

REPORT TO CABINET

21 March 2018

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| Subject: | Consultation Outcomes and Submission of Mayoral West Midland Combined Authority WMCA Governance Scheme for the West Midlands Fire Service |
| Director: | Chief Executive – Jan Britton |
| Contribution towards Vision 2030: |  |
| Contact Officer(s): | Maria Price – Service Manager, Legal maria-price@sandwell.gov.uk |

DECISION RECOMMENDATIONS

That Cabinet:

1. Note the outcomes of the formal public consultation.
2. Agree to consent to the submission of the Scheme together with the results of the Consultation to the Secretary of State for the Home Office, so as to enable the transfer of governance of West Midlands Fire Service (WMFS) from West Midlands Fire and Rescue Authority (WMFRA), to the Mayoral West Midlands Combined Authority (WMCA).
3. Approve to delegate authority as required to the Chief Executive and Leader of the Council to approve the draft order received from Government to be laid before parliament, to enable the changes for WMCA to assume governance of WMFS.
4. Note changes to the indicative timeline presented to Cabinet on 17 October 2017.

1 PURPOSE OF THE REPORT

- 1.1 To provide an overview of the public consultation evaluation in respect of the Mayoral West Midland Combined Authority WMCA Governance Scheme for the West Midlands Fire Service WMFS and give consent to the submission of the Scheme and Consultation results to the Secretary of State for the Home Office, the Home Secretary.
- 1.2 To delegate authority to the Chief Executive and Leader of the Council, as required, to consider the draft order on behalf of the council and provide consent to proceed with the laying of the draft order before parliament.
- 1.3 To note the revised timetable in Paragraph 5.14.

2 CONSULTATION

- 2.1 Consultation should include those that have an interest in the decisions recommended.
- 2.2 Details of the consultation undertaken are provided within the body of the report.

3 COMPLIANCE ISSUES

- 3.1 There are no compliance issues identified in the report.

4 FINANCIAL IMPLICATIONS

- 4.1 The financial implications and process for transfer of functions to the Mayoral WMCA are currently being considered by WMFRA and WMCA to enable effective planning of implementation of the order. On transfer, the WMCA will assume ownership of all properties, rights and liabilities of the current WMFRA.

5 PURPOSE OF THE REPORT

- 5.1 The legal implications and process for devolving powers to the WMCA are set out below in this report.
- 5.2 WMCA and WMFRA have been consulting with the legal heads of service from all seven constituent councils for advice and guidance throughout this journey.
- 5.3 All relevant legislation pertaining to this governance route has been detailed in the Governance Review and Scheme presented to Cabinet 17 October 2017.

6 PUBLIC SECTOR EQUALITY DUTY

- 6.1 As cited in this report, efforts were made to ensure the public consultation reached hard-to-reach and equality groups in the region, to meet the requirements of the Local Democracy, Economic Development and Construction Act 2009 section 113, which stipulates that the consultation must reflect the identities and interests of local communities. As part of the consultation exercise this was also one of the questions asked.
- 6.2 The survey was made available in different formats to allow access by all equality groups of the community.
- 6.3 An initial equalities analysis was carried out on the initial Mayoral West Midlands Combined Authority Scheme, having due regard to the equalities implications of the Scheme, on which the original draft Order was based. At this time it was concluded that further detailed analysis was not required as any detailed project/programmes, to result from the incorporation of this and any future Schemes and Orders, would be subject to individual equalities analysis.

7 RELEVANT BACKGROUND/CHRONOLOGY OF KEY EVENTS

Governance Review and Scheme

- 7.1 Following the report presented to Cabinet on 17 October 2017 and the WMCA board paper on 8 December (see background papers), this paper seeks to update Cabinet on the progress made to date and the outcomes of the public consultation.
- 7.2 The WMCA supported the WMFRA's broad proposal for the transfer of its functions to the Mayoral WMCA on 3rd March 2017.
- 7.3 On the 8 September 2017 the WMCA Board noted the indicative timeline for the proposed governance route and approved the development of a governance review and scheme for the Mayoral WMCA governance of WMFS pursuant to Sections 111 and 112 (1d) of Local Democracy, Economic Development and Construction Act 2009.
- 7.4 The Governance Review presented to Cabinet on 17 October 2017 provided a review of existing governance arrangements and functions, this included the proposed new model and its benefits under the Mayoral WMCA.
- 7.5 The Scheme presented to Cabinet 17 October 2017 detailed the roles, accountabilities, and powers required by each individual and body in the proposed governance model.

