

EXPLANATORY MEMORANDUM TO

THE FIRE AND RESCUE AUTHORITY (MEMBERSHIP) ORDER 2017

2017 No. 1165

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 This Order amends Schedule 10 to the Local Government Act 1985 to reduce the number of members to be appointed to the West Midlands Fire and Rescue Authority by each of its constituent councils. This Order amends Hampshire Fire and Rescue Authority's combination scheme set out in the Schedule to the Hampshire Fire Services (Combination Scheme) Order 1996 to make provision to enable Hampshire Fire and Rescue Authority to appoint a police and crime commissioner whose police area wholly or partly coincides with the area of the Authority, as a member of the Authority and to alter the Authority's quorum arrangements. This Order also amends the Schedule to the Dorset and Wiltshire Fire and Rescue Authority (Combination Scheme) Order 2015 to reduce the number of its members from thirty to eighteen.

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 the 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 West Midlands Fire and Rescue Authority is a metropolitan fire and rescue authority created under the Local Government Act 1985. Schedule 10 to the 1985 Act stipulates the number of members for each metropolitan fire and rescue authority; in the case of West Midlands, they are currently required to have twenty-seven members drawn from each of the seven West Midlands' constituent authorities.
- 4.2 Section 29(2) of the 1985 Act permits the Secretary of State to by order make alterations – either an increase or decrease - to the number of members specified in Schedule 10. In accordance with section 29(4) of the 1985 Act, the Secretary of State has consulted with those constitute councils in making this alteration.
- 4.3 Article 2 amends Schedule 10 to the 1985 Act to reduce the overall membership of West Midlands Fire and Rescue Authority to fifteen members by reducing the number of members drawn from each of the seven constitute councils. In accordance with section 29(3) of the 1985 Act, the Secretary of State has had regard to the number of local government electors in the areas of the constituent councils.

- 4.4 Hampshire Fire and Rescue Authority is a combined fire and rescue authority created under the Fire Services Act 1947 and continued in effect by section 4 of the Fire and Rescue Services Act 2004 (“the 2004 Act”). The Authority was established by the Hampshire Fire Services (Combination Scheme) Order 1996 S.I. 1996/2923.
- 4.5 Section 4(4) of the 2004 Act permits the Secretary of State to vary or revoke such a scheme. The variations to Hampshire Fire Services (Combination Scheme) Order 1996 made by this Order were requested by Hampshire Fire and Rescue Authority following a public consultation and so the Secretary of State is under no obligation to consult on these changes (see section 4(5A) of the 2004 Act).
- 4.6 The Policing and Crime Act 2017 introduced a range of measures to drive greater collaboration between the police, fire and rescue and emergency ambulance services including the provision made in section 7 of the 2017 Act which enables police and crime commissioners to be represented on all types of fire and rescue authority. Article 3 and Schedule 1 amend the Hampshire Fire Services Combination Scheme set out in the Schedule to the Hampshire Fire Services (Combination Scheme) Order 1996 in particular to make provision enabling the Hampshire Fire and Rescue Authority to appoint a police and crime commissioner whose police area wholly or partly coincides with the area of the Authority, as a member of the Authority.
- 4.7 Under the current arrangements members of the Authority are appointed by the constituent authorities. New paragraphs 11 and 12 of the combined scheme substituted by article 3 and paragraphs 3 and 4 of Schedule 1 to this Order, reflect that the Authority will be able to appoint a relevant police and crime commissioner as a member but that all other members will, as now, be appointed by the constituent authorities. Paragraph 5 makes provision for the Authority to appoint the relevant police and crime commissioner as a member of the Authority; that the police and crime commissioner must request to become a member; that any such request must be considered by the Authority and the Authority must provide and publish reasons for its decision, that the police and crime commissioner can delegate their attendance at a meeting of the Authority but that only the police and crime commissioner can vote. Paragraph 6 is consequential to the amendment made by Paragraph 3. Paragraph 7 provides that the police and crime commissioner’s membership of the fire and rescue authority ends when their term of office as a police and crime commissioner ends. Paragraph 8 clarifies the position in relation to members who are appointed by a constituent authority leaving their position – either through resignation, disqualification, or otherwise ceases to be member - six months before the end of their term of office and consequential voting implications. Paragraph 9 changes the quorum of the Authority from one third to one half and from at least a representative from a constituent authority to at least one member from any two constituent authorities.
- 4.8 Dorset and Wiltshire Fire and Rescue Authority is a combined fire and rescue authority created by section 2 of the Fire and Rescue Services Act 2004. The Authority was established by the Dorset and Wiltshire Fire and Rescue Authority (Combination Scheme) Order 2015 S.I. 2015/435. Section 2(6) of the 2004 Act permits the Secretary of State to vary or revoke such a scheme. The variations to the Dorset and Wiltshire Fire and Rescue Authority (Combination Scheme) Order 2015 made by this Order were requested by Dorset & Wiltshire Fire and Rescue Authority and so the Secretary of State is under no obligation to consult on these changes (see section 2(6A) of the 2004 Act).

