STATUTORY INSTRUMENTS

2017 No. 510

LOCAL GOVERNMENT, ENGLAND
TRANSPORT, ENGLAND

The West Midlands Combined Authority (Functions and Amendment) Order 2017

Made - - - - 30th March 2017

Coming into force in accordance with article 1

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104(1)(a), 105(1) and (3), 105A(1)(a) and (b), (2)(a) and (3)(b), 107D(1), (5) and (7)(a) to (e), 113A, 114 and 117(5) of the Local Democracy, Economic Development and Construction Act 2009(**1**) ("the 2009 Act").

The Secretary of State, having regard to a scheme prepared and published under section 112 of the 2009 Act(**2**), considers that—

(a) the making of this Order is likely to improve the exercise of statutory functions in the combined area to which this Order relates, and

(b) any consultation required by section 113(2) of the 2009 Act(**3**) has been carried out.

In making this Order, the Secretary of State has had regard to the need to reflect the identities and interests of local communities, and to secure effective and convenient local government(**4**).

In accordance with sections 104(10), 105(3A), 105B(2) and 107D(9) of the 2009 Act(**5**) the West Midlands Combined Authority and the councils whose areas are comprised in the area of that combined authority have consented to the making of this Order.

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 117(2) of the 2009 Act.

(**1**) 2009 c. 20. Section 104 was amended by sections 8 and 14 of, and Schedule 5 to, the Cities and Local Government Devolution Act 2016 (c. 1) ("the 2016 Act"). Section 105 was amended by sections 6, 9 and 14 of the 2016 Act. Section 105A was inserted by section 7 of the 2016 Act. Section 107D was inserted by section 4 of the 2016 Act. Section 114 was amended by section 23 of, and Schedule 5 to, the 2016 Act. Section 117 was substituted by section 13 of the Localism Act 2011 (c. 20). Section 117 was amended by Schedule 5 to the 2016 Act.

(**2**) Section 112 was amended by sections 6 and 23 of the 2016 Act.

(**3**) Section 113 was amended by sections 12, 14 and 23 of, and Schedule 5 to, the 2016 Act.

(**4**) Section 113(3) of the 2009 Act requires the Secretary of State when making an order under sections 104, 105, 106 or 107 in relation to an existing combined authority to have regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government.

(**5**) Sections 104(10) and 105(3A) were inserted by section 14 of the 2016 Act. Section 105B was inserted by section 7 of the 2016 Act. Section 107D was inserted by section 4 of the 2016 Act.

In accordance with section 105B(9) of the 2009 Act the Secretary of State has laid before Parliament a report explaining the effect of this Order and why the Secretary of State considers it appropriate to make this Order.

Accordingly, the Secretary of State makes the following Order:

PART 1

General

Citation and commencement

1.—(1) This Order may be cited as the West Midlands Combined Authority (Functions and Amendment) Order 2017.

(2) Save as provided in paragraph (3) this Order comes into force on 8th May 2017.

(3) Article 24(3)(d)(ii) comes into force on the day after the day on which this Order is made.

Interpretation

2. In this Order—

"the 1980 Act" means the Highways Act 1980(**6**);

"the 1988 Act" means the Road Traffic Act 1988(**7**);

"the 1989 Act" means the Local Government and Housing Act 1989(**8**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**9**);

"the 1997 Act" means the Road Traffic Reduction Act 1997(**10**);

"the 1999 Act" means the Greater London Authority Act 1999(**11**);

"the 2000 Act" means the Transport Act 2000(**12**);

"the 2003 Act" means the Local Government Act 2003(**13**);

"the 2004 Act" means the Traffic Management Act 2004(**14**);

"the 2008 Act" means the Housing and Regeneration Act 2008(**15**);

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

"the 2011 Act" means the Localism Act 2011(**16**);

"the 2016 Order" means the West Midlands Combined Authority Order 2016(**17**);

"combined area" means the combined area of the Combined Authority;

(**6**) 1980 c. 66.
(**7**) 1988 c. 52.
(**8**) 1989 c. 42.
(**9**) 1991 c. 22.
(**10**) 1997 c. 54.
(**11**) 1999 c. 29.
(**12**) 2000 c. 38.
(**13**) 2003 c. 26.
(**14**) 2004 c. 18.
(**15**) 2008 c. 17.
(**16**) 2011 c. 20.
(**17**) S.I. 2016/653.