- 7.6 The benefits of the Mayoral WMCA governance model provides huge opportunities for the joint transformation of public services to West Midlands communities, providing value for money in the delivery of public safety. The benefits can be broadly summarised under four main themes: public safety delivered through a broad range of responses to emergency services, a workforce to support joined up services and reduce vulnerability, continued improvement and transformation, and operational independence.
- 7.7 In adherence to section 112 of Local Democracy, Economic Development and Construction Act 2009, which states that a combined authority must seek the approval of its constituent councils on the governance review and scheme, all seven constituent councils were consulted between October and November 2017.
- 7.8 Unanimous support for the proposed scheme was received from all seven constituent councils, along with approval to proceed to a public consultation. Comments received from councils included: that the fire budget and fire reserves be ring-fenced, that the Mayor appoint the Chair of the Mayoral Fire Advisory Committee (MFAC) in consultation with constituent council Leaders, and that MFAC be composed of no fewer than 15 members to ensure sufficient representation from all constituent authorities. As part of the public consultation exercise the Scheme was revised to reflect these concerns (Appendix A).

Consultation

- 7.9 A formal public consultation (Appendix B) on the proposed scheme was launched on 11 January 2018 for a period of eight weeks to 8 March 2018. This was pursuant to section 113 (3) Local Democracy, Economic Development and Construction Act 2009. The consultation is a requirement for the making of an order, which stipulates that the Secretary of State must not only consult constituent councils within a combined authority's area but also must have 'due regard to the need - (a) To reflect the identities and interests of local communities and (b) To secure effective and convenient local government'.
- 7.10 The consultation seeks views on the detail of the proposed scheme, this includes the roles of the Mayor and WMCA, the proposed MFAC and the Chief Fire Officer. The consultation also seeks the views of the communities of the combined authority's area on the stated benefits of the proposed governance change and the transfer of powers to the Combined Authority.

7.11 The consultation approach consists of a frequently asked questions list, the scheme, a survey, plain English text of the governance journey and of key roles. Advice and guidance was sought from public relations and public affairs firm the Built Environment Communications Group (BECG) who are members of the Consultation Institute, which promotes best practice within public consultations across UK, as well as constituent council Communications departments.

7.12 In order to reach all sections of the society the consultation has been promoted through a comprehensive range of digital and non-digital forums:

- WMCA website
- Constituent council websites
- WMFS website and social media pages
- Press releases
- Letters to key stakeholders (see full consultation outcomes report in Appendix C for stakeholder list)
- Letters to West Midlands MPs whose constituencies fall within the WMCA area
- Letters to MEPs
- WMFS stations are promoting the consultation through contact time with the communities as part of normal prevention based activities and focused command based workshop events
- 1000 printed copies of the survey have been disseminated by staff to date such as youth engagement activities and places of worship
- 200 copies to each constituent council for distribution at key location such as council offices and libraries
- Graphics have also been provided to each constituent council for displaying on plasma screens,
- The survey was available in easy read and large print as well as cd audio formats upon request, a helpline was also set up to enable disabled members of the public to complete the survey with the support of a member of staff. A total of four easy read versions, seven large print versions and four audio versions were requested

7.13 Overview of responses to the consultation are as follows (see Appendix C for full consultation outcomes report):

- Outcomes of question 1: 47% of respondents 'strongly agreed' or 'agreed' that the WMCA should take on the responsibility for the functions of the West Midlands Fire and Rescue Authority. Conversely, 41% of respondents strongly disagreed or disagreed with the proposed governance change.

