EXPLANATORY MEMORANDUM TO

THE WEST MIDLANDS COMBINED AUTHORITY (FUNCTIONS AND AMENDMENT) ORDER 2017

2017 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 This Order provides for certain functions of the West Midlands Combined Authority's ("the Combined Authority") constituent councils and certain public authorities to be exercised by the Combined Authority, certain specified functions of the Combined Authority's functions to be exercisable only by the Mayor of the Combined Authority and for certain governance arrangements, including the addition of non-constituent councils, of the Combined Authority.

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 attached to this Explanatory Memorandum.

3.2 Section 104(2) of the 2009 Act provides that section 85 of the Local Transport Act 2008 ("the 2008 Act") (provision about membership of an ITA) applies to (a) an order under section 104(1)(a) of the 2009 Act, and (b) the combined authority to whom that order applies, as it applies to an order under section 84 of that Act and the Integrated Transport Authority (ITA) to whom that order applies. Section 84(1) and (2)(a) of the 2008 Act provide that the Secretary of State may by order make provision about the constitutional arrangements of an ITA, including provision as to the membership of the ITA (including the number and appointment of members of the ITA and the remuneration of, and pensions or allowances payable to or in respect of, any member of the ITA). Section 85(1)(a) of the 2008 Act, as applied by section 104(1)(a) of the 2009 Act provides that an order which includes provision about the number and appointment of members of the ITA must provide for the majority of the members of the combined authority to be appointed by the combined authority's constituent councils. Section 107A(6) of the 2009 Act provides that a mayor for the combined area of a combined authority is by virtue of that office a member of, and the chair of, the combined authority. Article 24(2)(d) of the Order provides for a further five non-constituent council councils (North Warwickshire, Rugby, Shropshire, Stratford-on-Avon and Warwickshire) to the Combined Authority, each appointing one member to the Combined Authority. In consequence of article 24(2)(d), article 25 provides for section 85(1)(a) of the 2008 Act (provision that may be made in an order under section 84: membership of ITA) to be applied without including the Mayor in any calculation of whether a majority of the members of the Combined Authority have

been appointed by the constituent councils. The Mayor's appointment by virtue of section 107A of the 2009 Act makes the Mayor a unique kind of member and the purpose of the amendment is to clarify how section 85 is to operate in relation to this unique kind of member. The membership provisions for the Combined Authority state that two members will be appointed from amongst the elected members of each of the constituent councils of the Combined Authority, one member from amongst the elected members of each of the non-constituent councils, and one member from each Local Enterprise Partnership. Following the appointment of the Mayor on the 8 May 2017 the Combined Authority will comprise of 28 members; 14 constituent members, 10 non-constituent council members, three Local Enterprise Partnership members and the Mayor. The amendment to section 85 of the 2008 Act in article 25 of this Order ensures that the majority of the members of the Combined Authority are appointed by the constituent councils.

Other matters of interest to the House of Commons

3.3 This entire instrument applies only to England.

3.4 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.

3.5 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this 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 Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.6 The Department has reached this view because it considers that the primary purpose of the provisions in this 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. The primary purpose of the subject-matter of the instrument is not within Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); the primary purpose of the subject matter of the instrument is not within Schedules 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act); and the primary purpose of the subject-matter of the instrument is not within Schedule 7 to the Government of Wales Act 2006 and is not otherwise outside the legislative competence of the National Assembly for Wales (see section 108 of that Act).

4. Legislative Context

4.1 Part 6 of the 2009 Act, as amended by the Cities and Local Government Devolution Act 2016 ("the 2016 Act"), provides for the establishment of combined authorities for the areas of two or more local authorities in England.

4.2 The Combined Authority was established in June 2016 by the West Midlands Combined Authority Order 2016, [1] and the position of elected Mayor for the Combined Authority was established in September 2016 by the West Midlands Combined Authority (Election of Mayor) Order 2016. [2]

4.3 Combined authorities are bodies corporate which may be given power to exercise specified functions of a local authority, and power to exercise specified functions of any other public authority.

