

Agenda Item No.



Combined Authority Board Meeting

Date	7 April 2017
Report title	West Midlands Combined Authority Overview and Scrutiny Committee
Cabinet Member Portfolio Lead	Councillor Bob Sleigh – Chair of the WMCA
Accountable Chief Executive	Jan Britton Email: jan_britton@sandwell.gov.uk Tel: 0121 569 3500
Accountable Employee	Sarah Sprung Email: sarah_sprung@sandwell.gov.uk Tel: 0121 569 3200
Report to be/has been considered by	Management Board Programme Board Legal Group

Recommendation(s) for action or decision:

The Combined Authority Board is recommended to:

1. Note the progress of the Combined Authority Scrutiny Committee;
2. Consider the implications of the Combined Authorities Overview and Scrutiny Committees (Access to Information and Audit Committees) Order 2017.
3. Consider options for the West Midlands Combined Authority Overview and Scrutiny the membership model as detailed in Appendix 2.

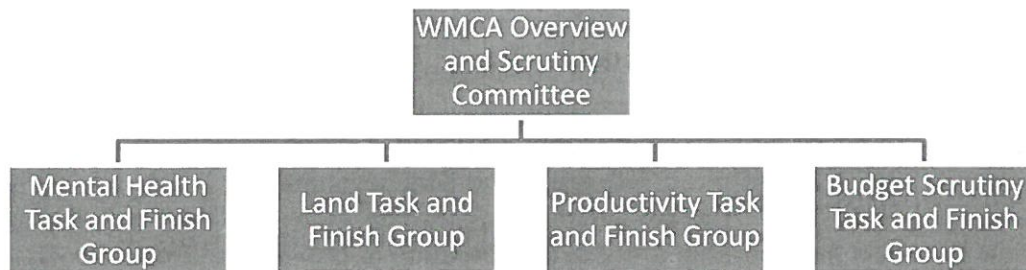
1.0 Purpose

- 1.1 This report is to apprise the Combined Authority Board of progress with the development of the Scrutiny function, and on the implications contained in the Combined Authorities (Overview and Scrutiny Committees Access to Information and Audit Committees) Order 2017 which comes into force on 8 May 2017.

2.0 Background

- 2.1 The Scrutiny Committee of the West Midlands Combined Authority was established by the Shadow Combined Authority Board on 10 June 2016, and ratified following the inception of the WMCA on 29 June 2016, also referred to as the AGM. The Committee met twice in 2016 and, in addition, held a workshop event to which Combined Authority Board Members (the Executive), Scrutiny Committee Members and Chief Executives attended.
- 2.2 At its first meeting on 15 July 2016, the Scrutiny Committee appointed its Chair, Councillor Peter Hughes, considered its terms of reference and other constitutional related items. At this point it was decided that a workshop to bring together the executive and scrutiny was required in order that a work programme could be developed which would allow the Scrutiny Committee to add value to the work of the Combined Authority.
- 2.3 The purpose of the workshop held on 25 November 2016 was:-
- To learn of the key strands of work being undertaken by the West Midlands Combined Authority (WMCA);
 - To hear of areas where the WMCA believed scrutiny's involvement could add value;
 - To consider a way of working by scrutiny members which balanced the need to hold to account with pre-decision scrutiny;
 - To consider an outline work programme for the Joint Scrutiny Committee.
- 2.4 One area which was given consideration at the workshop event was in relation to how the Scrutiny Committee could maintain links with local authority scrutiny across the Combined Authority Area. This matter had been identified as a key issue with other Combined Authority scrutiny arrangements nationally. However, the West Midlands are fortunate to have an established, mature Regional Scrutiny Network consisting of Local Authority Scrutiny Chairs and Scrutiny Managers. Consultation took place with the Network on 13 January 2017, firstly to apprise them of progress in developing the CA scrutiny committee, and secondly to consider their views on how CA scrutiny should engage with local authorities in the area.
- 2.5 The feedback received from the Network was that it could be utilised for 'calls for evidence' as required by the WMCA Scrutiny Committee but that this should not detract from maintaining a dialog with individual constituent and non-constituent councils. Indeed contact was made with scrutiny managers of constituent and non-constituent councils in December 2016 seeking views on engagement. Only three responses were received, two with offers to host meetings. To further cement the relationship between WMCA Scrutiny and Local Authority Scrutiny an engagement session is planned to take place on 4 April 2017 where discussion will take place on ways of working and protocols on responsibilities for holding to account.