- 4.9 Article 4 and Schedule 2 amend the Dorset and Wiltshire Fire and Rescue Authority Combination Scheme set out in the Schedule to the Dorset and Wiltshire Fire and Rescue Authority (Combination Scheme) Order 2015 to reduce the number of members of the authority. Paragraph 2 of the Schedule has the effect of reducing the membership from not more than thirty members to not more than eighteen except in stipulated circumstances. Paragraph 3 gives effect to this change by allowing each constituent authority to appoint at least two members with additional members allowed to ensure its number of representatives is proportionate to the number of local government electors in its area in relation to the number of such electors in each of the other constituent authorities' areas.

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 The Minister for Policing and the Fire Service has made the following statement regarding Human Rights:

“In my view the provisions of the Fire and Rescue Authority (Membership) Order 2017 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 Since 2016 the Home Office has been delivering a programme of fire reform. One element is to strengthen local fire and rescue governance which this Order contributes to. The Home Office is supportive of fire and rescue authorities considering how they can strengthen their local governance arrangements, and in the case of the West Midlands, Hampshire and Dorset & Wiltshire fire and rescue authorities, they have determined that the membership changes brought into effect by this Order will streamline and strengthen their governance arrangements. In each case they undertook a local review to consider governance options.
- 7.2 In relation to the other change brought about by this Order in relation to Hampshire's governance, the Policing and Crime Act 2017 introduced a range of measures to drive greater collaboration between the police, fire and rescue and emergency ambulance services. This included amending the 2004 Act to enable a PCC to be represented on their local fire and rescue authority – the ‘representation model’.
- 7.3 The representation model enables the police and crime commissioner to become a member of the fire and rescue authority. For combined fire and rescue authorities established under sections 2 and 4 of the Fire and Rescue Services Act 2004 (of which Hampshire is one), in order to apply the representation model their combination scheme must be amended. The Home Office will consult to seek agreement to change every combination scheme to insert provisions which will allow the ‘representation model’ introduced by the Policing and Crime Act 2017 to apply. The Home Office is content to amend Hampshire's combination scheme separately now rather than wait to amend the other schemes together as Hampshire has requested this change so there is no need for the Secretary of State to consult and it will allow local governance to be strengthened.

8. Consultation outcome

- 8.1 Before making an order varying a combination scheme, the 2004 Act requires the Secretary of State to consult any fire and rescue authority, as well as any other authority, which appears to them likely to be affected by the change and any other local authority, the whole or part of whose area forms part of the area of the combined authority. The Secretary of State is also required to consult any other person they consider appropriate. However, where the variation to a Scheme has been proposed by the fire and rescue authority – which is the case with the changes proposed by this Order - there is no requirement for the Secretary of State to consult. Hampshire’s proposal is as a result of local consultation with the local constituent councils, Hampshire’s Police and Crime Commissioner and Hampshire Fire and Rescue Service. Their consultation was also open to the public. The responses – all positive – were considered by Hampshire Fire and Rescue Authority in making their decision.
- 8.2 Before making an order varying the membership numbers of a metropolitan fire and rescue authority, in accordance with section 29(4) of the Local Government Act 1985, the Secretary of State has consulted with those affected constituent councils with no council raising any view. In developing proposals, the West Midlands Fire and Rescue Authority did consult with each of the West Midlands’ constitute councils, all of whom were content with the changes brought into effect by this Order.

9. Guidance

- 9.1 The Order is considered to be self-explanatory and there are no plans to provide additional guidance.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument as no impact on business is foreseen.

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.
- 12.2 Should the police and crime commissioner request to become a member of the fire and rescue authority and the Authority accept the request, as a directly elected individual, they will be accountable to the public for the implementation of the proposal and their work on the fire and rescue authority.
- 12.3 From April 2018, the efficiency and effectiveness of every fire and rescue authority in England will be considered by an independent inspectorate, Her Majesty’s Inspectorate for Constabulary and Fire & Rescue Services.

13. Contact

- 13.1 Steve Polly at the Home Office telephone: 0207 035 0949 or email: stephen.polly1@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.