EXPLANATORY MEMORANDUM TO

THE WEST MIDLANDS COMBINED AUTHORITY (TRANSFER OF POLICE AND CRIME COMMISSIONER FUNCTIONS) ORDER 2024

2024 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This Order transfers police and crime commissioner ("PCC") functions from the PCC for West Midlands to the Mayor of the West Midlands Combined Authority ("the Mayor"). Enabling the Mayor to exercise PCC functions is consistent with the Government's ambition to see all combined authority mayors exercise PCC functions where feasible.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Article 1(2) provides for the Order to come into force on the day after the day on which it is made. Although the Order comes into force on that date in order to allow for preparations for the transfer of functions, the actual transfer of functions does not take place until after the election, several weeks later. To the extent that the instrument will impose duties on people that are significantly more onerous than before, or require them to adopt different patterns of behaviour, the Home Office considers that those affected will have a reasonable chance to adapt to the changes required.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. European Convention on Human Rights

5.1 The Minister for Crime, Policing and Fire, Chris Philp, has made the following statement regarding Human Rights:

"In my view the provisions of the West Midlands Combined Authority (Transfer of Police and Crime Commissioner Functions) Order 2024 are compatible with the Convention rights."

6. Legislative Context

6.1 The Police Reform and Social Responsibility Act 2011 established the position of the Police and Crime Commissioner for West Midlands.

6.2 The West Midlands Mayoral Combined Authority was established by the West Midlands Combined Authority Order 2016 (S.I. 2016/653).

6.3 Section 62 of the Levelling-up and Regeneration Act 2023 amended section 107F of the Local Democracy, Economic Development and Construction Act 2009 so that there is no longer a requirement for the combined authority and constituent local authorities to consent to the making of this Order.

6.4 Under section 113 of the Local Democracy, Economic Development and Construction Act 2009, the Secretary of State is required before making an Order to consider that to do so is likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the area, and that to do so is appropriate having regard to the need to secure effective and convenient local government and to reflect the identities and interests of local communities. S113 also requires the Secretary of State to carry out a public consultation unless the local authority carried out a public consultation themselves on a proposal made to the Secretary of State.

7. Policy background

What is being done and why?

7.1 The Levelling Up White Paper[1] (LUWP) outlines the key leadership role that combined authority mayors have in public safety and improving public health. It set out the Government's aspiration to have combined authority mayors take on the Police and Crime Commissioner (PCC) role, where feasible. Part One of the PCC Review (the Review) cemented the Government's view that the join up of public safety functions under the leadership of a combined authority mayor has the potential to offer wider levers to prevent crime[2]. It is the Government's view that the democratic accountability of the PCC model is preserved under the mayoral PCC model.

7.2 The geography of the West Midlands Combined Authority is coterminous with the geography of the West Midlands Police Force. The election of the Mayor of the West Midlands is aligned with the PCC election cycle. It is Government's view that the exercise of PCC functions by the Mayor of the West Midlands has the potential to realise a more collaborative, holistic approach to public safety in the West Midlands, whist maintaining the democratic accountability that underpins the PCC model. The Secretary of State is satisfied that the making of this Order is likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the area, and that to do so is appropriate having regard to the need to secure effective and convenient local government and to reflect the identities and interests of local communities.

7.3 This Order transfers PCC functions for West Midlands to the West Midlands Mayoral Combined Authority (WMCA) to be exercised by the Mayor. The Order also provides that the Mayor is to be treated, in relation to the exercise of their PCC functions, as PCC for the purposes of all PCC enactments. This will take effect from 7 May 2024. The Order applies some legislation with modifications to the Mayor in the exercise of their PCC functions and provides that other legislation does not apply.

[1] His Majesty's Government (2022), Levelling Up in the United Kingdom, pp. 142, Levelling Up the United Kingdom (publishing.service.gov.uk)
[2] Home Secretary (2021), Concluding Part One of the PCC Review, Written statements - Written questions, answers and statements - UK Parliament

7.4 This Order provides in relation to the PCC functions: (a) that following the election of the Mayor on 2 May 2024, the Mayor is to exercise PCC functions for West Midlands Police area from 7 May 2024; (b) for the abolition of the PCC for West Midlands from 7 May 2024; (c) that there should be no future PCC ordinary elections, or by-elections in the West Midlands.

7.5 This Order makes provision in relation to the transfer of PCC functions – in particular, transfer of property, rights and liabilities. The property, rights and liabilities in respect of the PCC for West Midlands are to transfer to the WMCA. In relation to such property, rights and liabilities (and any acquired in relation to the Mayor's PCC functions after the transfer) the Mayor is to exercise all functions relating to them and make all decisions (although the Mayor may delegate in line with the position on delegation set out in PCC-related legislation as modified by this Order). Any receipts arising from such property, rights and liabilities are to be paid into the police fund. This ensures that police funding is protected.