- Outcomes of question 2: 59% of respondents 'strongly agreed' or 'agreed' that there should be a Fire Advisory Committee, consisting of members from the WMCA constituent councils, the Police and Crime Commissioners Office, Health and Ambulance Trust, that will advise, support and review decisions made by the Mayor. Conversely, 33% of respondents either 'strongly disagreed' or 'disagreed' with this element of the proposed governance changes.
- Outcomes of question 3: 54% of respondents 'strongly agreed' or 'agreed' that the Chief Fire Officer should be accountable to the Mayor for the operational functions of the Fire Service, whereas 35% either 'disagreed' or 'strongly disagreed'.
- Outcomes of question 4: 42% of respondents 'strongly agreed' or 'agreed' that the Mayoral WMCA taking on responsibility for the function of West Midlands Fire and Rescue Authority would achieve those aims outlined within the questions posed. Conversely, 42% of respondents 'strongly disagreed' or 'disagreed' with one or more of the aims listed.
- Outcomes of question 5: 39% of respondents 'strongly agreed' or 'agreed' that the Order to transfer the Fire Service into the Combined Authority is likely to: improve the statutory functions in the Combined Authority area; reflect the local communities; and secure effective and convenient local government. 42% of respondents either 'strongly disagreed' or 'disagreed' with the question. The outcomes for question 5 also show the highest number of 'don't know' responses (4% of respondents), as well as the highest number of 'neither agree or disagree' (15% of respondents).
- Questions 6 – 14 enquire about the identity of the respondent to inform the Secretary of State's need to give due regard to views of the communities of the West Midlands. The identities of respondents broadly reflect the communities of the West Midlands, however, numbers for Asian and Black communities is lower than targets.
- Outcomes also show that 47% of respondents stated they work for the public sector, which represents an engaged workforce and indicates a balanced representation across all sectors.

Timescales/Next Steps

- 7.14 As requested by constituent councils, the indicative timeline presented to Cabinet in November 2017, has been extended to allow for councils to note the outcomes of the consultation and provide consent to proceed with this direction:

| DETAILS | DATE |
|---|--|
| 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- February 2018 |
| Analysis of consultation responses locally | March 2018 |
| Constituent councils consider outcomes of the public consultation. Seek consent of constituent councils to submit proposal to Secretary of State. | April - 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 (nb. Parliamentary recess) |
| Constituent council and WMCA approval of detail of order (see paragraph 5.2) | October - November 2018 |
| Order enters Parliamentary process | December 2018 - January 2019 |
| Secretary of State approves order | February 2019 |
| The West Midlands Fire and Rescue Authority functions transfer to the WMCA | February/March 2019 |

- 7.15 Receipt of the draft order from the Home Office is anticipated following the Summer recess this year. To allow for effective adherence to the timeline, it is requested that authority is delegated to the Leader and Chief Executive as required, to consider the draft order and provide consent to the order being laid before Parliament to enable the proposed governance changes, on behalf of the Council.
- 7.16 The table below reflects the dates this consultation outcomes report seeking consent of constituent councils is scheduled to be tabled:

| CONSTITUENT COUNCIL | CABINET (for consent) |
|----------------------------|----------------------------------|
| Birmingham | 17 th April |
| Coventry | 10 th April |
| Dudley | 21 st March |
| Sandwell | 21 st March |
| Solihull | 5 th April |
| Walsall | 21 st March |
| Wolverhampton | 25 th April |

8 LIST OF BACKGROUND REPORTS

- WMFRA report: 'Route Map to Mayoral Governance' (20 February 2017)
- WMFRA Report - Future Governance Working Group (20 February 2017)
- Future Governance Working Group Report (February 2017)
- West Midlands Combined Authority (WMCA) report (3 March 2017)
- WMFRA report – 'Route map to Mayoral West Midlands, Combined Authority Governance - a Reformed Fire Authority (RFA) and decision (10 April 2017)
- WMCA Board Report - 8 September - Mayoral WMCA Governance of WMFS
- <https://governance.wmca.org.uk/documents/s617/Report.pdf>
- SMBC - GOVERNANCE OF WEST MIDLANDS FIRE SERVICE (17 October 2017)
- WMCA Board (8 December 2017)

APPENDICES

APPENDIX A - Scheme

APPENDIX B – Consultation Survey.

APPENDIX C – Consultation Outcomes Report.

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 B – Consultation Survey.

<https://www.wmca.org.uk/media/1997/wmca-consultation-online.pdf>

APPENDIX A - Scheme

APPENDIX B – Consultation Survey.

APPENDIX C – Consultation Outcomes Report. APPENDIX A - Scheme

APPENDIX B – Consultation Survey.

APPENDIX C – Consultation Outcomes Report.APPENDIX C – Consultation Outcomes Report.