"the Combined Authority" means the West Midlands Combined Authority, a body corporate established by the 2016 Order(**18**);

"Combined Authority roads" means the highways specified in Schedule 1;

"constituent council" means the councils for the local government areas of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton;

"Corporation" means a corporation established by the Secretary of State in accordance with the provisions in section 198 of the 2011 Act, with the modifications made by Schedule 4, following the designation of an area of land by the Combined Authority;

"the HCA" means the Homes and Communities Agency(**19**); and

"the Mayor" means the mayor for the combined area, except where the context otherwise requires(**20**).

PART 2

Transport

Power to pay grant

3.—(1) The functions of a Minister of the Crown(**21**) specified in section 31 of the 2003 Act (power to pay grant) are functions of the Combined Authority that are exercisable in relation to the combined area.

(2) The functions are exercisable by the Combined Authority concurrently with a Minister of the Crown.

(3) Paragraph (4) applies where, in exercising functions referred to in paragraphs (1) and (2), the Combined Authority determines an amount of grant to be paid towards expenditure incurred or to be incurred by a constituent council in relation to the exercise of its highway functions.

(4) In determining that amount, the Combined Authority must have regard to the desirability of ensuring that the constituent council has sufficient funds to facilitate the effective discharge of those functions.

(5) To comply with paragraph (4), the Combined Authority must take into account any other sources of funding available to the constituent council for expenditure incurred or to be incurred in relation to the exercise of its highway functions.

(6) For the purposes of the exercise by the Combined Authority of the functions referred to in paragraphs (1) and (2), section 31 of the 2003 Act has effect as if—

(a) in subsection (1)—

(i) the reference to a Minister of the Crown were a reference to the Combined Authority;

(ii) the reference to a local authority in England were a reference to a constituent council;

(b) subsection (2) were omitted;

(c) in subsections (3) and (4), the references to the person paying it (the grant) were references to the Combined Authority;

(d) subsection (6) were omitted.

(**18**) See article 3(2) of the 2016 Order.
(**19**) The HCA is a body corporate established under section 1 of the 2008 Act.
(**20**) Article 3 to S.I 2016/933 provides for there to be a mayor for the combined area of the Combined Authority.
(**21**) See section 105A(9) of the 2009 Act for the definition of "Minister of the Crown".

(7) In this article "highway functions" means the functions which are exercisable by a constituent council (in whatever capacity) in relation to the highways for which it is the highway authority.

Agreements between authorities and strategic highways companies

4.—(1) The functions of the constituent councils specified in section 6 of the 1980 Act (powers to enter into agreements with the Minister or strategic highways companies relating to the exercise of functions with respect to trunk roads etc)(**22**) are exercisable by the Combined Authority in relation to the combined area.

(2) The functions of the constituent councils as local highway authorities specified in section 8 of the 1980 Act (power to enter into agreements with local highway authorities and strategic highways companies for the doing of certain works)(**23**) are exercisable by the Combined Authority in relation to Combined Authority roads.

(3) The functions referred to in paragraphs (1) and (2) are exercisable by the Combined Authority concurrently with the constituent councils.

(4) In this article "local highway authority" has the meaning given by section 329(1) of the 1980 Act(**24**).

Promoting road safety

5.—(1) The functions of the constituent councils specified in section 39(2) and (3) of the 1988 Act (duties of local authorities in relation to measures designed to promote road safety and studies into vehicular accidents arising, etc)(**25**) are exercisable by the Combined Authority in relation to the combined area.

(2) The functions are exercisable by the Combined Authority concurrently with the constituent councils.

Bus lane contraventions

6.—(1) The functions of the constituent councils in relation to each of their civil enforcement areas are exercisable by the Combined Authority in relation to the Enforcement Area.