7.6 Section 115(5) of the 2009 Act provides that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) apply to the staff transferring from the Office of the West Midlands PCC to the WMCA. This ensures that employees are protected as they transfer from the employment of the Office of the PCC to the WMCA.

7.7 In respect of complaints, the Mayor and any Deputy Mayor for Policing and Crime will be treated in line with the position in existing combined mayoral authorities in which the mayor exercises the functions of a PCC.

7.8 Article 10 provides that the current financial year of the PCC and Chief Constable for West Midlands is to be extended from 31 March until 6 May 2024. This is in order to rationalise accounting processes and avoid preparing additional accounts for the interim period.

7.9 The Order provides that the costs of the Mayor's PCC functions in the first year (financial year commencing 1 April 2024) are to be met from the police precept issued by the PCC for West Midlands. This ensures that the precept issued to the PCC applies to the Mayor.

7.10 In respect of disqualification criteria, the criteria for PCCs will apply to the Mayor in addition to the standard mayoral criteria, given that the Mayor will exercise PCC functions. The criteria have been modified to enable their suitable application to the Mayoral post.

7.11 The Order provides that where the Police and Crime Panel suspends the Mayor from the exercise of PCC functions due to that person being charged with a serious criminal offence, the Police and Crime Panel must appoint a person to exercise the Mayor's PCC functions. This ensures that policing governance is not disrupted upon the suspension of the Mayor.

7.12 The Order also provides that where the Deputy Mayor of the Combined Authority is acting in place of the Mayor because the Mayor is unable to act (which does not include where the Mayor is suspended by the Police and Crime Panel from the exercise of PCC functions as described in paragraph 7.10 above) and, after a period of six months, the Mayor remains unable to act, the mayoral post becomes vacant and a by-election is therefore triggered. This is consistent with the position for PCCs and ensures that a person who has not been directly elected to exercise PCC functions

cannot exercise them for an extended period of time where a Mayor with PCC functions is incapacitated.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans for a consolidation exercise at this point.

10. Consultation outcome

10.1 The Secretary of State conducted a public consultation for six weeks between 20 December and 31 January. Individual and stakeholders were able to respond to an online survey platform, via paper responses available to print from the Gov.UK consultation page or paper forms available in public buildings or by sending an email to the consultation inbox. Respondents were given the opportunity to indicate whether they agree or disagree with the transfer of PCC functions to the Mayor of the West Midlands (or to select 'don't know'). They were then asked a follow up question to explain why they think this, and finally, they were given an opportunity to provide any further comments. In total, 7,103 people responded or commented on the consultation: this included 7,076 through the online platform and 27 through other channels.

10.2 Key themes in support of the transfer brought out from the responses included: bringing police governance under a mayor enables a more strategic overview and better join up of public services, the cost savings associated with merging the two roles, dissatisfaction with the current PCC model, and the fact that the Mayor is a more high-profile, recognisable, and accountable figure. In opposition, themes included the role being too much for one individual to deliver, the potential for politicisation of the PCC role, that it is better to have two separate individuals independent from one and other, and dissatisfaction at both the PCC and mayoral model. A report on the consultation outcome prepared by the Secretary of State will be published on the Gov.UK consultation website on the laying date.

10.3 The Government has also consulted with the WMCA and Office of the PCC. The Mayor of the West Midlands has consented to this Order.

11. Guidance

11.1 No guidance is necessary to accompany the Order. The Government continues to work with the mayoral combined authorities to support their implementation of the devolution deals.

12. Impact

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

12.2 As regards to impact on the public sector, the Government believes that mayors who exercise PCC functions have greater ability to join-up delivery on tackling crime and securing public safety. With an expanded role comes a high public profile, visibility and greater ability to bring about local change. The Secretary of State is satisfied that this Order is in line with the Government's ambition to enable all combined authority

mayors to exercise PCC functions, where possible, as outlined in the Levelling Up White Paper.

12.3 A Regulatory Impact Assessment has not been prepared for this instrument because it does not directly affect the business and voluntary sectors.

13. Regulating small business

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

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that combined authorities are required under the devolution agreements reached with the Government to put in place an extensive programme of evaluation, agreed with HM Treasury, of the devolution agreements.

15. Contact

15.1 Lauren Day - Lauren.Day1@homeoffice.gov.uk or Peter Cordingley - Peter.Cordingley1@homeoffice.gov.uk.

15.2 Kayleigh Chapman, Deputy Director for the Police Strategy and Reform Unit, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chris Philp, Minister of State for Crime, Policing and Fire can confirm that this explanatory memorandum meets the required standard.