4.4 Section 105(3) of the 2009 Act (Constitution and functions: local authority functions generally): the Secretary of State may by order make provision for the costs of a combined authority to be met by its constituent councils, and the basis on which the amount payable by each constituent council is determined.

4.5 Section 114 of the 2009 Act (Incidental etc provision): the Secretary of State may by order make incidental, consequential, transitional or supplementary provision for the purposes of, or in consequence of, an order under this Part or for giving full effect to such an order. Section 117(5) of the 2009 Act (Orders): an order under Part 6 of the 2009 Act may include provision amending, applying (with or without modifications), dis-applying, repealing or revoking any enactment whenever passed or made.

4.6 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 Andrew Percy MP, Parliamentary Under Secretary of State at the Department for Communities and Local Government, has made the following statement regarding Human Rights:

"In my view the provisions of the West Midlands Combined Authority (Functions and Amendment) Order 2017 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

[1] www.legislation.gov.uk/uksi/2016/653
[2] www.legislation.gov.uk/uksi/2016/933

public service efficiency, improve Britain's weak productivity, and rebalance the economy, including contributing to the Midlands Engine. Devolution will provide local leaders with the levers they need to boost economic growth. It is local areas themselves who are often best placed to take decisions relating to the area about the use of public money and assets, support for business, infrastructure investment, and decisions on housing. With devolution, Government investment in economic development can be tailored directly to the individual challenges and opportunities particular places and communities face and can effectively be augmented by private sector investment. Devolution will allow greater local integration of public service delivery, increasing public service efficiency and improving outcomes.

7.2 This Order is a significant step in the implementation of the Devolution Deal[3] which the Government agreed with the West Midlands on 17 November 2015. This agreement provides for powers to be conferred on the mayoral West Midlands Combined Authority, with certain powers to be exercised by the Mayor, as well as devolving significant budgets, including investment funds of over £1 billion over 30 years.

7.3 Combined authorities may exercise specified functions across the local government areas that make up the combined authority area. Under the Devolution Deal, and as provided for in the West Midlands Combined Authority (Election of Mayor) Order 2016, there will be a directly elected Mayor for the Combined Authority from May 2017. The elected Mayor will become the Chair of the Combined Authority, with the first election on 4 May 2017 and the elected Mayor taking office on 8 May 2017. The first term of office of the Mayor is to be three years, with subsequent elections in May 2020, and then every four years thereafter.

7.4 This Order is part of the legislation necessary to deliver the West Midlands Devolution Deal under which powers are to be devolved to the area. Proposals to confer these powers on the Combined Authority, some to be exercised by the Mayor, were made by the Combined Authority in a statutory scheme[4] pursuant to the provisions of the 2009 Act. The Combined Authority has undertaken a consultation on these proposals (see paragraph 8.1) and as required by the 2009 Act, the Combined Authority and its seven constituent councils have consented to the making of the Order. The Order laid in draft will, if approved by Parliament, be made pursuant to the provisions of the 2009 Act, as amended by the 2016 Act.

7.5 The Secretary of State is satisfied that the statutory conditions for the Order, provided for in the 2009 Act, as amended by the 2016 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 Combined Authority area; and that where proposals relate to local authority functions and constitutional changes 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. The Order confers a number of local authority and public authority functions on the Combined Authority to be exercised in relation to the Combined Authority area, as reflected in the Devolution Deal. Certain functions are to be exercisable by the Mayor individually, and others by the Combined Authority (which is chaired by the Mayor). Specifically, this Order makes provision, as described in the following paragraphs, to

[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/477421/West_Midlands_devolution_deal_unsigned_final_web.pdf
[4] https://westmidlandscombinedauthority.org.uk/media/1236/mayoral-wmca-scheme.pdf

confer on the Combined Authority functions, which cover: transport (7.7 – 7.8); housing and regeneration (7.9 - 7.13); air quality; smoke-free premises, places and vehicles; anti-social behaviour; and culture (7.14 – 7.18).