(2) The functions are exercisable by the Combined Authority (in relation to the Enforcement Area) concurrently with each constituent council (in relation to its civil enforcement area).

(3) For the purposes of this article, the Combined Authority is to be treated as an approved local authority(**26**) for the Enforcement Area, and references in the 2005 Regulations to an approved local authority or to the combined area of such an authority are to be construed accordingly.

(4) In this article—

(a) "the 2005 Regulations" means the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005(**27**);

(**22**) Section 6 was amended by sections 8 and 102 of, and Schedules 4 and 17 to, the Local Government Act 1985 (c. 51), section 22 of, and Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19), section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7), and S.I. 1995/1986.
(**23**) Section 8 was amended by section 8 of, and Schedule 4 to, the Local Government Act 1985, section 22 of, and Schedule 7 to, the Local Government (Wales) Act 1994, and section 1 of, and Schedule 1 to, the Infrastructure Act 2015.
(**24**) This definition in section 329(1) of the 1980 Act was amended by section 1 of, and Schedule 1 to the Infrastructure Act 2015.
(**25**) Section 39 was amended by section 168 of, and Schedule 8 to, the 1991 Act, and by section 279 of the 1999 Act.
(**26**) Under section 144(3) of the 2000 Act an authority is an approved local authority if an order has been made designating the whole or any part of its area as a civil enforcement area for parking contraventions, and the Secretary of State has made an order specifying it as an approved local authority.
(**27**) S.I. 2005/2757.

(b) "civil enforcement area" means an area falling within Schedule 8 to the Traffic Management Act 2004 (civil enforcement areas and enforcement authorities)(**28**) and which falls within a constituent council's area;

(c) "Enforcement Area" means the area comprising the civil enforcement areas of the constituent councils.

Road traffic reduction

7.—(1) The functions of the constituent councils as principal councils specified in section 2 of the 1997 Act (duty of principal councils to make reports) are exercisable by the Combined Authority in relation to Combined Authority roads.

(2) Subject to paragraph (3), the functions are exercisable by the Combined Authority instead of by the constituent councils.

(3) The Combined Authority must consult the constituent councils before exercising the functions mentioned in paragraph (1).

(4) In this article "principal council" has the meaning given by section 1 of the 1997 Act(**29**).

Permit schemes

8.—(1) The functions of the constituent councils as local highway authorities specified in the following provisions of the 2004 Act are exercisable by the Combined Authority in relation to Combined Authority roads—

(a) section 33 (preparation of permit schemes)(**30**);

(b) section 33A (implementation of permit schemes of strategic highways companies and local highway authorities in England)(**31**); and

(c) section 36 (variation and revocation of permit schemes)(**32**).

(2) The functions of the constituent councils as permit authorities specified in the 2007 Regulations are exercisable by the Combined Authority in relation to Combined Authority roads.

(3) The functions mentioned in paragraph (1) and (2) are exercisable by the Combined Authority concurrently with the constituent councils.

(4) Part 3 of the 2004 Act (permit schemes) applies in relation to the preparation, implementation, variation and revocation of permit schemes by the Combined Authority as it applies in relation to the preparation, implementation, variation and revocation of permit schemes by a constituent council, subject to the modifications in Schedule 2.

(5) The 2007 Regulations apply in relation to the content, preparation, operation, variation and revocation of permit schemes by the Combined Authority as they apply in relation to the content, preparation, operation, variation and revocation of permit schemes by a constituent council.

(6) For the purposes of paragraph (5), references in the 2007 Regulations to a Permit Authority are to be read as including references to the Combined Authority.

(7) In this article—

(a) "permit scheme" is to be construed in accordance with section 32 of the 2004 Act; and

(**28**) 2004 c. 18.
(**29**) Section 1 was amended by section 280(1) of the 1999 Act.
(**30**) Section 33 was amended by section 51 of, and Schedule 10 to, the Deregulation Act 2015 (c. 20).
(**31**) Section 33A was inserted by section 51 of, and Schedule 10 to, the Deregulation Act 2015.
(**32**) Section 36 was substituted by section 51 of, and Schedule 10 to, the Deregulation Act 2015.