

## EXPLANATORY MEMORANDUM TO

### THE FIRE AND RESCUE AUTHORITY (POLICE AND CRIME COMMISSIONER) (APPLICATION OF LOCAL POLICING PROVISIONS, INSPECTION, POWERS TO TRADE AND CONSEQUENTIAL AMENDMENTS) ORDER 2017

2017 No. 863

#### 1. Introduction

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

#### 2. Purpose of the instrument

- 2.1 The Policing and Crime Act 2017 (the 2017 Act) amended the Fire and Rescue Services Act 2004 (the 2004 Act) to provide for the creation of a new type of fire and rescue authority (FRA). Such an authority will be a corporation sole and the person who is for the time being the police and crime commissioner (PCC) for the police area that corresponds to the area of the authority for the time being that FRA. A section 4A FRA is created by an order made by the Secretary of State – the first of which has been created for Essex (The Police, Fire and Crime Commissioner for Essex (Fire and Rescue Authority) Order 2017 No. 864).
- 2.2 This order seeks to make provision as appropriate that; is corresponding and similar to the PCC model; applies legislation relating to a PCC with modifications to such an FRA; makes further provision in connection with powers to trade of, and inspection of, section 4A FRAs and consequential on the implementation of the model.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

##### *Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### 4. Legislative Context

- 4.1 This Order makes provision related to the creation of a fire and rescue authority by an order made under section 4A of the 2004 Act, as amended by the 2017 Act. Section 6 of, and Schedule 1 to, the 2017 Act amend Part 1 of the 2004 Act to make provision for the creation by order of a corporation sole as the FRA for a specified area and for the person who is for the time being the police and crime commissioner for that area to take on responsibility for governance of those fire and rescue services – see new sections 4A to 4M of, and Schedules A1 and A2 to the 2004 Act.
- 4.2 A PCC must submit a proposal to the Secretary of State for such an order to be made. The Secretary of State can only give effect to such a proposal where it appears to her to be in the interests of economy, efficiency and effectiveness, or public safety (the

statutory tests). She cannot give effect to an order on the basis of economy, efficiency and effectiveness, if she believes it would have an adverse effect on public safety.

- 4.3 This instrument links to the Police, Fire and Crime Commissioner for Essex (Fire and Rescue Authority) Order 2017 No. 864. It will also apply to any future Orders made under the section 4A powers mentioned above.
- 4.4 Section 4M of the 2004 Act, inserted by section 6 of, and Schedule 1 to, the Policing and Crime Act 2017 enables the Secretary of State to make provision in secondary legislation in relation to a FRA that corresponds, or is similar to, legislation relating to a police and crime commissioner. This Order applies such provisions.
- 4.5 Articles 3 to 23 of the Order make provision in relation to the appointment, suspension and dismissal of the chief fire officer of a section 4A FRA that corresponds to the provision made by the Police Reform and Social Responsibility Act 2011 in relation to the appointment, suspension and removal of chief constables.
- 4.6 Article 24 of the Order sets out the obligations on the chief fire officer of a section 4A FRA in relation to securing value for money and Article 25 obliges the chief fire officer of a section 4A FRA to have regard, in exercising their functions, to the fire and rescue plan issued by their Authority.
- 4.7 Article 26 of the Order sets out functions of a section 4A FRA that are to be excluded from inspection under the arrangements for inspection made by section 28 of the 2004 Act. This builds upon existing inspection provision in primary legislation under section 28(A7) of the 2004 Act. This ensures the right balance between inspection by Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services and scrutiny by the Police, Fire and Crime Panel.
- 4.8 Article 27 of the Order provides that a section 4A FRA is authorised to trade in any of their ordinary functions subject to certain exceptions – placing them in the same position as other FRAs, although this does not apply in regards to a PCCs policing functions.
- 4.9 Article 28 and Schedule 1 apply, with modifications set out in the Schedule, certain secondary legislation relating to a PCC to a s4A FRA.
- 4.10 Article 29 and Schedule 2 make provision for consequential amendments to other relevant legislation.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England only.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 The 2017 Act introduced a range of measures to drive greater collaboration between the police, fire and rescue and emergency ambulance services. One of those measures

was to amend the 2004 Act to enable PCCs to take on responsibility for the governance of fire and rescue services within their area, where they make a local case to do so. A PCC would need to show that it would be in the interests of economy, efficiency and effectiveness, or public safety (the statutory tests) for an Order transferring governance to be made.