7.6 The Order provides for the funding of the Combined Authority. It does this by requiring the constituent councils to meet any reasonably incurred costs of the Combined Authority, to the extent these costs are not to be met by other resources. The Order then provides that the constituent councils may agree the respective proportions they will pay; in absence of this agreement, the proportions are to be calculated by reference to their respective shares of the total resident population, as estimated by the Statistics Board. The Order also recognises that the Combined Authority functions for bus lane contraventions, conferred in this Order, may be funded through the existing transport levy. [5]

7.7 Reflecting the Devolution Deal's commitments that the Mayor of the West Midlands will take responsibility for a devolved and consolidated transport budget, and for a key route network, the Order makes provision for identifying specific local authority roads as the Combined Authority roads, to create a statutorily defined West Midlands Key Route Network, and for enabling the Mayor, with the assistance of the Combined Authority, to:

- exercise the functions of a Minister of the Crown specified in section 31 (power to pay grant) of the Local Government Act 2003, to pay grants (in practice for highways maintenance) to the constituent councils of the Combined Authority, with the condition that the Mayor has regard to the desirability of ensuring that the council has sufficient funds to facilitate the effective discharge of highways functions, and has regard to any other sources of funding available to the council for expenditure incurred, or to be incurred, in relation to the exercise of highway functions; functions to be held concurrently with the Secretary of State.
- exercise the functions of the constituent councils specified in section 6 (powers to enter into agreements with the Minister or strategic highways companies relating to the exercise of functions with respect to trunk roads etc.) of the Highways Act 1980[6] in relation to the Combined Authority area; functions to be held concurrently with the constituent councils.
- exercise the functions of the constituent councils as local highway authorities specified in section 8 (power to enter into agreements with local highway authorities and strategic highways companies for the doing of certain works) of the Highways Act 1980[7] in relation to the Combined Authority roads; functions to be held concurrently with the constituent councils.
- exercise the functions of the constituent councils specified in section 39(2) and (3) (duties of local authorities in relation to measures designed to promote road

[5] http://www.legislation.gov.uk/ukdsi/2017/9780111153321/contents

[6] Section 6 was amended by section 8 of, and paragraph 4 of Schedule 4 to, the Local Government Act 1985 (c.51), section 22 of, and paragraph 2 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19), section 1 of, and paragraph 7 of Schedule 1to, the Infrastructure Act 2015 (c.7), and S.I. 1995/1986.

[7] Section 8 was amended by section 22 of, and paragraph 3 of Schedule 7 to, the Local Government (Wales) Act 1994, section 8 of, and paragraph 5 of Schedule 4 to, the Local Government Act 1985, and section 1 of, and paragraph 8 of Schedule 1 to, the Infrastructure Act 2015.

safety and studies into vehicular accidents arising, etc) of the Road Traffic Act 1988[8]; functions to be held concurrently with the constituent councils.

- exercise the functions of the constituent councils specified in section 2 (duty of principal councils to make reports) of the Road Traffic Reduction Act 1997, to report to the Secretary of State on the levels of existing traffic flows, forecast growth and reduction targets; functions to be exercised by the Combined Authority instead of the constituent councils, with the condition that the Combined Authority must consult those councils before exercising the functions.

- exercise the functions of the constituent councils specified in sections 33 (preparation of permit schemes), 33A (implementation of permit schemes of strategic highways companies and local highway authorities in England) and 36 (variation and revocation of permit schemes) of the Traffic Management Act 2004[9] and the Traffic Management Permit Scheme (England) Regulations 2007, [10] to operate a permit scheme designed to control the carrying out of works on the Combined Authority roads; functions to be held concurrently with the constituent councils.

- exercise the functions of the constituent councils specified in sections 83 (works for road purposes likely to affect apparatus in the street), 84 (measures necessary where apparatus affected by major works) and 85 (sharing of costs of necessary measures) of the New Roads and Street Works Act 1991 Act[11] and the Street Works (Sharing of Costs of Works) (England) Regulations 2000, giving the Combined Authority the power to collect contributions from utilities for diversionary works needed as a result of highways works carried out by the Combined Authority; functions to be held concurrently with the constituent councils.

