

Submissions on the draft West Midlands Combined Authority (Transfer of Police and Crime Commissioner Functions) Order 2024 and Government response

Submission from Mr Jonathan Jardine, Chief Executive, West Midlands Police and Crime Commissioner

I'm writing on behalf of Mr Simon Foster, the West Midlands Police and Crime Commissioner, regarding the *West Midlands Combined Authority (Transfer of Police and Crime Commissioner Functions) Order 2024* ([The West Midlands Combined Authority \(Transfer of Police and Crime Commissioner Functions\) Order 2024 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2024/0001/eng/sch/1/1))

Mr Foster has asked me to advise the Secondary Legislation Scrutiny Committee and the Statutory Instruments (Joint Committee) that there are particular sensitivities regarding this Order to which he wishes the committees' attention is brought.

This Order is opposed by the majority of West Midlands local authorities and MPs, and the provision in the Levelling Up and Regeneration Act 2023 that enabled the creation of this Order was opposed in the Lords.

The process via which this Order has come to be submitted to Parliament also includes contested elements, and there is potential that Mr Foster will seek permission for a Judicial Review.

Mr Foster notes that the government will likely attempt to expedite and minimise consideration of this Order when, given its sensitivity and the opposition from a majority of the MPs and local authorities affected by it, as well as concerns raised by their Lordships during the passage of the enabling legislation, it merits thorough scrutiny and consideration. Furthermore, a Home Office consultation on the proposed transfer of police and crime powers to the mayoralty prompted to majority of respondents to express opposition to the proposal. This Order is novel, contentious and repercussive - it is the first of its kind. He respectfully requests that the SI is given as full as possible consideration by both Houses to enable the range of issues engaged by the Order, and the number of members with an interest, to be part of its consideration.

Background

In 2019, the majority of the constituent members of West Midlands Combined Authority voted against the transfer of Police and Crime Commissioner functions to the West Midlands Mayoralty. All work on a transfer ceased.

It is to be noted that in other areas, where there is unanimous local authority support - such as Greater Manchester, West Yorkshire, York and North Yorkshire and South Yorkshire - such transfers have taken place, or are progressing. In the West Midlands, that support does not exist.

The *Levelling Up and Regeneration Act 2023* enables an existing Combined Authority Mayor to unilaterally seek and consent to the transfer of Police and Crime Commissioner functions in their area, even where the majority of constituent members of their Combined Authority are opposed to such a transfer.

Shortly after Royal Assent on 2 November 2023, the Mayor of the West Midlands wrote to the Home Secretary, having decided to "formally request" the transfer of the powers. This was six months before the Mayoral and PCC elections which are due to be held on 2 May 2024.

On 6 December 2023, the Home Secretary replied stating that he was, "satisfied that it is right that we should proceed to transfer the functions to be exercised by the Mayor of the West Midlands from

the point of the May 2024 elections." He continued that, "my officials will shortly lay the required secondary legislation before Parliament".

Simon Foster sent pre-action letters to the Home Secretary, the West Midlands Mayor and West Midlands Combined Authority raising a number of concerns regarding this process.

Following this, the Home Secretary did not lay secondary legislation when they said they would but, instead, on 20 December 2023, launched a short, unexpected and retrospective consultation on whether the transfer should take place, despite having already having written to the Mayor to say that it would. The consultation ran until 31 January 2024, a six week period straddling Christmas. The Home Secretary claimed that they had not made a decision on 6 December 2023, in effect meaning that until they made a subsequent further decision after the consultation, the transfer would not take place and the PCC election would follow as planned. Thus, with just three months to go before the planned PCC and Mayoral elections, it is still not clear whether both the PCC and Mayoral elections, or just the Mayoral election would go ahead. Given the size and complexity of the West Midlands, this has created significant complexities and costs for election administrators, and created confusion for electors and potential candidates.

The Home Secretary launched a similar consultation for the proposed transfer in South Yorkshire.

Three working days after the consultation closed on 31 January 2024, the Home Secretary wrote to the Mayor of the West Midlands on 6 February 2024, advising that he was minded to proceed with the transfer.

The Mayor gave his unilateral consent to the transfer on the morning of 7 February 2024.

On the afternoon of 7 February 2024, the results of the consultation were published. 50% of nearly 7,000 respondents were opposed to the transfer, while 46% supported it.

The draft Order was subsequently submitted to Parliament.