- 2.6 A further meeting of the Scrutiny Committee took place on 16 December 2016. The Committee considered a report on the outcomes of the workshop and discussed its work programme and how best to structure its ways of working to deliver against this. It was felt that a key area in which Scrutiny may be able to add value was in relation to the three commissions established by the Combined Authority. The Committee considered that it would 'add value' not by scrutinising the content of commission reports, but by investigating how recommendations from the Commissions may be taken forward and implemented effectively across the Combined Authority area.
- 2.7 Whilst the Scrutiny Committee will retain responsibility for holding WMCA to account, it was decided that (in the first instance) four task and finish groups be established to undertake key strands of work. These Groups reflect the three commissions, plus the requirement to undertake scrutiny of the Combined Authority budget. The structure of the scrutiny function is set out below:-



- 2.8 The Chair of Scrutiny has been working closely with the newly appointed independent Chair of Audit Risk and Assurance to ensure that the two areas work in a complementary, effective way. To further this, the Chair of Audit attended the Scrutiny Workshop on 25 November, 2016 and the Scrutiny Committee Meeting in December. In addition a joint finance training session, for members of both scrutiny and audit, took place on 27 January 2017.
- 2.9 In order for any Scrutiny Committee to be effective it needs dedicated resources both in terms of officer commitment and commitment from its members. Going forward this is paramount to the Committee achieving positive outcomes and applies to members and substitute members. Where nominated members are unable to attend there needs to be a culture of sending substitute members to ensure consistent representation of both constituent and non-constituent members.
- 2.10 On 26 November 2016 a draft order was laid before Parliament, entitled the Combined Authorities (Overview and Scrutiny Committees Access to Information and Audit Committees) Order 2016 [the order] [Update: the Order was ratified on 27 January 2017 and will take effect on 8 May 2017]. The Scrutiny Committee met on 27 January 2017 and discussed key areas of the Order and their implications for Combined Authority Scrutiny arrangements. A full analysis of the Order is contained in Appendix 1, a summary of significant areas of the Order are summarised as follows:

i) Membership

- The majority of members of the scrutiny committee must be members of a constituent council, all of those members have one vote.
- Where a member is not from a constituent council they don't have a vote automatically, but can be given one by resolution of the combined authority, this provides a mechanism for the scrutiny committee to appoint members from non-constituent councils and/or expert co-optees.
- The spread of the scrutiny committee members from the constituent councils must reflect the overall balance of political parties across the constituent councils, this is the balance of members overall, not just the leadership of the councils.
- Appointments must be accompanied by a public notice.
- Two-thirds of members must be present for a meeting to be quorate.
- There is provision within the Order for WMCA to appoint an independent chair to the Scrutiny Committee.

In order to achieve a majority of Constituent Council representatives, and achieve political balance, the preferred option of the Chair of the WMCA Overview and Scrutiny Committee is detailed below:-

- i) 12 seats for Constituent Councils
- ii) 3 seats for LEP representatives
- iii) 4 seats for Non-Constituent Councils, 1 place per County area (Warwickshire, Worcestershire, Shropshire and Staffordshire).

Further detail on membership and political balance is provided at Appendix 2.

ii) Chairing

- Where the Chair is an "independent" person (an option open to CAs to include in their governance scheme) it means that they must not be a member or officer now (or in the last five years) of a constituent council, or a parish council which forms part of an area covered by a constituent council, or a close friend or relative of someone with the above characteristics;
- Where the Chair is not an independent person, they must be an appropriate person. This means that they cannot be of the same political party as the Mayor. Where the Mayor is elected as an independent candidate, the scrutiny committee chair must not be of the same party that has the majority of members on the scrutiny committee – or where two or more parties have the same number of members, any of those parties;
- There has to be a public appointment process for the Chair if they are to be an independent person.

The Chair of the Overview and Scrutiny Committee (and their political party) for the next Municipal year can only be determined once the Mayoral election has been concluded.

iii) Member references and work programming

- Similar provisions exist here as apply to individual councils. The CA scrutiny committee must put in place arrangements to ensure that any of its members (and, importantly, any member of the combined authority) can refer an issue to the scrutiny committee for discussion;

- Where the committee decides not to accept such reference it has to provide reasons for its decision.

iv) Relations with the Mayor and combined authority

- The provisions here are broadly similar to those that apply to individual authorities. CA scrutiny committees have the power to make recommendations to the combined authority and Mayor, both the CA Board and Mayor are required to respond within two months;
- In relation to call-in (provided for under Schedule 5A of the 2009 Act) a meeting must be convened by the CA Board or Mayor to reconsider the decision no later than 10 days after the scrutiny committee's recommendation is received.
- Where information is provided to a member of a scrutiny committee, the Mayor or CA Board, the usual provisions around confidential and exempt information will apply. Members of scrutiny committees do however have enhanced information rights, broadly similar to those conferred on councillors by virtue of Regulations laid in 2012. In the case of CA scrutiny committee members, such requests must be complied with by the Mayor or CA Board no later than 10 days after they are received.

