operational independence:

The Home Office also confirmed that it would be unachievable to provide for the CFO to be the head of paid service of WMFS within the Statutory Order, due to the need for primary legislation to enable this. This is because the Local Government and Housing Act 1989 only caters for one Head of Paid Service role within a local authority structure. Pleasingly, however, the draft Order continues to recognise the operational independence and technical responsibilities of the CFO. Our proposed response to this position is outlined in section 2.13c.

Proposed Solutions to achieving key asks

- 2.14 There is clear local will to secure the key asks. So, following discussions with the Home Office, the below proposals were identified as a means to enable these to be met locally:
- a. The ring fencing of budget, precept and reserves can be provided for through agreement of the WMCA Board. Transparency can be provided through a public commitment and scrutiny via WMFS's Section 151 Officer and the WMCA Overview and Scrutiny Committee. The WMCA annual budget setting process which requires the agreement of all Constituent Councils provides an additional check and balance for such an arrangement. Levels of assurance can be provided locally, along with an accountability for the CFO to be designated a clear budget, in order to be able to lead and deliver the strategy of the Fire and Rescue Service through appropriate resources.
 - b. MFAC composition: It is proposed that a minor change is made for the draft Order, setting the committee as being composed of a 'maximum' of 18 members; with 15 elected members and 3 co-optees. The PCC would retain the voting member status as is currently in place on the reformed WMFRA as a co-optee, reflective of the representative model set out in the Policing and Crime Act 2017. This proposal from the Home Office will not present a risk to the Constituent Council representation on the MFAC.
 - c. CFO as Head of Paid Service for WMFS: Whilst the Statutory Order cannot assign this role to the CFO, it can detail those accountabilities which 'will only be exercised' by the CFO. These can align to the key asks proposed in the Scheme. Locally, assurance can be provided through constitutional revisions that designate all organisational and operational matters to the CFO.
- 2.15 In the report of the 25th May 2018, the Board was informed (paragraph 2.16 of 25th May 2018 report) that all councils had agreed to delegate authority to the Leader and Chief Executive/Managing Director of the council, to approve the draft Order received from Government. This is in order for it to be laid before parliament and to enable the changes for the Mayoral WMCA to assume governance of WMFS. Furthermore, it was stated that all constituent councils including the WMCA, would be formally consulted should there be any major changes to the proposals in the Scheme made in the draft Order.
- 2.16 Consequently, an urgent letter was issued to constituent council Leaders requesting a decision on the proposed solutions to achieving the key asks (paragraph 2.13).

Constituent Council Responses

- 2.17 Six Leaders have agreed to the proposed way forward with two qualifications received in relation to:
- Corresponding amendments to the Constitution of the WMCA to be brought forward for approval alongside the Statutory Order process.

- The ring fencing of budget and reserves to be considered by the WMCA Board during its budget setting processes and included in the revised WMCA constitution

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

Progressing key asks and finalising Order

2.18 The ring fencing of budget, precept and reserves:

Further to the intention set out in paragraph 2.13 assurances will be provided through ring-fencing of the WMFS budget, precept and reserves in the WMCA constitution. The proposed constitutional wording is set out in paragraph 5.

2.19 MFAC:

2.19.1 Paragraph 2.13 has also confirmed how the issues relating to the MFAC's composition will be overcome.

2.19.2 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 WMFS, should sit with the WMCA Overview and Scrutiny Committee. This was subsequently made clear in the letter of submission to the Home Office and is now reflected in the draft Order.

2.19.3 It is also noteworthy that the draft Order permits the payment of allowances to members of the MFAC. Allowances will therefore become a local determination. An independent review of Members remuneration would be required in order to give effect to any scheme of member's allowances.

2.20 CFO as Head of Paid Service for WMFS:

2.20.1 Whilst the Statutory Order cannot assign this role to the CFO, it can detail those areas which 'will only be exercised by the CFO' and these can align to the key asks proposed in the Scheme. Locally, additional assurance can be provided through constitutional revisions that designate all organisational and operational matters to the CFO, aligned to the draft Order.

2.20.2 The letter of submission to the Home Office also clarified the point in relation to the appointment and dismissal of the Chief Fire Officer and Principal Officers. Within the Governance Review it was clear that the Chief Fire Officer should be accountable to the Mayor for their actions. However, within the Scheme this was extended in error to other Principal Officers. This has been rectified in the draft Order.