7.8 The Order also provides, in relation to transport, for the Combined Authority to exercise the functions of the constituent councils specified in the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005, [12] to issue penalty charges in respect of bus lane contraventions across the Combined Authority area; function to be held concurrently with the constituent councils.

7.9 The Devolution Deal included the commitment that the Mayor of the West Midlands would exercise planning powers to drive housing delivery and improvements in housing stock, giving the same competencies as the Homes and Communities Agency (HCA).

7.10 To support this ambition, the Order provides that the public authority functions (functions of the HCA) in sections 5-12 of the Housing and Regeneration Act 2008, including powers of land acquisition and disposal, are conferred on the Combined Authority. The compulsory purchase powers, contained in section 9(2), are to be

[8] Section 39 was amended by section 168 of, and paragraph 121(3) of Schedule 8 to, the New Roads and Street Works Act 1991 (c. 22), and by section 279 of the 1999 Act.
[9] Section 33 was amended by paragraph 5 of Schedule 10 to the Deregulation Act 2015 (c.20), Section 33A was inserted by paragraph 6 of Schedule 10 to the Deregulation Act 2015 and Section 36 was substituted by paragraph 8 of Schedule 10 to the Deregulation Act 2015.
[10] S.I. 2007/3372, amended by S.I. 2015/958.
[11] Section 83 was amended by Schedule 1 to the Traffic management Act 2004 (c.18).
[12] S.I. 2005/2757.

exercised by the Mayor, with the assistance of the Combined Authority, and with consent from at least one Combined Authority member representing the area(s) in question. As is the case when the HCA exercises these powers, the Mayor may only implement a Compulsory Purchase Order with the consent of the Secretary of State. All HCA powers are to be exercised by the Combined Authority for the purpose of objects, which are the same as the HCA's objects, and which include to improve the supply and quality of housing, to secure regeneration or development of land or infrastructure, and to support the creation, regeneration or development of communities in the area. The functions are to be held concurrently with the HCA.

7.11 The Devolution Deal states that as part of the West Midlands High Speed 2 Growth Strategy Combined Authority-led Development Corporations should support the delivery of local growth in the area.

7.12 In giving effect to this commitment, this Order provides for the conferral onto the Combined Authority of the public authority functions (functions of the Greater London Authority (GLA), particularly the Mayor of London) to designate mayoral development areas and create Mayoral Development Corporations (MDCs) in the Combined Authority area. Conferring these functions is the first step in establishing an MDC in the West Midlands; a further order is necessary to create such a body if the Combined Authority decides to exercise the functions being given to them. The timeline for this order would be dependent on the decisions to be taken by the Combined Authority.

7.13 The functions now being conferred on the Combined Authority are in the Localism Act 2011 ("the 2011 Act") (Part 8, Chapter 2; Schedule 21 and Schedule 22), specifically for the Mayor of London to exercise in relation to the Greater London area. The Order uses the provisions in the 2009 Act, as amended by the 2016 Act, to confer, appropriately modified, functions in the 2011 Act onto the Combined Authority to be exercised in relation to the Combined Authority area. The Order makes the following provisions:

- references in the 2011 Act to the GLA and the London Assembly are to be read as references to the Combined Authority;
- the Combined Authority to have in relation to its area the corresponding functions that the Mayor of London has in relation to London;
- the Combined Authority may only exercise the functions conferred on the Combined Authority if at least one member of the Combined Authority appointed for any constituent council whose council area contains any part of the area to be designated consents to the exercise of the functions (this is to ensure there is support for the proposed MDC from the local area – in London this is achieved by the involvement of the elected London Assembly in the process for establishing MDCs);
- the 2011 Act provides that the Mayor of London can designate an area if the designation of the area is considered expedient for furthering any one or more of the GLA's principal purposes. As the Combined Authority does not have "principal purposes" the Order replaces this with a condition that the Combined Authority must consider that such designation would further "economic development and regeneration in the Combined Authority area"; and
- the persons to be consulted before an area may be designated have been changed to reflect the conditions in the West Midlands Combined Authority.