Matters the committees and members may wish to consider

1. The Home Secretary's decision of 6 December 2023 to proceed with the transfer
2. The Home Secretary's decision to launch a consultation on 20 December 2023, following their earlier decision on 6 December
3. The status and efficacy of the consultation between 6 December 2023 and 31 January 2024
4. The Home Secretary's decision on 6 February 2024, and a) the tests required of the Home Secretary under S113 of the Local Democracy, Economic Development and Construction Act 2009, and b) the Home Secretary's due regard to the results of the consultation

8 February 2024

Submission from Lord Bach and Lord Hunt of Kings Heath

We are writing to express our deep concerns over the draft Statutory Instrument and invite the Committee to bring it specially to the attention of the House. The Committee may recall the controversy surrounding this proposal which was debated on a number of occasions during the passage of the Levelling Up Bill through the House. There were two votes on the issue both at Report and during Ping Pong.

Among other issues, we are concerned that this measure may be considered an attack on local democracy in the West Midlands, in that the electorate is being denied the chance to say whether it wants the role of a separate PCC to be maintained or handed over to the Mayor.

It is Lord Bach's intention to move a critical motion when the SI is debated in the House of Lords.

We have read the letter sent to you by the Chief Executive of the WM OPCC which in our view reinforces the difficulties of the SI and why it should be brought to the special attention of the House.

11 February 2024

Further information from the Home Office in response to submissions

Q1: The consultation feedback statements state that an Economic Note for each transfer "has been completed and will be published". The SLSC has been clear, and the Government has agreed, that all supporting explanatory material should be available at the time an instrument is laid. Why was that not followed in this case? When will the notes be published? Could you please summarise their contents?

A1: The Economic Notes were published on 13 February and can be found here: [West Midlands police and crime commissioner functions transfer – GOV.UK \(www.gov.uk\)](#) and [South Yorkshire police and crime commissioner functions transfer – GOV.UK \(www.gov.uk\)](#). Whilst there was a slight delay to publication of these notes, they were published as soon as possible, and within a week of laying the orders which we understand to be acceptable.

Both Economic Notes indicate potential savings stemming from the cancellation of PCC elections and no longer paying for PCC salaries.

Q2: During the passage of the Levelling-up and Regeneration Bill (13 July 2023, col 1917), the Minister gave a commitment that "any statutory instruments transferring PCC functions to mayors for May 2024 should be laid six months ahead of the elections in early November to provide notice to candidates, the electorate and the electoral administrations of any changes". Does the timing of this statutory instrument break that commitment? How is that justified? Can the elections go ahead in an orderly fashion?

A2: Baroness Scott in her 13 July speech (see quotation below) outlined Government's intention to align as far as possible with the Gould principle. In the case of the West Midlands and South Yorkshire Orders, it has not been possible to lay six months ahead of the May 2024 elections due to the circumstances. We have laid the orders as early as possible, and we have been engaged with the local areas, including returning officers, throughout the process and the respective mayors have consented to the respective orders.

"The Government's intention is to align as far as possible with the Gould principle relating to electoral management, which would suggest that any statutory instruments transferring PCC functions to mayors for May 2024 should be laid six months ahead of the elections in early November to provide notice to candidates, the electorate and the electoral administrations of any changes. It is for these reasons that the Government are unable to accept Amendment

307A proposed by the noble Lord, Lord Bach. It would time out any PCC transfers in time for mayoral combined authority elections in 2024 where there is a local desire for this.”

We have been closely engaged with both local areas in the planning of these transfers. Local stakeholders are aware of the timeline involved and we are confident local areas will be able to deliver orderly elections. The West Midlands mayoral election is already scheduled for May 2024 and South Yorkshire have indicated they are already planning for a May 2024 mayoral election.

Q3: Why was the West Midlands (WM) PCC’s unfavourable view of the transfer not reported in the EM? The Committee has made very clear a number of times (including in this report addressed specifically to the Home Office, para 19) that the Explanatory Memorandum (EM) needs to acknowledge and address significant concerns expressed about its policy.

Under consultation, the South Yorkshire (SY) EM notes that the leaders of the Constituent Authorities within the SY Combined Authority signalled their agreement with the Order. On the WM EM there is no referral to the views of the constituent authorities. Were they consulted and (whether they were or not), have they indicated any views?

A3: The explanatory memorandums summarise the views expressed through the respective consultations, both for and against, which includes any responses from stakeholders. The consultations in both areas were public and anyone was able to respond. The combined authorities, their constituent and non-constituent authorities, mayors, PCCs, and MPs, amongst others, in both areas were made aware of the consultations. The government has also published our full response to the consultations on Gov.UK.

The South Yorkshire Explanatory Memorandum included the signalling of agreement from the leaders of the constituent authorities within the South Yorkshire Mayoral Combined Authority and the South Yorkshire PCC because they provided their signatures in the Mayor’s original letter (May 2023) to the Home Secretary signalling his interest in a transfer of PCC functions.

Q4: Why is the Home Office content that there is ‘local consent’ for the changes when both consultations opposed them and (at least, according to the submission), in the case of the West Midlands so does the majority of local authorities and MPs?