Revised timeline and next steps:

2.21 The timeline presented to the Board has been reviewed to reflect the timeline received from the Home Office:

DETAILS	DATE	Amendment
WMCA approved a governance review and scheme to be developed	8 September 2017	
Development of governance review and scheme, which considered the business case for the change in governance.	September 2017	
Constituent Council approval of the content of the governance review and scheme.	October-November 2017	
WMCA approval of the content of the governance review and scheme and approval to proceed to public consultation.	8 December 2017	
Consultation of proposals set out in the scheme on behalf of the Secretary of State	January- March 2018	
Analysis of consultation responses locally	March 2018	
Constituent councils and WMCA consider outcomes of the public consultation. Seek consent to submit proposal to Secretary of State.	March - May 2018	
Governance review, scheme and analysis of consultation reviewed by Secretary of State (4-12 weeks).	June 2018	
Government development of order required to give effect to the proposed changes.	July - September 2018	August 2018. Local response required by end of September
Constituent council and WMCA approval of detail of order	October - November 2018	September 2018
Order enters Parliamentary process	December 2018 - January 2019	This process requires three months
Home Secretary approves order	February 2019	March 2019
The West Midlands Fire and Rescue Authority functions transfer to the WMCA	1 st April 2019	Target transfer date remains

3.0 Wider WMCA Implications

3.1 Devolution deals I and II made a strategic commitment to this change. Effecting this in 2019 allows WMFS to be in the best possible shape coming into the WMCA, and ensure the full value of this transfer is realised.

3.2 Planning for implementation scenarios has begun, although it is acknowledged that final approval has yet to be obtained. The changes continue to represent a significant piece of work in terms of planning and governance, and ensuring that the WMCA has robust arrangements in place to deliver an orderly transfer and secure the changes set out in the scheme and governance review. A joint implementation team has been convened to enable delivery of the proposals over the coming months, aligned to the strategic intent of the governance change identified in the governance review and scheme. Due diligence work has also commenced in regard to financial issues. There will be resource implications for staff from both WMFS and WMCA as Officers lead the transfer process through project management disciplines.

4.0 Financial implications

4.1 The financial implications have been included in previous reports to Board. Specific issues have arisen at this stage in relation to a number of points that were raised by the Home Office following formal submission of the Governance Review and Scheme.

4.2 The Home Office has referred to some points that cannot be delivered through the Order due to the prevailing legislation covering those issues. This section therefore closely correlates with section 5. These points are set out elsewhere in the report together with proposals which will mitigate the impact of these changes. Additionally, the draft Order has identified MFAC member allowances and paragraph 2.18.3 is referred to.

5.0 Legal implications

5.1 The legal implications have been included in previous reports to Board. The specific issue that has arisen at this stage is in relation to a number of points that were raised by the Home Office following formal submission of the Governance Review and Scheme.

5.2 The Home Office have referred to some points that cannot be delivered through the Order due to the prevailing legislation covering those issues. These points are set out elsewhere in the report together with proposals which will mitigate the impact of these changes. Consultation with the Constituent Authorities has resulted in a request for sight of the proposed amendment to the Constitution which would deal with the issue of a “local” ring-fence for Fire Service budgets, precepts, reserves and assets.

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

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

- B. All assets relating to the discharge of Fire Service operations and functions will be owned by the WMCA as set out in the Order, but ring fenced for use in relation to Fire Service Operations. Any receipts, income or proceeds of sale in relation to Fire Service Assets will be retained within “the budget”.
- C. Any reserves associated with the Fire Service at the point of transfer should be purely for the use of the Fire Service. Future movement in the Fire Service reserves need to be directly linked to the budgetary arrangements set out in A and B above.
- D. The CFO together with the officer responsible for the proper administration of financial affairs of the WMCA under section 151 Local Government Act 1972(11), will propose and be accountable for an annual budget for the fire and rescue service which will ensure the most effective and efficient delivery of services to local communities as set out in the Fire Service Strategy.
- E. Nothing in these provisions shall be taken as precluding any shared services, shared use of assets or other forms of joint working involving assets, personnel or services maintained by “the budget” with the consent of the Mayor and the Chief Fire Officer.

6.0 Equalities implications

There are no equalities implications presently arising from this report. However, this may change as progress develops.

7.0 Schedule of background papers

WMFRA response to the Enable Closer Working between the Emergency Services Consultation – the prelude to the Policing and Crime Bill (October 2015)
 WMFRA Integrated Risk Management Plan Public Outcomes Report (20 February 2017)
 WMFRA report - ‘Route Map to Mayoral Governance’ (20 February 2017)
 WMFRA report – ‘Route map to Mayoral West Midlands, Combined Authority Governance - a Reformed Fire Authority (RFA) and decision (10 April 2017)
 WMCA Board (8th September 2017)
 WMCA Board – WMFRA Governance Review and Scheme (8th December 2017)
 The National Framework for Fire and Rescue Services England 2018
 WMFRA report – Widening CFO Accountabilities 16 April 2018
 Governance of WMFS Public Consultation Outcomes Report (25 May 2018)

Appendix 1 – Revised Scheme

West Midlands Combined Authority Scheme

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

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

The scheme provides as follows:

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

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

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

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

1.2 It is proposed that the properties, rights and liabilities of the WMFRA would become functions of the WMCA.

1.3 It is proposed that the functions relating to fire and rescue referred to in 1.1 should become WMCA functions.

1.4 It is proposed that the fire and rescue functions once they become functions of the WMCA are exercisable only by the Mayor (section 107D (1) Cities and Local Government Devolution Act 2009).