7.14 The Devolution Deal provides that the Combined Authority could be enabled to implement Low Emission Zones and Clean Air Zones in order to help achieve their Air Quality Plan objectives (both nationally and locally).

7.15 Combined authorities already have the powers to create these emission control zones, but in support of these functions the Order enables the Combined Authority to exercise the air quality functions of the constituent councils specified in sections 82 (local authority reviews), 83 (duty to designate air quality management areas), 84 (duties in relation to designated area) and 113 (disclosure of information) of the Environment Act 1995.[13] Functions to be held concurrently with the constituent councils.

7.16 The Combined Authority, as part of the Devolution Deal, has brought forward proposals for securing safer travel across the bus and tram network. The Order provides that the Combined Authority can exercise the functions of the constituent councils specified in section 10(3) (duty to enforce) and (5) (power to authorise officers), and paragraphs 13 and 16 (functions relating to fixed penalty notices) of Schedule 1 to the Health Act 2006,[14] regulation 3(5) of the Smoke-free (Premises and Enforcement) Regulations 2006[15] and regulation 3(4) of the Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007,[16] to be an enforcement authority in relation to the prohibition of smoking in premises, places and vehicles across the Combined Authority area. Functions to be held concurrently with the constituent councils.

7.17 The Order also provides that the Combined Authority can exercise the functions of the constituent councils specified in sections 5 (application for injunctions) and 104 (review of response to complaints) of the Anti-Social Behaviour, Crime and Policing Act 2014, to issue civil injunctions for antisocial behaviour in relation to the bus and tram network in the Combined Authority area. The Combined Authority will also be a relevant authority for the purposes of section 115 (disclosure of information) of the Crime and Disorder Act 1998.[17] Functions to be held concurrently with the constituent councils.

7.18 In support of the Combined Authority's role to promote the West Midlands and attract business and innovation to the region the Order provides that the Combined Authority can exercise the functions of the constituent councils specified in section 145 (provision of entertainments) of the Local Government Act 1972.[18] Functions to be held concurrently with the constituent councils.

---

[13] Section 84 was amended in relation to England and Wales by section 59 of, and Schedule 13 to, the Deregulation Act 2015 and Section 113 was amended in relation to England and Wales by paragraphs 14 and 18 of Schedule 2 and Schedule 3 to the Pollution Prevention and Control Act 1999 (c. 24) and paragraphs 361 and 384 of Part 1 of Schedule 2 to S.I. 2013/755.

[14] Section 10 was amended by section 95 of the Children and Families Act 2014 (c. 6) and Schedule 1 was amended by section 95 of the Children and Families Act 2014 (c. 6).

[15] S. I. 2006/3368. Regulation 3 was amended by regulation 6 of S.I. 2015/286.

[16] S.I. 2007/760. Regulation 3 was amended by regulation 4 of SI 2015/939.

[17] Section 115 was amended by S.I. 2000/90, section 74 of, and Schedule 7 to, the Criminal Justice and Court Services Act 2000 (c. 43), section 97 of the Police Reform Act 2002 (c. 30), S.I. 2469/2002, S.I. 2003/602, section 219 of the Housing Act 2004 (c. 34), section 22 of, and Schedule 9 to the Police and Justice Act 2006 (c. 48), section 29 of the Transport Act 2008 (c. 26), S.I. 2008/912 , the Police Reform and Social Responsibility Act 2011 (c. 13), section 55 of, and Schedule 5 to, the Health and Social Care Act 2012 (c. 7), and S.I. 2010/886.

[18] 1972 c. 70. Section 145 was amended by section 198 of and paragraph 59 of Schedule 6 to the Licensing Act 2003 (c. 17).

7.19 In order to manage the exercises of those powers identified in the Order as being held concurrently with the constituent councils, the Combined Authority will operate in accordance with a Memorandum of Understanding with the constituent councils to prevent duplication of procedures or local disagreement. In the case of both the prohibition of smoking and civil injunctions for antisocial behaviour the Combined Authority will only exercise these functions on buses and the bus network and trams and the tram network.

