

West Midlands Combined Authority

Scheme for the transfer of police and crime commissioner functions

Interpretation

In this Scheme:

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

“the 2011 Act” means the Police Reform and Social Responsibility Act 2011;

“the 2016 Act” means the Cities and Local Government Devolution Act 2016;

“the area” means the area of the combined authority;

“the combined authority” means the West Midlands combined authority, WMCA;

“the deputy mayor for policing and crime” means the deputy mayor for policing and crime for the area;

“the mayor” means the mayor for the area;

“the OPCC” means the office of the police and crime commissioner;

“the police and crime commissioner” PCC means the police and crime commissioner for the West Midlands;

1. Summary

This Scheme is prepared following the decision of the West Midlands Combined Authority (WMCA) on 20 July 2018.

The Scheme provides as follows:

- provision in relation to the transfer of police and crime commissioner (“PCC”) functions from the Police and Crime Commissioner for the West Midlands to the Combined Authority Mayor for the West Midlands in May 2020;
- transfer the property, rights and liabilities of the PCC to the West Midlands Combined Authority

Whilst recognising that the section 4 (1) (107F) 2016 Act does not require this the Scheme has nevertheless been prepared in conjunction with a Review under section 111 of the 2009 Local Democracy, Economic Development and Construction Act, as amended, which concluded that the making of an order conferring additional functions on the WMCA, as set out in the Scheme, and changes to the constitutional arrangements of the WMCA. The proposals in the Scheme will be the subject of a further public consultation. In putting forward the report before Parliament the Home

Secretary will include a description of any consultation taken into account, section 105A (10) of the 2009 Act.

2. Legislative Context

The Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) established the position of PCC and specifies the core functions of a PCC. Section 107F of the Local Democracy, Economic Development and Construction Act 2009 (the “2009 Act”), inserted by section 4 of the Cities and Local Government Devolution Act 2016 (the 2016 Act), provides that a mayor for the area of a combined authority can, by order, be conferred functions of a police and crime commissioner for the area. Section 107F(8) specifies that any PCC function exercisable by the mayor is to be taken to be a function of the combined authority exercisable by the mayor acting individually, or by a person acting under arrangements with the mayor in accordance with provision made under Schedule 5C of the 2009 Act. Section 107F also specifies that an order providing for a mayor to exercise PCC functions must provide that there is to be no PCC in that area from a specified date and may cancel any future PCC ordinary elections which would otherwise have taken place in that same area, extend the term of office of the current PCC to the specified date and prevent any PCC by-election taking place in that area within six months of the specified date.

The functions are those conferred on PCCs by or under the following act or any other Act (whenever passed)

- Police Reform and Social Responsibility Act 2011

3. The Scheme

The Scheme provides for the following changes:

3.1 Mayor with PCC responsibilities

In line with the Local Democracy, Economic Development and Construction Act 2009 as amended by the Cities and Local Government Act 2016, Schedule 2 the Mayor will exercise PCC functions in relation to the combined authority area. This will provide for a single directly accountable individual responsible for the discharge of core PCC functions which will be consistent with the PCC model and ambition for local people to have a single point direct accountability. This includes securing that the police force is efficient and effective and holding the chief constable to account.

Under the 2011 Act the PCC is a Corporation Sole with the ability to discharge the core functions provided for in the 2011 Act. As laid out above, and in 3.3 Functions, the functions will transfer to the Mayor who will have the sole responsibility for deciding upon and discharging the functions. There are however areas that are currently solely discharged by the PCC as Corporation Sole that with the transfer will reside in the WMCA as legal entity although the decision making in respect of these functions, after the transfer, will remain with the Mayor as PCC:

- Properties, Rights and Liabilities
- Appointments

- Borrowing
- Contracts

Details as to how it is proposed that this will operate in the future can be found in 3.4, 3.5, 3.9 and 3.10 respectively.

Appropriate remuneration will be paid in respect of the Post of Mayoral PCC, this would be developed following further advice from the Home Office.

3.2 Deputy Mayor Police and Crime

In line with the existing provision for PCCs to appoint a Deputy PCC (DPCC) and delegate functions to them, the Mayor will appoint a Deputy Mayor for Policing and Crime (DMPC).

The post will exclude Members of the WMCA and be restricted to those persons residing in the WMCA Area.

Appropriate remuneration will be paid in respect of the Post of Deputy Mayor Police and Crime, this would be developed following further advice from the Home Office.