A4: Section 107F of the Local Democracy, Economic Development and Construction Act 2009 outlines the statutory consent required to make an order transferring PCC functions to a combined authority Mayor. In both the West Midlands and South Yorkshire only the mayors are required to consent and both mayors have.

The Levelling-up and Regeneration Act 2023 amended the Local Democracy and Economic Construction Act 2009 to remove the requirement for the relevant combined authority and its constituent authorities to consent to an order transferring PCC functions to a combined authority mayor. This is reflective of the fact that it is the mayor who would be exercising PCC functions, not the combined authority or its constituent councils, and that it is already the case that local authorities have no role in the exercise of PCC functions.

It also reflects that PCC functions are not local government functions. The functions transfer from one directly elected individual, a PCC, to another directly elected individual, a combined authority mayor.

The consultations in both areas were public and anyone was able to respond. The respective combined authorities, their constituent and non-constituent authorities, mayors, PCCs, and MPs, amongst others, in both areas were made aware of the consultations. The key objective of the consultation was to obtain the views of those consulted, as opposed to the number of persons who are for and against the transfer. Whilst the numbers for and against the transfer were taken into account by the Home Secretary, the most helpful aspect of the consultation for the purpose of making the decision was the information provided in the responses.

Q5: The submission states that the Secretary of State wrote to the Mayor on 6 December saying that he was "satisfied that it is right that we should proceed to transfer the functions to be exercised by the Mayor of the West Midlands, and that, "my officials will shortly lay the required secondary legislation before Parliament". Is this correct?

A5: Yes that is correct, however, following the Home Secretary's original decisions to transfer PCC functions to the South Yorkshire and West Midlands mayors, it came to light that the Levelling-up and Regeneration Act 2023 placed new statutory tests and a consultation requirement on the Home Secretary before making the respective orders. The Home Secretary therefore undertook to comply with those requirements and take fresh decisions, which he did prior to laying both orders.

Q6: The submission also states that, in launching the consultation, the Secretary of State said that they had not made a decision on 6 December 2023. How is that consistent with the statement in the letter quoted above?

A6: It has not been suggested by the Home Secretary that the decision communicated to the local area on 6 December had not been taken. Following the original decision, the application of new statutory tests and a consultation requirement to the transfer of PCC functions to combined authority mayors came to light. The Home Secretary therefore undertook to comply with those and took fresh decisions on both transfers. The Order that was laid on the 7 February was done so as a result of the fresh decision taken by the Home Secretary which complied with the statutory requirements of section 113 of the Local Democracy, Economic Development and Construction Act 2009, as amended by section 66 of the Levelling-up and Regeneration Act 2023.

Q7: Why have the conclusions about the consultations (with majority opposition in both cases) been over-ruled?

A7: The key objective of the consultations was to obtain the views of those consulted, as opposed to the number of persons who are for and against the transfer. Whilst the numbers for and against the transfer were taken into account by the Home Secretary, the most helpful aspect of the consultation for the purpose of making the decision was the information provided in the responses.

Further, whilst a small majority of the total responses to the West Midlands consultation disagreed with the transfer, over 900 of these were duplicate responses. Although not enough is yet known about the duplicate responses to exclude them, if they were excluded, the proportion of respondents who agreed with the transfer would be revised to over 50%.

The responses to the public consultations were not the only relevant information taken into account when the Home Secretary considered whether to make the orders to transfer the functions in the West Midlands and South Yorkshire. The Home Secretary also had regard to information concerning the statutory tests and duties relevant to his decisions.

Q8: Why is the decision consistent with the tests required of the Home Secretary under the Local Democracy, Economic Development and Construction Act 2009, and with the requirement to pay due regard to the results of the consultation?

A8: Before making an order transferring PCC functions to a combined authority mayor, the Home Secretary must 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 consider that it is appropriate having regard to the need to secure effective and convenient local government and to reflect the identities and interests of local communities.

In taking his decision to lay the orders, the Home Secretary has had regard to a range of information, including the responses to the public consultation, each one of which was analysed by officials, and is satisfied that the statutory tests have been met.

Mayors who exercise PCC functions have the potential to take a more joined up approach on crime prevention and decision making. The soft and hard levers at their disposal, along with the higher public profile of a combined authority mayor means that they are well placed to bring partners together and join up strategic focus and service delivery across multiple sectors.

Both mayors play a significant role in the economic development of their respective regions. The government believes there are benefits to one person leading on both public safety and economic development as this will provide mayors a wider range of levers to deliver on both these mandates in a joined up and strategic way.

Government also believes that transferring PCC functions to the mayors will enhance accountability and provide for strong policing governance in both areas. Where there are mayors and PCCs covering the same geography there is the risk of competing mandates. Transferring PCC functions to the respective mayors reduces this risk and provides greater clarity to the electorate.

19 February 2024