EXPLANATORY MEMORANDUM TO

THE WEST MIDLANDS COMBINED AUTHORITY (BUSINESS RATE SUPPLEMENTS FUNCTIONS AND AMENDMENT) ORDER 2018

2018 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order confers functions corresponding to the business rate supplements functions that the Greater London Authority has in relation to Greater London on the West Midlands Combined Authority ("the WMCA") in relation to its area. The Order provides that the functions are exercisable only by the mayor of the Combined Authority. In addition, the Order amends the WMCA's list of combined authority roads which make up the statutorily defined West Midlands Key Route Network[1] over which the WMCA exercises functions relating to highways and traffic.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The report required by section 105B(9) of the Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act") is published alongside this Explanatory Memorandum.

Other matters of interest to the House of Commons

3.2 The entire instrument applies only to England.

3.3 The instrument applies only to England as it is entirely concerned with local government areas in England. Section 103(2) of the 2009 Act provides that a combined authority may be established in relation to local government areas in England. The instrument does not give rise to minor or consequential effects outside England.

3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject matter of the entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter; or the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament; or the National

[1] S.I. 2017/510

Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.5 The Department has reached this view because it considers that the primary purposes of the provisions in the instrument relate to local government which is within the devolved legislative competence of the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales.

4. Legislative Context

4.1 Part 6 of the 2009 Act provides for the establishment of combined authorities for the areas of two or more local authorities in England. They are bodies corporate that may be given power to exercise specified functions of a local authority, and power to exercise specified functions of any other public authority. Mayoral combined authorities are chaired by a mayor for the area of the combined authority who is elected by the local government electors for the area of a combined authority.

4.2 The WMCA was established by the West Midlands Combined Authority Order 2016 (S.I. 2016/653); the position of elected Mayor for the WMCA was established by the West Midlands Combined Authority (Election of Mayor) Order 2016 (S.I. 2016/933); and the West Midlands Combined Authority (Functions and Amendment) Order 2017 (S.I. 2017/510) conferred further functions on the WMCA, some of which are exercisable individually by the Mayor. Certain highways and traffic functions were conferred on the WMCA in respect of the "combined authority roads" specified in Schedule 1 to that Order. These functions were conferred under section 105, 107D and 114 of the 2009 Act.

4.3 The Business Rate Supplements Act 2009 ("the BRS Act") gives county councils, unitary district councils and the Greater London Authority ("levying authorities") the power to levy a supplement on the national non-domestic rate, known as the business rate supplement ("BRS"). The BRS Act provides that the purpose of the supplement is to raise money for expenditure on a project that will promote economic development in an area and the supplement is limited to a maximum of two pence in the pound of the rateable value of a property. The Business Rate Supplements (Rateable Value Condition) (England) Regulations 2009 (S.I. 2009/2542) provide that the BRS can only be levied on properties with a rateable value of more than £50,000. The BRS Act was amended by section 68 of the Localism Act 2011 (c. 20) to provide that any BRS must be approved in a ballot of affected businesses before it can be imposed.

4.4 Section 105B of the 2009 Act provides that when laying before Parliament an order which confers public authority functions on a combined authority, the Secretary of State must also place a report before Parliament which sets out the effect of the order and why the Secretary of State considers it is appropriate to make it. The report must include any consultation and information which has been taken into account, as well as any other evidence or contextual information that the Secretary of State considers it appropriate to include.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales as the relevant powers being exercised extend to England and Wales.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 Jake Berry MP, Parliamentary Under Secretary of State at the Ministry of Housing, Communities and Local Government, has made the following statement regarding Human Rights:

"In my view the provisions of the West Midlands Combined Authority (Business Rate Supplements Functions and Amendment) Order 2018 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Government committed in its 2015 manifesto to "devolve powers and budgets to boost local growth in England…to large cities which choose to have elected mayors". The Government considers such devolution will boost economic growth, increase public service efficiency, improve Britain's productivity, and rebalance the economy, including contributing to the Midlands Engine and the Northern Powerhouse.