Appendix 3 to the report details mechanisms for holding the mayor and the Combined Authority to account.

v) Mayoral and CA decision-making – key decisions

- The provisions around “key decisions” are essentially identical to those applying to individual authorities. A key decision is one involving significant (the term is not defined) expenditure or significant issues covering two or more electoral wards or divisions in the area. As usual, the requirement is that certain details of such decisions be published 28 days in advance, although there are certain urgency provisions that apply.
- The special urgency provisions provide for the 28 days requirement, and normal urgency provisions, to be waived if the scrutiny chair agrees. Where the Chair is not available, the duty falls to the Chair of the CA. Where the CA Chair is also the Mayor, this could involve the Mayor making a judgment on the urgency of one of his/her own decisions. The Centre for Public Scrutiny has sought further clarification on this element of the Order. The Department for Communities and Local Government have advised that they do not envisage that the Mayor will be classed as a “decision-maker” under this part, so the Mayor cannot find themselves in the position of giving approval to their own request for special urgency. Further clarification on the definition of “decision-maker” for the purpose of the Order is awaited.

vi) Scrutiny officer

- As with individual councils, the CA must appoint a “scrutiny officer”, with a duty to promote the function. Such an officer must be an employee of the CA – not any of the constituent councils. The Centre for Public Scrutiny has sought further clarification on this element of the order and has provided the following update as of 15 December, 2016: The Department for Communities and Local Government advised that their reading of this part (Clause 9 of the Order) is that it does not preclude a seconded officer from a constituent council from holding the position of combined authority scrutiny officer.

Sandwell Metropolitan Borough Council has seconded an officer to undertake the role of Statutory Scrutiny Officer for 2.5 day per week for a 12 month period.

2.10 At its meeting on 27 January 2017, the WMCA Scrutiny Committee considered the implications of the Order and provides the following comments that the Board may wish to take into consideration:-

- Membership requires the right balance to ensure that the Committee does not become too large and unwieldy, whilst also ensuring that non-constituent members have a strong voice. The preferred option in terms of political and geographical balance is detailed in Appendix 2, Option 1.
- Protocols between the executive and scrutiny need to be developed to ensure that there is clarity of purpose and accountability.
- Protocols also need to be developed between CA Scrutiny and local authority scrutiny.
- Mechanisms for scrutiny of the CA budget need to be put in place for the 2017/18 Municipal Year.

3.0 Wider WMCA Implications

- 3.1 The effectiveness of the CA Scrutiny function will contribute to the overall effectiveness of the Combined Authority.
- 3.2 The CA must ensure that it is compliant with relevant legislation.
- 3.3 Arrangements for the scrutiny of CA decisions also need to be developed. The WMCA Scrutiny Committee has investigated the process undertaken at the London Assembly. Appendix 3 to this report details how Overview and Scrutiny will achieve this.

4.0 Financial implications

- 4.1 At present the cost of the officer to support the scrutiny function is being met by Sandwell Metropolitan Borough Council (SMBC). SMBC have agreed to fund this post for a fifteen month period, this period commenced on 1 January 2017.

5.0 Legal implications

- 5.1 A number of amendments will be required to the WMCA Constitution in light of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017, as detailed in Appendix 1 to this report.
- 5.2 There are no further legal implications flowing from this report

6.0 Schedule of background papers

- 6.1 House of Commons Library – briefing paper number 06649, 23 November 2016 Combined authorities.
The Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017.

7.0 Appendices

Appendix 1 – Analysis of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2016;
Appendix 2 – Membership of the West Midlands Combined Authority Overview and Scrutiny Committee;
Appendix 3 – Holding the Mayor and the Executive to Account.

Section of the Order	Current Provision	Further Action Required
3. - (1) The majority of members of a combined authority's overview and scrutiny committee must be members of that combined authority's constituent councils.	Compliant at present.	At present there are 12 members on the Scrutiny Committee, 7 from Constituent Authorities, 3 from Non-Constituent Authorities and 2 from LEP's. Black Country and Coventry and Warwickshire have each nominated a representative to the scrutiny board, the third LEP (Greater Birmingham and Solihull) have yet to nominate a representative. As the number of non-constituent councils increase there is a danger that, should each wish to sit on the Scrutiny Committee, the majority of members would cease to be from constituent councils. Options are discussed within the report and detail is provided in Appendix 2.
3. - (2) At least two-thirds of the total number of members of the overview and scrutiny committee must be present at a meeting of the overview and scrutiny committee before business may be transacted.	Requires change in constitution.	Part 2, Section 9. of the WMCA Constitution be amended to read: "no business is to be transacted at a meeting of any overview and scrutiny committee appointed by the Combined Authority unless two thirds of its members from at least five separate Constituent Authorities (or substitute members acting in place of those members) are present at the meeting.