7.20 The Order provides that the functional power of competence exercisable by the mayoral Combined Authority under section 113A (general power of EPB or combined authority) of the 2009 Act[19] is also exercisable by the Mayor. This provision has the effect of confirming the Mayor's power to do things appropriate or incidental to those functions exercisable by the Mayor.

7.21 The Order permits the Mayor to appoint one person to act as political adviser, for the period of the Mayor's term; or until the Mayor leaves office, if the Mayor leaves before the end of their term. This ensures the Mayor has access to political advice, in addition to, and separately from appropriate officer support, and within proportionate resource.

7.22 Finally, the Order makes constitutional amendments to the West Midlands Combined Authority Order 2016. These include:

- provisions that reflect that from the 8 May 2017 the Mayor is to be the chairman of the Combined Authority;
- the addition of five new non-constituent council (North Warwickshire, Rugby, Shropshire, Stratford-on-Avon and Warwickshire) to the Combined Authority, which will increase the representation of the three Local Enterprise Partnership areas, and neighbouring councils, on the Combined Authority, a key partnership recognised in the Devolution Deal;
- provision applying section 85 of the 2008 Act without including the Mayor in any calculation of whether a majority of the members of the Combined Authority have been appointed by the constituent councils;
- providing the Mayor with a vote on all matters, and that for decisions relating to matters provided for in the Order the Mayor is to be with the majority of the two-thirds of constituent councils members required for a decision;
- that for a decision to be taken on whether a MDC in the Combined Authority area can submit a compulsory purchase order to the Secretary of State authorising the acquisition of land, each member appointed by a constituent council whose area forms part of the proposed land to be acquired must be part of the majority of the two-thirds of constituent councils members, and the Mayor, required for that decision;
- that decisions subject to a unanimous vote in favour by constituent council members must also include the Mayor's vote as part of that unanimous vote when it is a matter in connection to the use of the Mayor's functions;

[19] Section 113A was inserted by section 13 of the Localism Act 2011 and amended by paragraphs 17 and 25 of Schedule 5 to the 2016 Act.

- amending the quorum of the overview and scrutiny committee to be at least two-thirds of the total number of the committee members present; and
- providing that the Combined Authority may establish an independent remuneration panel to recommend allowances payable to the Mayor and Deputy Mayor of the Combined Authority, and that the Combined Authority can fund such remuneration.

8. Consultation outcome

8.1 The Combined Authority undertook a consultation for the purposes of the 2009 Act on the proposals contained in the scheme, which was published on 4 July 2016, for conferring powers on the mayoral Combined Authority and for including additional non-constituent councils. The Combined Authority led the consultation, delivered in conjunction with the seven constituent local authorities. The consultation ran for seven weeks from 4 July to 21 August 2016.

8.2 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 Combined Authority's summary of responses[20] to the consultation includes analysis of two profile based questions and analysis of responses to each of the nine multiple choice questions and analysis of the additional free text responses.

8.3 The outcome of the consultation on the Combined Authority's proposals was generally positive, with 777 (60 per cent) agreeing that the mayoral Combined Authority will promote more efficient and effective governance in the West Midlands. Questions were targeted at the functions contained within the scheme: on transport 1025 (79 per cent) agreed with the proposals; for Low Emission and Clear Air Zones 931 (71 per cent) agreed; on High Speed 2 growth (including mayoral development corporations) 836 (65 per cent) agreed; and on more and better homes 893 (69 per cent) agreed. On the finance proposals for the Combined Authority, including mayoral precepting and a business rate supplement to fund specific schemes (both to be brought forward in future legislation) 703 (54 per cent) of respondents agreed with the approach as opposed to 454 (35 per cent) who disagreed. The least positive response was to the question as to what impact the mayoral Combined Authority will have on the identity or interests of local communities, 654 (51 per cent) thought a positive impact, 247 (19 per cent) a negative impact and 200 (16 per cent) no impact at all.