7.2 The Government, working with the WMCA and the councils for the local government areas of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton, which form the area of the WMCA, has made significant progress with implementing the commitments in the first Devolution Deal, agreed with the West Midlands on 17 November 2015.[2] The WMCA was established on 15 June 2016,[3] additional functions were conferred on 30 March 2017[4] and then on 4 May 2017 the first Mayor of the WMCA was elected.

7.3 The West Midlands Combined Authority (Business Rate Supplements Functions and Amendments) Order 2018 is a step in the implementation of the second Devolution Deal[5] that the Government agreed with the West Midlands and announced at the Autumn Budget on 22 November 2017. This agreement committed that Government would "subject to the agreement of Parliament, provide for the Mayor of the WMCA to have the power to introduce a business rate supplement, which would be subject to a ballot of affected businesses."

7.4 Conferring the power to levy a BRS on to the WMCA, to be exercised by the Mayor will ensure the Mayor has the appropriate powers to develop projects that promote economic growth and regeneration in the area, benefiting both business and the wider community. It is local areas that are often best placed to take decisions relating to the area about the use of public money and assets, support for business and infrastructure investment.

7.5 The Order provides for the conferral of the Greater London Authority function under the 2009 Act to levy a supplement of up to two pence in the pound of a business property's rateable value on business rates bills. The purpose of any such levy is to raise money for expenditure on a project that will promote economic development in the levying authority's area, and which would not have happened without the supplement. The money raised cannot go towards day-to-day costs, defined in the

[2] https://www.gov.uk/government/publications/west-midlands-devolution-deal
[3] S.I. 2016/653
[4] S.I. 2017/510
[5] https://www.gov.uk/government/publications/a-second-devolution-deal-for-the-west-midlands

2009 Act as costs relating to housing, social services, education services, services for children, health services and services that the authority provides in the discharge of functions imposed by or under the Planning Acts (as defined by the Town and Country Planning Act 1990 (c. 8)) – services that levying authorities have existing obligations to provide.

7.6 The process for introducing a BRS ensures that businesses have the opportunity to shape and ultimately approve any proposal. The levying authority is required to consult upon and publish a prospectus setting out the benefits of the proposed project, and this is then subject to a ballot of affected businesses. Both a majority of affected individual rate-payers must approve it and the aggregate rateable value of those businesses in favour must exceed those against. Smaller businesses are protected – and therefore not eligible to vote in a ballot – as the levy cannot be applied to business properties with a rateable value of less than £50,000. The Mayor will also have the flexibility to increase this threshold, and to apply any other reliefs as they may set out in the prospectus describing the proposal.

7.7 This Order also amends the list of "combined authority roads", known locally as the West Midlands Key Route Network. This is a strategic network of key local roads across the West Midlands, which the WMCA has identified as serving the strategic demands of the area for the movement of people, goods and services, with large traffic volumes, and providing connections to the national strategic road network.[6] The WMCA has certain highway and traffic functions that it exercises concurrently with the councils in the area of the WMCA to use on these roads in relation to: agreements with strategic highway companies; road traffic reduction; permit schemes; and apparatus affected by highway bridge or transport works. The amendments to the list of roads were sought by the WMCA so that the definition covers all roads that are part of the strategic network of key local roads.

7.8 The effect of amending the list is to extend the scope of the functions conferred on the WMCA in respect of certain roads and as such the Secretary of State is satisfied that the statutory conditions, provided for in the 2009 Act, have been met. These conditions include that no further consultation is required on the proposals; that the proposals are likely to improve the exercise of statutory functions in the WMCA area; and that they are appropriate, having regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government.

7.9 The Secretary of State is satisfied that the statutory conditions for this Order, provided for in the 2009 Act, have been met. These conditions include that the appropriate consent – from the Mayor, the Combined Authority and its constituent councils – is given to the making of the Order, and the Secretary of State considers that the making of the Order is likely to improve the exercise of statutory functions in the area to which the Order relates.