3.3 Functions

As per the Police Reform and Social Responsibility Act 2011 the following functions in general, will exist. A PCC may delegate any function to a DPCC, with the exception of those strategic functions reserved as being exercisable only by the PCC. The functions which may not be delegated by a PCC to a Deputy PCC, and as such by a Mayor acting as PCC to a DMPC are:

- issuing a police and crime plan;
- setting the police budget including the council tax requirement; and,
- Chief Constable dismissals, suspensions and appointments.

Functions that may only be exercised by the PCC or DPCC and, correspondingly, may only be exercised by the Mayor acting as PCC or the DMPC are:

- determining police and crime objectives;
- attendance at a meeting of a Police and Crime Panel in compliance with a requirement by the panel to do so;
- preparing an annual report;
- appointing a local auditor under section 7 of the Local Audit and Accountability Act 2014 (“the 2014 Act”); and
- deciding whether to enter into a liability limitation agreement under section 14 of the 2014 Act.

In addition the Mayor, acting as PCC or the DMPC, may also delegate or sub delegate functions, but not those listed above subject to statutory limitations.

3.4 Transfer of properties, rights and liabilities

All property, rights and liabilities which are property, rights and liabilities of the PCC will transfer and vest in the WMCA.

In addition to the Mayors existing 'functional power of competence' the Order will also provide for:

- all functions in relation to such property, rights and liabilities are to be exercised by the mayor;
- all decisions relating to such property, rights and liabilities are to be made by the mayor;
- any receipts arising from such property, rights and liabilities (whether arising from their use, sale, disposal or otherwise) are to be paid into the police fund kept by the mayor by virtue of section 21 of the 2011 Act.

Unless delegated by the Mayor in line with 3.3 above.

In addition the use of these assets will also be ring fenced within the Constitution so as to emulate as far as possible the current PCC 'corporation sole' arrangement.

3.5 Office of the Police and Crime Commissioner OPCC

The staff within the OPCC, including any secondments, will transfer under a statutory transfer order which will replicate the characteristics of a TUPE transfer.

The Mayoral OPCC will be managed by an 'OPCC Executive Director'.

Arrangements would be made locally for the Mayor to be involved with any appointment.

3.6 Monitoring Officer and Chief Finance Officer (Section 151 Officer)

There will be a monitoring officer whose responsibilities include the Mayor's exercise of PCC functions. The person appointed to be the monitoring officer will be able to cover a range of policy areas, not just policing.

In addition there will be a chief finance officer (Section 151 Officer) whose responsibilities include the Mayor's exercise of PCC functions. The person appointed to be chief finance officer can cover a range of policy areas, not just policing.

Arrangements would be made locally for the Mayor to be involved with any appointments.

3.7 Police and Crime Panel

There will be no change to the role and arrangements in respect of the Police and Crime Panel. Members of the Combined Authority will not be a member of the PCP.

Scrutiny of the discharge of PCC functions will be performed by the Police and Crime Panel who hold the appropriate powers, set out in the Police Reform and Social Responsibility 2011 Act alongside their responsibilities and membership

requirements, to effectively scrutinise the actions and decisions of the Mayor PCC and enable the public to hold them to account.

The Police and Crime Panel (PCP) will exercise broadly the same functions as PCPs under the PCC model, but with some minor modifications such as ensuring the panel only scrutinises the policing element of the precept, which forms a separately identifiable component of a wider combined authority precept, rather than the whole precept.

3.8 Police Funds

Police Funds will be kept separate to the discharge of other Mayoral Combined Authority functions and into which all receipts arising and liabilities incurred in the exercise of PCC functions must be paid. Within the existing arrangements for a combined authority mayor PCC, there is a single precept comprising of separate components for the mayor's general functions and one for policing. The PCC component is required to appear separately on council tax bills.

Arrangements will need to be made in the Order to extend the financial year in accounting terms for the WMPCC so that the PCC and CC prepare statement of accounts for the period 1 April 2019 up to the date of transfer.

Money paid into the police fund will be reserved for policing, for example receipts from the sale of police assets would have to be spent on matters relating to policing. In line with statutory guidance for PCCs, as set out in the 'Revised Financial Management Code of Practice' for policing, the Mayor would have to publicly account for how police funds are spent.