8.4 The 23 stakeholder responses were almost universally supportive, for example from Sustainable West Midlands "we welcome the fact that a low carbon region is recognised as one of the key pillars of the strategic economic plan together with the priority action of environmental technologies", and the HCA "strong support for WMCA devolution and our continued commitment to partnership working to achieve the shared objectives to maximise housing growth". Some concerns were raised, including from Business Professional Services, the West Midlands Police and Crime Commissioner and the University of Warwick, about the Mayor's limited role in strategic leadership and ability to deliver mayoral priorities. The HCA also raised a concern about the Combined Authority having the ability to compulsory purchase HCA land, however it is considered that this concern is addressed as the Secretary of

[20] https://westmidlandscombinedauthority.org.uk/media/1354/mayoral-wmca-consultation-report-for-upload.pdf

State (sponsor of the HCA) must provide consent for the use of this function. A further concern was that under the MDC legislation the Secretary of State will have the power to transfer HCA land to MDCs, again this is addressed as the Secretary of State, as sponsor to the HCA, will consider any impact on the HCA before taking such a decision.

8.5 As statute requires, the Secretary of State was sent the Combined Authority's summary of responses to the consultation, to which he has had regard when deciding the provisions to include in the Order. In accordance with the requirements at section 113(2) of the 2009 Act, the Secretary of State has also reviewed the Combined Authority's consultation, and is of the view that no further consultation is necessary. The Secretary of State is satisfied that the Combined Authority's 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 and Warwickshire LEP newsletter, social media, posters in public buildings and significant stakeholders engagement); and the analysis undertaken.

8.6 The Secretary of State has taken the decision not to implement, by the Order, all of the proposals that formed part of the scheme, which was consulted on by the Combined Authority. In particular, in relation to the Combined Authority's transport provisions: the power to pay grants to bus service operators and the General Power of Improvement in respect of highways (the Combined Authority indicated that it no longer wished to receive the functions); powers associated with moving traffic contraventions on the Key Route Network (the Department for Transport requested to address this outside of the Deal implementation process); and the power to create Clean Air Zones and Low Emission Zones (combined authorities already have such powers). Further proposals in the scheme do not at this time require any legislation for implementation, and for those that do (bus franchising, business rates, devolution of adults skills budgets and related employment functions, data sharing, treatment of MDC areas during compulsory purchase, and financial provisions such as budget setting, mayoral precepting, and the extension of borrowing and levying powers to cover the Combined Authority's new functions), the Government will seek Parliament's approval to further legislation, subject to the statutory tests being met where relevant. Finally, the Combined Authority's scheme proposed that the Mayor be excluded from decisions listed in the West Midlands Combined Authority Order 2016 as being subject to unanimous constituent member agreement. The Secretary of State took the decision that the Mayor, as chair of the Combined Authority, should have a vote on all decisions, and that when a decision is subject to unanimous agreement and relates to the exercise of the Mayor's functions, the Mayor must be part of that unanimous agreement.

9. Guidance

9.1 No guidance is necessary to accompany this Order. The Government continues to work with colleagues in the Combined Authority area to support their implementation of the Devolution Deal.

10. Impact

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

10.2 As regards impact on the public sector, the Combined Authority should lead to operational efficiencies that could lead to reduced costs. Indeed, the statutory tests

require the Secretary of State to consider that establishing the Combined Authority is likely to improve the exercise of statutory functions in the areas to which an order relates and the Secretary of State is required to have regard to the need to secure effective and convenient local government. As explained at paragraph 7.5, the Secretary of State is satisfied that these tests are met in relation to the provisions of the Order.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

12.1 This Order provides for functions to be devolved to the Combined Authority. The Combined Authority will be required, under the devolution agreements reached with Government, to put in place an extensive programme of evaluation, agreed with HM Treasury, of the devolution agreement, including the new governance arrangements.

13. Contact

13.1 Lydia Strawson at the Department for Communities and Local Government Telephone: 0303 444 2784 or email: lydia.strawson@communities.gsi.gov.uk can answer any query regarding the instrument.