Section of the Order	Current Provision	Further Action Required
3. - (3) Each member of the overview and scrutiny committee appointed from the constituent councils is to have one vote and no member is to have a casting vote.	Compliant.	No action required.
3. - (4) Members of the overview and scrutiny committee who are appointed other than from the constituent councils shall be non-voting members of the committee but may be given voting rights by resolution of the combined authority.	Part 2, Section 6 of the WMCA Constitution states that each member of the Overview and Scrutiny Committee has one vote.	The decision to allow non-constituent councils the right to vote needs to be by resolution of the Board. The CA constitution is silent on this at the moment and needs to be explicit.
3. - (5) Any questions that are to be decided by the overview and scrutiny committee are to be decided by a simple majority of the members present and voting on that question at a meeting of the overview and scrutiny committee.	Compliant.	No action required.
3. - (6) If a vote is tied on any matter it is deemed not to have been carried.	Compliant.	No action required.
3. - (7) In this article, references to an overview and scrutiny committee include references to a subcommittee of such a committee.	As the Committee has established Select Committees the provisions of this order will also apply to these bodies.	No action required.
4.—(1) The combined authority must— (a) appoint such a number of members of each of the constituent councils to an overview and scrutiny committee, so that the members of the committee taken as a whole reflect so far as reasonably practicable the balance of political parties for the time being prevailing	Will be reliant on each council confirming nominations in order to be compliant.	Liaise with all councils to advise of deadline for receipt of nominations. Publish notice online advising of appointments.

Section of the Order	Current Provision	Further Action Required
among members of the constituent councils when taken together; and (b) within the period of 28 days beginning with the day on which an appointment is made to the overview and scrutiny committee, publish a notice that— (i) states that it has made an appointment; (ii) identifies each member of the committee who has been appointed; and (iii) specifies the period for which the members of the committee have been appointed.		
4. - (2) The notice mentioned at paragraph (1)(b) must be published— (a) if the combined authority has a website, on its website; or (b) otherwise, in such manner as it thinks is likely to bring the notice to the attention of persons who live in its area.	See above.	See above.
5.—(1) — Paragraphs (2) to (4) apply where the chair of an overview and scrutiny committee is to be an independent person in accordance with provision made under paragraph 3 of Schedule 5A to the 2009 Act(b).		
5. - (2) A person is independent if the person— (a) is not a member, co-opted member or officer of the combined authority; (b) is not a member, co-opted member or officer of a constituent council or a parish council for which a constituent council is the principal authority; (c) is not a relative, or close friend, of a person within	Not applicable at present.	The WMCA Board may wish to consider the appointment of an independent chair in future years, if so these provisions would apply.

Section of the Order	Current Provision	Further Action Required
sub-paragraph (a) or (b); and (d) was not at any time during the 5 years ending with an appointment as chair of the overview and scrutiny committee under arrangements made by the combined authority in accordance with paragraph 3(4)(a) of Schedule 5A to the 2009 Act— (i) a member, co-opted member or officer of the combined authority; or (ii) a member, co-opted member or officer of a constituent council or a parish council for which a constituent council is the principal authority. (3) A person may not be appointed as independent chair of the overview and scrutiny committee unless— (a) the vacancy for a chair of the overview and scrutiny committee has been advertised in such manner as the combined authority considers is likely to bring it to the attention of the public; (b) the person has submitted an application to fill the vacancy to the combined authority, and (c) the person's appointment has been approved by a majority of the members of the combined authority. 5. - (4) A person appointed as independent chair of the overview and scrutiny committee does not cease to be independent as a result of being paid any amounts by way of allowances or expenses in connection with performing the duties of the appointment. 5. - (5) Paragraph (6) applies where the chair of an overview and scrutiny committee is to be an appropriate person in accordance with provision made		

Section of the Order	Current Provision	Further Action Required
under paragraph 3(4)(b) of Schedule 5A to the 2009 Act.		
5. - (6) Where the mayor is not a member of a registered political party, a person may not be appointed as chair of the overview and scrutiny committee if that person is – (a) a member of the registered political party which has the most representatives among the members of the constituent councils on the combined authority, or (b) where two or more parties have the same number of representatives, a member of any of those parties.	Not compliant.	Change required to Part 2, Section 7 of the WMCA Constitution. The Chair of the WMCA Scrutiny Committee will not be able to be of the same political party as the elected mayor, following the mayoral election on 4 May 2017. Add to 7.1 “The chair of the committee must come from a different political party from the combined authority mayor (or the combined authority’s majority party, if there is no mayor)”.
6.—(1) The combined authority must ensure that it enables— (a) any member of an overview and scrutiny committee to refer to the committee any matter which is relevant to the functions of the committee; (b) any member of a sub-committee of an overview and scrutiny committee to refer to the sub-committee any matter which is relevant to the functions of the sub-committee; (c) any member of the combined authority to refer to an overview and scrutiny committee any matter which is relevant to the functions of the committee and is not an excluded matter; and (d) any member of a constituent council or a non-constituent council(a) of a combined authority to refer to an overview and scrutiny committee any matter	Compliant.	Suggest further work take place with constituent and non-constituent councils to publicise the work of WMCA Scrutiny Committee, in order to engage Council’s in the scrutiny process. Existing work with the West Midlands Regional Scrutiny Network provides a good foundation for this work in ensuring messages are delivered at a local level and that there is opportunity for council’s to feed information up. Session carried out with the Regional Scrutiny Network on 13 January, 2017.