7.10 Devolution Deals made with Cambridgeshire and Peterborough, Liverpool City Region and West of England combined authorities contained a mayoral infrastructure supplement, which has similar aims to the BRS. The Local Government Finance Bill that was lost with interruption of business, as a result of the 2017 election, included provisions for a mayoral infrastructure supplement and for mayoral combined

[6] A map of the Key Route Network: http://staging.tfwm.org.uk/strategy/key-route-network/

authorities to levy a BRS. The Government subsequently offered the BRS power to those mayoral combined authorities, which they have accepted, with the consent of the authorities in the area of the combined authority and subject to the agreement of Parliament. Draft orders have been laid for the Cambridgeshire and Peterborough[7], Liverpool City Region[8], and West of England.[9]

8. Consultation outcome

8.1 Unlike the legislation surrounding the establishment of a combined authority, or the conferral of local authority functions on a combined authority, a consultation is not required to confer public authority functions, such as functions of the Mayor of London, on a combined authority.

8.2 An Order can be made to 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 if 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 relevant area. The appropriate consent is that of the mayor, combined authority and constituent council of the combined authority. Before laying this Order, the Government sought and obtained the consent of the Mayor, Combined Authority and constituent council in relation to the Order, and considers that the Order is likely to improve the exercise of statutory functions in the area of the Combined Authority.

8.3 Further consultation at this time is not considered necessary. Should the combined authority mayor choose to exercise the BRS functions conferred, they would be required to conduct a statutory consultation on proposals and then secure agreement to a prospectus from a ballot of affected businesses, in accordance with section 4 of the BRS Act. However, as consultation has been undertaken in the WMCA area, it is described below.

8.4 The WMCA undertook a consultation in relation to proposals contained in a scheme[10] that the WMCA prepared and published under provisions in the 2009 Act. The WMCA prepared this scheme following agreement of the first devolution deal with the Government.

8.5 The consultation ran for seven weeks from 4 July to 21 August 2016. This consultation has already been the subject of the Explanatory Memorandum to S.I. 2017/510, as most of the proposals consulted on have already been provided for in legislation, including those related to the establishment and management of the West Midlands Key Route Network. That Explanatory Memorandum also set out that for proposals that required legislation including those related to business rates, the Government would seek Parliament's approval to further legislation.

8.6 The scheme proposed that the WMCA would be a levying authority for the purposes of the BRS Act and the constituent councils would be deemed to be acting jointly through the WMCA in accordance with Section 2(3) of the BRS Act. The scheme also proposed that the Mayor would have the ability, in consultation with businesses, and with agreement of the relevant Local Enterprise Partnership Board(s), and the

[7] http://www.legislation.gov.uk/id/ukdsi/2018/9780111170113
[8] http://www.legislation.gov.uk/id/ukdsi/2018/9780111170120
[9] http://www.legislation.gov.uk/id/ukdsi/2018/9780111170106
[10] https://www.wmca.org.uk/media/1367/mayoral-wmca-scheme.pdf

Combined Authority, to raise a BRS, up to a specified cap for investment in specified projects, aiding the delivery of the investment programme driven by the Combined Authority Strategic Economic Plan.

8.7 The WMCA led the consultation, which was delivered in conjunction with the seven constituent councils. 1309 digital responses were received and 19 paper responses. Of the 1328 responses received, 63 per cent were from local residents and seven per cent from businesses; in addition 23 stakeholder representations were received. The WMCA's summary of responses[11] to the consultation includes analysis of two profile based questions, analysis of responses to each of the nine multiple choice questions and analysis of the additional free text responses.