- 7.2 The PCC for Essex is the first to develop, publicly consult, and submit a proposal. The Home Secretary found that the proposal appeared to be in the interests of economy, efficiency and effectiveness, and that there would be no detrimental impact on public safety. Being satisfied that the proposal met the statutory tests, the Home Secretary is required to make an order which abolishes the existing Fire and Rescue Authority and creates a legal corporation which enables the PCC to become the new Fire and Rescue Authority (see the Police, Fire and Crime Commissioner for Essex (Fire and Rescue Authority) Order 2017 No. 864.)
- 7.3 This Order comes into effect at the same time as the section 4A FRA in Essex is created and seeks to make provision as appropriate that; is corresponding and similar to the PCC model; applies legislation relating to a PCC with modifications to such an FRA; makes further provision in connection with powers to trade of, and inspection of, section 4A FRAs and consequential on the implementation of the model. We have sought to balance the application of the PCC model as far as reasonable and appropriate, whilst being mindful that a section 4A FRA is another type of FRA and, as such, should also be subject to certain provisions applicable to other types of FRA.

## **8. Consultation outcome**

- 8.1 The Home Office established an implementation group to consider provisions of this Order with key stakeholders from policing and fire; seeking their views on its application in a section 4A FRA, and ensuring this meets policy intentions.

## **9. Guidance**

- 9.1 PCCs have discretion about how to structure their proposal. However, to support their development, the Association of Policing and Crime Chief Executives have produced guidance<sup>1</sup>, adopting the key headings contained in HM Treasury's 'five case' model for public sector business cases - the 'Green Book'<sup>2</sup>.
- 9.2 This Order is considered to be self-explanatory and there are no plans to provide additional guidance.
- 9.3 The Government will continue to publicly support emergency services collaboration, including transfers of governance where a local case is made. Further opportunities to promote collaboration through keynote speeches and stakeholder engagement will also be utilised.

## **10. Impact**

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

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<sup>1</sup> 'Police and Fire Business Case – Guidance for OPCC Chief Executives'. See <http://www.apace.org.uk/> or [http://apace.org.uk/documents/APACE\\_Police\\_Fire\\_Business\\_Case\\_Guidance.pdf](http://apace.org.uk/documents/APACE_Police_Fire_Business_Case_Guidance.pdf)

<sup>2</sup> The Green Book and related supplementary guidance can be accessed and downloaded from the Green Book pages of HM Treasury's public web site at: <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>

10.2 There is no impact on the public sector by virtue of this Order alone, which applies only to s4A Authorities. A separate Order is required to effect a governance transfer and create a s4A Authority – see the Police, Fire and Crime Commissioner for Essex (Fire and Rescue Authority) Order 2017 No. 864. An impact assessment will be conducted by each area that is seeking to pursue a transfer of governance.

## **11. Regulating small business**

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

## **12. Monitoring & review**

12.1 The Home Office does not intend to put in place any formal mechanism for monitoring and reviewing this Order, but will consider any issues raised by stakeholders that arise as a result of the Order.

12.2 As directly elected individuals, Police Fire and Crime Commissioners (PFCC) will be accountable to the public for the implementation of their proposal. To facilitate this, the decisions of the PFCC will be subject to scrutiny from the Police, Fire and Crime Panel and the performance of the police and fire services will be subject to inspection as part of the relevant inspection programmes.

## **13. Contact**

13.1 Matthew Watts / Kate Yeung at the Home Office Telephone: 0207 035 5521 / 0207 035 5010 or email: [matthew.watts@homeoffice.gsi.gov.uk](mailto:matthew.watts@homeoffice.gsi.gov.uk) / [kate.yeung@homeoffice.gsi.gov.uk](mailto:kate.yeung@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.