Section of the Order	Current Provision	Further Action Required
which is relevant to the functions of the committee and is not an excluded matter.		
6. - (2) For the purposes of paragraph (1), a combined authority enables a member mentioned in paragraph (1)(a) to (d) to refer a matter to a committee or sub-committee if it enables that member to ensure that the matter is included in the agenda for, and discussed at, a meeting of the committee or sub-committee.	Compliant.	See above.
6. - (3) Paragraphs (4) to (7) apply where a matter is referred to an overview and scrutiny committee by a member of a combined authority or a member of a constituent council or a non-constituent council in accordance with arrangements made by the combined authority pursuant to paragraph (1)(c) or (d).	Compliant	Ensure that members are trained on the powers of overview and scrutiny.
6. - (4) In considering whether or not to exercise any of the powers under arrangements made in accordance with paragraph 1(2)(a) or (3)(a) of Schedule 5A to the 2009 Act in relation to a matter referred to the committee, the committee must have regard to any representations made by the member as to why it would be appropriate for the committee to exercise any of these powers in relation to the matter. 6. - (5) If the committee decides not to exercise any of its powers under arrangements made in accordance with paragraph 1(2)(a) or (3)(a) of Schedule 5A to the 2009 Act in relation to the matter, it must notify the member of— (a) its decision; and (b) the reasons for it.	Compliant	Ensure that members are trained on the powers of overview and scrutiny.

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6. - (6) The committee must provide the member with a copy of any report or recommendations which it makes under paragraph 1(2)(b) or (3)(b) of Schedule 5A to the 2009 Act in connection with the matter referred to it by the member. 6. - (7) Paragraph (6) is subject to article 8 (confidential and exempt information).		
7.—(1) Where an overview and scrutiny committee or a sub-committee of such a committee makes a report or recommendations the committee may— (a) publish the report or recommendations; (b) by notice in writing require the combined authority or the mayor to— (i) consider the report or recommendations; (ii) respond to the overview and scrutiny committee indicating what (if any) action the combined authority proposes to take; (iii) if the overview and scrutiny committee has published the report or recommendations under paragraph (a), publish the response. (2) A notice given under paragraph (1)(b) must require the combined authority or the mayor to comply with it within two months beginning with the date on which the combined authority or the mayor received the reports or recommendations or (if later) the notice. (3) The combined authority or the mayor must respond to a report or recommendations made by an overview and scrutiny committee, or a sub-committee of such a committee, as result of a	No recommendations have been put forward from scrutiny to the executive as yet.	Develop protocols between scrutiny and the executive to ensure all parties are clear on requirements and expectations in relation to the consideration of recommendations.

Section of the Order	Current Provision	Further Action Required
referral made in accordance with article 6 within two months beginning with the date on which the combined authority or the mayor received the notice.		
(4) Where an overview and scrutiny committee exercises any of its powers under arrangements made in accordance with paragraph 1(2) or 1(3) of Schedule 5A to the 2009 Act in relation to a decision made but not implemented— (a) where recommendations have been made under paragraph 1(4)(b) of Schedule 5A to the 2009 Act, the combined authority or the mayor must hold a meeting to reconsider the decision no later than 10 days after the date on which the recommendations of the overview and scrutiny committee were received by the combined authority; and (b) any direction under arrangements made in accordance with paragraph 1(4)(a) of Schedule 5A to the 2009 Act may have effect for a period not exceeding 14 days from the date on which the direction is issued.	Compliant.	No action required.
8.—(1) This article applies in relation to— (a) the publication of any document as a result of a reference made in accordance with article 7 (duty of combined authority and the mayor to respond to overview and scrutiny committee) comprising— (i) a report or recommendations of an overview and scrutiny committee; or (ii) a response of a combined authority or the mayor to any such report or recommendations; and	No recommendations have been put forward from scrutiny to the executive as yet.	Develop protocols between scrutiny and the executive to ensure all parties are clear on requirements and expectations in relation to the consideration of recommendations.

Section of the Order	Current Provision	Further Action Required
(b) the provision of a copy of such a document to a member of a combined authority or to a member of a constituent council or a non-constituent council, by an overview and scrutiny committee or a combined authority or the mayor.		
(2) The overview and scrutiny committee or the combined authority, or the mayor in publishing the document— (a) must exclude any confidential information; and (b) may exclude any relevant exempt information. (3) The overview and scrutiny committee, or the combined authority, or the mayor , in providing a copy of a document to a member of the combined authority or to a member of a constituent council or a non-constituent council, may exclude any confidential information or relevant exempt information. (4) Where information is excluded under paragraph (2) or (3), the overview and scrutiny committee or the combined authority, or the mayor , in publishing, or providing a copy of, the document— (a) may replace so much of the document as discloses the information with a summary which does not disclose that information; and (b) must do so if, in consequence of excluding the information, the document published, or copy provided, would be misleading or not reasonably comprehensible. (5) If by virtue of paragraph (2), (3) or (4) an overview and scrutiny committee or the combined authority, or the mayor , in publishing or providing a	Compliant.	No action required.