The police fund, which will include precept income, will also include reserves maintained for policing and crime reduction. The Local Government Finance Act 1992 requires billing and precepting authorities in England and Wales to have regard to the level of reserves needed for meeting estimated future expenditure when calculating the budget requirement. Police reserves should be maintained in accordance with the relevant guidance, agreed accounting principles and locally agreed financial regulations and schemes of governance.

All decisions on money relating to policing must be made by the mayor. Money in the police fund can only be spent on policing and matters that are incidental to the mayor's PCC functions.

Decisions on the sale of police assets and reinvestment of receipts must be made by the mayor and money paid into police fund from where it can only be spent on matters that are incidental to the mayor's PCC functions.

3.9 Borrowing

The Mayor will be ultimately responsible for decisions relating to borrowing in relation to PCC functions, as laid out in the 'Revised Financial Management Code of Practice' for Policing, but may delegate them in practice. The cost of such borrowing will be met from Police Funds and as above kept separate to the discharge of other

Mayoral Combined Authority functions. This does not detract from the legal status of the Combined Authority as the borrowing party.

The WMCA will have the same borrowing rights for Mayor PCC functions that are currently enjoyed by the PCC and as such should not be subject to a borrowing cap.

3.10 Contracts

Decisions on entering into contracts regarding police matters are functions of a PCC under the PCC model (with scope for some delegation to the Chief Constable).

As such and in keeping with the PCC model the Mayor will have ultimate responsibility for all contracts relating to police matters, although they may provide consent for contracts to be entered into by the chief constable or another to whom the Mayor personally delegates responsibility to as per existing agreements and protocols.

Decisions on the issuing of policing related grants would also rest with the Mayor or anyone to whom they delegate responsibility.

3.11 Police and Crime Plan

The police and crime plan which involves consideration of the strategic policing requirement is a key public facing deliverable. The provisions on police and crime plans as set out in the 2011 Act will still apply in respect of the Mayor acting as PCC.

3.12 Policing Protocol

The Policing Protocol will apply to a Mayor acting as PCC as it applies to a PCC.

3.13 West Midlands Police

West Midlands Police will remain a distinct and separate organisation.

3.14 Inspection, Investigation and Complaints

The powers of HMICFRS, as set out in the Police Act 1996, and the police complaints procedure, as set out in the Police Reform Act 2002 and subsequent amendments, will still apply.

3.15 Consequential amendment and modification requirements

The following consequential amendment and modification requirements of enactments will be required in their application to the WMCA with Mayoral PCC functions:

Primary Legislation

Amendments to the Police Reform and Social Responsibility Act 2011

Modifications to the Local Government Act 1972

Police (Property) Act 1897

Trustee Investments Act 1961

Pensions (Increase) Act 1971

Local Government (Miscellaneous Provisions) Act 1976

Local Government, Planning and Land Act 1980

Local Government Finance Act 1988

Road Traffic Act 1988

Local Government and Housing Act 1989

Police Act 1996

Police Reform Act 2002

Proceeds of Crime Act 2002

Local Railways and Transport Safety Act 2003

Government Act 2003

Local Government and Public Involvement in Health Act 2007

Local Democracy, Economic Development and Construction Act 2009

Police Reform and Social Responsibility Act 2011

Local Audit and Accountability Act 2014

Secondary legislation

Motor Vehicles (Third Party Risks) Regulations 1972

Official Secrets Act 1989 (Prescription) Order 1990

Police (Disposal of Sound Equipment) Regulations 1995

Police (Property) Regulations 1997

Health and Safety (Enforcing Authority) Regulations 1998

Motor Vehicles (Driving Licences) Regulations 1999

Redundancy Payments (Continuity of Employment in Local Government, etc) (Modification) Order 1999

Motor Vehicles (Access to Driver Licensing Records) Regulations 2001

Police and Criminal Evidence Act 1984 (Drug Testing of Persons in Police Detention) (Prescribed Persons) Regulations 2001

Police Regulations 2003

Docking of Working Dogs' Tails (England) Regulations 2007

REACH Enforcement Regulations 2008

Elected Local Policing Bodies (Specified Information) Order 2011

Policing Protocol Order 2011

Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012

Police Appeals Tribunals Rules 2012

Police and Crime Commissioner (Disqualification) (Supplementary Provisions) Regulations 2012

Police and Crime Panels (Precepts and Chief Constable Appointments) Regulations 2012 55

Local Government Pension Scheme Regulations 2013

Local Audit (Auditor Resignation and Removal) Regulations 2014

Combined Authorities (Mayors) (Filling of Vacancies) Order 2017