1.5 For the purposes of the exercise of the fire and rescue functions, the Mayor may do anything that the WMCA may do under section 113A of the LDEDC Act 2009 (general power of EPB or combined authority) (1).

1.6 It is proposed that the WMCA has the same borrowing powers in respect to its functions, relating to fire and rescue as are currently exercised by the WMFRA.

1.7 It is proposed that the WMCA retain the same core grant and precept funding arrangements in respect to its functions relating to fire and rescue, as currently exercised by the WMFRA.

1.8 It is proposed that both the funding and reserves for fire are ring fenced within the Mayoral WMCA.

1.9 Any decisions or acts made before abolition of the WMFRA should have effect as if agreed by, or, in relation to the Mayoral WMCA. For example, the setting of the precept for, under section 40 Local Government Finance Act 1988 to the constituent councils in respect of the financial year beginning before transfer in governance, should have effect as if issued by the Mayoral WMCA.

1.10 It is proposed that Members of the WMCA may assist the Mayor in the exercise of the fire and rescue functions in line with delegations, provided that the functions may not include:

- Functions relating to the budget and setting of the precept,
- Functions relating to statutory plans such as the Integrated Risk Management Plan (IRMP) and strategies,
- Functions relating to all properties, rights and liabilities,
- The appointment of the Chief Fire Officer and Principal officers.

Mayoral Fire Advisory Committee

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

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

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

Governance

- Appointment of elected members from each of the constituent councils will be made so that the members of the committee taken as a whole, reflect as far as reasonably practicable, the overall balance of political parties prevailing amongst the constituent councils.
- The majority of members of the committee must be members of the constituent councils, all of those members have one vote.
- Where a member is not from a constituent council (a co-opted member) they will not have voting powers.
- Two-thirds of members must be present for a meeting to be quorate.
- The Chair of the Committee will be appointed by the Mayor in consultation with constituent council leaders.

Functions

- The Committee will not be a decision-making committee this responsibility will remain with the Mayor and Chief Fire Officer, as appropriate.
- The Committee will advise the Mayor, support the Mayor and review decisions made by the Mayor.
- Where decisions are reviewed, the Committee will submit a report to the WMCA Overview and Scrutiny Committee.
- The Committee will support the Mayor in providing advice around exercising fire functions, to ensure the right level of detail and understanding is provided to inform the Mayor's role as the Authority.
- The Committee will represent the priorities and strategy of the Mayor and WMFS in their respective local authorities and will report on performance in relation to fire functions.
- The Committee will represent the priorities and strategy of the Mayor and West Midlands Fire Service (WMFS) within the seven constituent councils, regionally with other Fire and Rescue

Services, and nationally through the National Joint Council and Local Government Association.

- The Committee will seek to influence the Government on behalf of the Mayor in matters related to the delivery of fire and rescue services locally, regionally and nationally.
- The Committee will enable the development of partnerships and services to the community through constituent council engagement.

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

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

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

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

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

Primary Legislation

Local Government Act 1972

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

Local Government in Housing Act 1989

2. (1) The Local Government and Housing Act 1989(c) is modified as follows.
(2) In section 67 (application of provisions about companies in which local authorities have interests), subsection (3)(k) applies as if the reference to "joint authority established by Part IV of that Act" included a reference to "the WMCA as a fire and rescue authority".
(3) In section 155 (emergency financial assistance to local authorities) subsection (4)(g) applies as if the reference to a "joint authority established by Part IV of the Local Government Act 1985" included a reference to "the WMCA as a fire and rescue authority".

Crime and Disorder Act 1998

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

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

Local Government Act 2003

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

Fire and Rescue Services Act 2004

5.— (1) The FRS Act 2004(b) is modified as follows. (2) Section 4A (power to provide for police and crime commissioner to be fire and rescue authority) has effect as if at the end of subsection (3)(b) there were inserted—
“, and (c) outside the Area.”; (3) Section 4B (1) (changes to existing fire and rescue authorities) has effect as if the reference to fire and rescue authorities in England outside Greater London did not include the WMCA.

Secondary legislation

6. In section 1 of the FRS 2004 Act(1), after subsection (4) insert—
“(5) This section is also subject to an order under Part 6 of the Local Democracy, Economic Development and Construction Act 2009 which transfers the functions of a fire and rescue authority to a combined authority established under section 103 of that Act”.

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

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

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

10.— (1) The Local Government Pension Scheme Regulations 2013(f) are modified as follows. (2) After regulation 64(8), insert—
“(8A) Paragraph (8B) applies where the exiting employer is the WMFRA and the liabilities of the fund in respect of benefits due to the WMFRA’s current and former employees (or those of any predecessor authority) have been or are to be transferred to the WMCA by virtue of this Order. (8B) Where this paragraph applies, no exit payment is due under paragraph (1) and paragraph (2) does not apply.”.

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

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

“(ii) the Area, the WMCA as a fire and rescue authority;”.

Appendix 2 – Home Office Advice

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

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

Cities and Local Government Devolution Act 2016 - legislation

www.legislation.gov.uk

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

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

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

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

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

Appendix 3 – Draft Order for governance change