Section of the Order	Current Provision	Further Action Required
copy of a report or recommendations— (a) excludes information; or (b) replaces part of the report or the recommendations with a summary, it is nevertheless to be taken to have published the report or recommendations. (6) In this article— “confidential information” has the meaning given by section 100A(3) of the Local Government Act 1972(a) (admission to meetings of principal councils); “exempt information” has the meaning given by section 100I of that Act(b); and “relevant exempt information” means— (a) in relation to a report or recommendations of an overview and scrutiny committee, exempt information of a description specified in a resolution of the overview and scrutiny committee under section 100A(4) of the Local Government Act 1972 which applied to the proceedings, or part of the proceedings, at any meeting of the overview and scrutiny committee at which the report was, or recommendations were, considered; and (b) in relation to a response of the authority or of the mayor, exempt information of a description specified in such a resolution of the authority which applied to the proceedings, or part of the proceedings, at any meeting of the authority at which the report or response was, or recommendations were, considered. (7) In this article, references to an overview and scrutiny committee include references to a		

Section of the Order	Current Provision	Further Action Required
subcommittee of such a committee.		
9.—(1) A combined authority must designate one of its officers as the scrutiny officer of the overview and scrutiny committee to discharge the functions in paragraph (2). (2) Those functions are— (a) to promote the role of the overview and scrutiny committee; (b) to provide support and guidance to the overview and scrutiny committee and its members; (c) to provide support and guidance to members of the combined authority and to the mayor in relation to the functions of the overview and scrutiny committee. (3) A combined authority may not designate as the scrutiny officer any officer of a constituent council of the combined authority. (4) In this article, references to an overview and scrutiny committee include references to a subcommittee of such a committee.	Compliant.	DCLG have indicated that a seconded officer from a constituent authority would meet requirements.
10.—(1) Subject to paragraph (3), a member of an overview and scrutiny committee or a subcommittee of such a committee is entitled to a copy of any document which— (a) is in the possession or under the control of the combined authority or the mayor ; and (b) contains material relating to— (i) any business that has been transacted at a meeting of a decision-making body of that authority; or (ii) any decision that has been made by an individual	Compliant.	No action required.

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member of that combined authority. (2) Subject to paragraph (3), where a member of an overview and scrutiny committee or a subcommittee of such a committee requests a document which falls within paragraph (1), the combined authority or the mayor must provide that document as soon as reasonably practicable and in any case no later than 10 clear days after the combined authority receives the request.		
(3) No member of an overview and scrutiny committee is entitled to a copy— (a) of any such document or part of a document as contains exempt or confidential information unless that information is relevant to— (i) an action or decision that that member is reviewing or scrutinising; or (ii) any review contained in any programme of work of such a committee or subcommittee of such a committee; or (b) of a document or part of a document containing advice provided by a political adviser (a). (4) Where the combined authority or the mayor determines that a member of an overview and scrutiny committee is not entitled to a copy of a document or part of any such document for a reason set out in paragraph (3), it must provide the overview and scrutiny committee with a written statement setting out its reasons for that decision. (5) In this article, references to an overview and scrutiny committee include references to a	Compliant.	No action required.

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subcommittee of such a committee.		
PART 3 – Key Decisions		
11. —(1) In this Order— (a) a “key decision” means a decision of a decision maker, which in the view of the overview and scrutiny committee for a combined authority is likely— (i) to result in the combined authority or the mayor incurring significant expenditure, or the making of significant savings, having regard to the combined authority’s budget for the service or function to which the decision relates; or (ii) to be significant in terms of its effects on person s living or working in an area comprising two or more wards or electoral divisions in the area of the combined authority; (b) “decision maker” includes a mayor or a person exercising functions pursuant to arrangements under section 107D(3)(a) or (b) of the 2009 Act.	Forward plan for CA in place.	Update required to the constitution in order to set out mechanisms to ensure compliance and communication/training for officers to ensure requirements of the Order are met.
(2) Where a decision maker intends to make a key decision, that decision must not be made until a notice has been published which states— (a) that a key decision is to be made in relation to the discharge of functions which are the responsibility of the combined authority; (b) the matter in respect of which the decision is to	Forward plan for CA in place.	Update required to the constitution in order to set out mechanisms to ensure compliance and communication/training for officers to ensure requirements of the Order are met.