8.8 In relation to the BRS proposals, the consultation asked "To what extent do you agree or disagree that [the Combined Authority] should get the functions highlighted above, and detailed in the 'finance section' of Mayoral WMCA Functions Scheme, to deliver these ambitions?", which included the two BRS proposals. Of the 1,302 responses to this section, 54 per cent agreed or strongly agreed, 35 per cent disagreed or strongly disagreed, and 11 per cent did not know. Of all functions consulted on, this was the area where fewest respondents agreed the functions should be granted. However, 68 per cent of businesses and 66 per cent of employees that responded to this question agreed the WMCA should have all finance functions in the scheme. Specifically, 55 free text responses (10 per cent) raised concerns relating to business rate increases, protection for smaller businesses, interference with businesses and discouraging businesses from operating in the West Midlands area.

8.9 In relation to the Key Route Network proposals, the consultation asked "To what extent do you agree or disagree that [the Combined Authority] should get the functions highlighted above, and detailed in the 'transport' section of the Mayoral WMCA Functions Scheme, to deliver these ambitions?", which included the creation of a Key Route Network and more effective and coordinated improvement and maintenance of the strategic road network. Of the 1305 responses to this section, 79 per cent agreed or strongly agreed, 18 per cent disagreed, and four per cent did not know. Of all functions consulted on, transport was the area receiving the greatest proportion of respondents agreeing that functions and funding should be transferred.

8.10 The most common theme in the free text responses to this question (27 per cent, 183 comments) was the need to work collaboratively or centrally plan policy or ensure strategic overview. Specifically in relation to the Key Route Network, 10 per cent of responses (68 comments) also cited that the transport network/transport links is a priority for the region and important for the economy. The consultation was about powers in relation to a strategic network of key local roads and the amendments in this Order ensure that the definition covers all roads which are part of that strategic network of key local roads.

8.11 In accordance with the requirements at section 113(2) of the 2009 Act, the Secretary of State has reviewed the WMCA's consultation, and is of the view that no further consultation is necessary. The Secretary of State is satisfied that the consultation was sufficient in terms of its length (seven weeks); the mechanisms used (online and paper versions and responses); the promotional activity (press releases, features in Coventry

[11] https://www.wmca.org.uk/media/1357/mayoral-wmca-consultation-report-for-upload.pdf

and Warwickshire LEP newsletter, social media, posters in public buildings and significant stakeholders engagement); and the analysis undertaken.

9. Guidance

9.1 No guidance is necessary for the Key Route Network element of this Order. Guidance on the Business Rate Supplement is available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/8306/business_rate_supplements_localauthority_guidance.pdf. The Government continues to work with colleagues in the Combined Authority to support their implementation of the devolution deals.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 The purpose of any BRS would be to promote local economic growth, thus benefiting both business and the wider community. Any supplement would only be taken forward following consultation with and a successful double-lock ballot of affected businesses.

10.4 Any BRS would be an additional two pence in the pound of rateable value on the business rate bills of liable rate-payers.

10.5 The following table shows the number of properties above the rateable value threshold that would may be affected by any BRS and the number of properties that would not be affected and therefore exempt from any BRS.

Levying authority	Properties affected (000s)	Properties excluded (000s)	Properties affected (%)	Properties exempt (%)
WMCA	9	89	9%	91%

10.6 An Impact Assessment has not been prepared for this instrument; no impact is anticipated from this instrument's amendments to the Key Route Network.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

11.2 There will be no additional regulation of business arising from the supplement. The business rate supplements legislation ensures that a supplement can only be applied to properties with a rateable value of more than £50,000. The rateable value threshold for the BRS is also substantially higher than that for Small Business Rate Relief (available for business properties with a rateable value of up to £15,000), which provides protection for small businesses.

12. Monitoring & review

12.1 The WMCA is required, under the devolution agreements reached with Government, to put in place an extensive programme of evaluation, agreed with HM Treasury, of the devolution agreements.

13. Contact

13.1 Luke Scofield, at the Ministry of Housing, Communities and Local Government, telephone: 030 3444 2562 or email: luke.scofield@communities.gsi.gov.uk, can answer any queries regarding each instrument.