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be made; (c) the decision maker's name, and title if any; (d) the date on which, or the period within which, the decision is to be made; (e) a list of the documents submitted to the decision maker for consideration in relation to the matter in respect of which the key decision is to be made; (f) the address from which, subject to any prohibition or restriction on their disclosure under article 8(2), copies of, or extracts from, any document listed is available; (g) that other documents relevant to those matters may be submitted to the decision maker; (h) the procedure for requesting details of those documents (if any) as they become available.		
(3) At least 28 clear days before a key decision is made, the notice referred to in paragraph (2) must be— (a) published— (i) if the combined authority has a website, on its web site; or (ii) otherwise, in such manner as it thinks is likely to bring the notice to the attention of persons who live in its area; (b) made available for inspection by the public at the offices of the combined authority. (4) Where, in relation to any matter—	Forward plan for CA in place, published on the CA website.	Update required to the constitution in order to set out mechanisms to ensure compliance and communication/training for officers to ensure requirements of the Order are met.

Section of the Order	Current Provision	Further Action Required
(a) the public may be excluded under section 100A of the Local Government Act 1972 from the meeting at which the matter is to be discussed; or (b) documents relating to the decision need not, because of article 8 (confidential information), be disclosed to the public, the notice referred to in paragraph (2) must contain particulars of the matter but may not contain any confidential information or exempt information or particulars of the advice of a political adviser. (5) In paragraph (4), “confidential information” and “exempt information” have the meanings given by article 8(6).		
General exception 12. —(1) Subject to article 13, where the publication of the intention to make a key decision under article 11 is impracticable, that decision may only be made— (a) where the proper officer has informed the chair of the relevant overview and scrutiny committee or, if there is no such person, each member of the relevant overview and scrutiny committee by notice in writing, of the matter about which the decision is to be made; (b) where the proper officer has made available to the public at the offices of the combined authority	Matters of urgency are detailed in the CA’s constitution, however at present this does not comply with the Orders requirements.	Constitution requires amendment to comply with requirement.

Section of the Order	Current Provision	Further Action Required
for inspection by the public and published on the combined authority's website, if it has one, a copy of the notice given pursuant to sub-paragraph (a); (c) after 5 clear days have elapsed following the day on which the proper officer made available the copy of the notice referred to in sub -paragraph (b). (2)Where paragraph (1)(a) or (b) applies to any matter, article 11 need not be complied with in relation to that matter. (3)As soon as reasonably practicable after the proper officer has complied with paragraph (1), he or she must— (a)make available to the public at the offices of the combined authority a notice setting out the reasons why compliance with article 11 is impracticable; and (b) publish that notice on the combined authority's web site, if it has one.		
Cases of special urgency 13.—(1) Where the date by which a key decision must be made makes compliance with article 12 impracticable, the decision may only be made where the decision maker has obtained agreement from— (a)the chair of the relevant overview and scrutiny committee; or	Matters of urgency are detailed in the CA's constitution, however at present this does not comply with the Orders requirements.	Constitution requires amendment to comply with requirement.

Section of the Order	Current Provision	Further Action Required
(b) if there is no such person, or if the chair of the relevant overview and scrutiny committee is unable to act, the chair of the combined authority; or (c) where there is no chair of either the relevant overview and scrutiny committee or of the combined authority, the vice-chair of the combined authority, that the making of the decision is urgent and cannot reasonably be deferred. (2) As soon as reasonably practicable after the decision maker has obtained agreement under paragraph (1) that the making of the decision is urgent and cannot reasonably be deferred, the decision maker must— (a) make available to the public at the offices of the combined authority a notice setting out the reasons why the meeting is urgent and cannot reasonably be deferred; and (b) publish that notice on the combined authority's web site, if it has one.		

West Midlands Combined Authority Overview and Scrutiny Committee Membership (based upon political proportionality of relevant authorities as at 1 April 2017)

Option 1 – Based upon the membership structure of the Police and Crime Panel

1. The Committee consists of a total of 19 members, 12 from Constituent Councils and 7 from LEP's and Non- Constituent Councils.

Constituent Councils

2. The Committee consists of 12 elected members from Constituent Councils, appointed on an annual basis by the Authorities as follows:
 - (a) One Member appointed by each of the following Councils:
 - Birmingham City Council
 - Coventry City Council
 - Dudley Metropolitan Borough Council
 - Sandwell Metropolitan Borough Council
 - Solihull Metropolitan Borough Council
 - Walsall Metropolitan Borough Council
 - Wolverhampton City Council
 - (b) Two further Members to be nominated by Birmingham City Council and appointed by the West Midlands Combined Authority.
 - (c) Two further Members to be jointly nominated by Dudley MBC, Sandwell MBC, Walsall MBC and Wolverhampton City Council (via the Association of Black Country Authorities) and appointed by the West Midlands Combined Authority.
 - (d) One further Member to be jointly nominated by Coventry City Council and Solihull Metropolitan Borough Council and appointed by the West Midlands Combined Authority.
3. Appointments must be made with a view to ensuring the balanced appointment objective as required under Part 2, Section 3 of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2016, in that it represents all parts of the Combined Authority area and the political make-up of the local authorities (when taken together).
4. Taking into account the West Midlands 2016 local election results the following political balance will apply to the Committee:
 - Labour 8
 - Conservative 4

5. Each constituent council is responsible for making its own individual appointment each with a named substitute. Appointments to the remaining 5 elected member places (and named substitutes) will be considered by the Combined Authority in line with the table shown below.

Scenario 1:

Party	LA Individual Appointments (7)	Places for confirmation at a meeting of the West Midlands Joint Committee (5)	Total
Labour (8)	<u>6 Places</u> Birmingham (1) Coventry (1) Dudley (1) Sandwell (1) Walsall (1) Wolverhampton (1)	<u>2 Places</u> Birmingham (1) Coventry CC /Solihull MBC (1) to be nominated on an annual rotation basis.	8
Conservative (4)	<u>1 Place</u> Solihull MBC (1)	<u>3 Places</u> Birmingham (1) Black Country Councils (2) to be nominated via the West Midlands Combined Authority.	4
Total	7	5	12

Scenario 2:

Party	LA Individual Appointments (7)	Places for confirmation at a meeting of the West Midlands Joint Committee (5)	Total
Labour (8)	<u>6 Places</u> Birmingham (1) Coventry (1) Dudley (1) Sandwell (1) Walsall (1) Wolverhampton (1)	<u>2 Places</u> Birmingham (1) Black Country Councils (1) to be nominated via the West Midlands Combined Authority to be nominated on an annual rotation basis.	8
Conservative (4)	<u>1 Place</u> Solihull MBC (1)	<u>3 Places</u> Birmingham (1)	4

		Coventry CC /Solihull MBC (1)	
		Black Country Councils (1) to be nominated via the West Midlands Combined Authority.	
Total	7	5	12

Non-Constituent Authorities

6. The Committee consists of four elected members from non-constituent councils, to ensure a geographical spread of representation the following applies:

Shropshire Non-Constituent Local Authorities [Shropshire, Telford]	1 Seat
Staffordshire Non-Constituent Local Authorities [Cannock, Tamworth]	1 Seat
Warwickshire Non-Constituent Local Authorities [Nuneaton & Bedworth, North Warwickshire, Rugby, Stratford-on-Avon, Warwickshire CC]	1 Seat
Worcestershire Non-Constituent Local Authorities [Redditch]	1 Seat

7. In addition, the appointment of non-constituent representation must as far as reasonably practicable, not change the overall political balance of the committee as outlined in point 4 above.
8. The Committee consists of three representatives from Local Enterprise Partnerships, one seat for each of the LEP's within the Combined Authority area:
- i. the Black Country,
 - ii. Coventry and Warwickshire,
 - iii. Greater Birmingham and Solihull

Option 2

1. The Committee consists of a total of 13 members, made up of the following:-
- i. 7 seats for constituent Council's (1 per authority);
 - ii. 5 seats for non-constituent council's;
 - iii. 1 seat for LEP representation.

West Midlands Combined Authority Overview & Scrutiny Committee

Holding the Mayor and the Combined Authority to Account

- The West Midlands Combined Authority Overview and Scrutiny Committee [the Committee] holds the Mayor and the Combined Authority to account by publicly examining policies and programmes through committee meetings, plenary sessions, site visits and investigations.
- The Committee may require that an officer or member of the Combined Authority attend meetings to answer questions, including the Mayor or Deputy Mayor.
- The Combined Authority and the Mayor should formally respond to the Committee's motions and formal recommendations within two months.
- The Committee will hold formal public question sessions with the Mayor a minimum of two times a year at Mayor's Question Time, one session of which will focus on the Mayor's budget and will be scheduled at an appropriate time to allow the Committee to suggest budget amendments, should it consider this necessary.
- As well as examining the Mayor's actions and decisions, the Committee act as champions for residents of the West Midlands by investigating issues that are important to the area - from improving the economy to how to tackle mental health in the region.

Call-in

The Committee has the power of call-in to call in decisions of the Mayor and Combined Authority which have been made but not implemented. This applies to all decisions, not just "key decisions". (Section 1(2)(a), Schedule 5A, Local Democracy, Economic Development and Construction Act 2009, as inserted by the Cities and Local Government Devolution Act 2016).

A stop can be placed on the implementation of the decision once it is under scrutiny.

Section 4(1), Schedule 5A, Local Democracy, Economic Development and Construction Act 2009, as inserted by the Cities and Local Government Devolution Act 2016.

Key decisions must be publicised. This includes publicity 28 days prior to when they are expected to be made, although urgency provisions do exist which allow the timescale to be shortened –with the agreement of the chair of the Overview & Scrutiny Committee.

This will help the Overview & Scrutiny Committee to understand when particularly important decisions may be coming to be made, and to plan to influence them beforehand.