

EXPLANATORY MEMORANDUM TO
THE POLICE, FIRE AND CRIME COMMISSIONER FOR STAFFORDSHIRE
(FIRE AND RESCUE AUTHORITY) ORDER 2018

2018 No. 696

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 instrument enables the person who is for the time being the Police and Crime Commissioner (PCC) for Staffordshire to be responsible also for the governance of fire and rescue services within their area. The PCC will then be known as the Police, Fire and Crime Commissioner. It is under the powers available through section 4A of the Fire and Rescue Services Act 2004 (the 2004 Act), as amended by the Policing and Crime Act 2017 (the 2017 Act), that this order abolishes the Stoke-on-Trent and Staffordshire Fire and Rescue Authority and in its place creates the ‘Staffordshire Commissioner Fire and Rescue Authority’.

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 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 fire and rescue authority for a specified area and for the person who is for the time being the police and crime commissioner for that area, or those areas when taken together, 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 them to be in the interests of economy, efficiency and effectiveness, or in the interests of public safety (the statutory tests). The Secretary of State cannot give effect to an order on the basis of economy, efficiency and effectiveness if they believe it would have an adverse effect on public safety.
- 4.3 This Order makes provision for the creation of a fire and rescue authority for the areas of the Stoke-on-Trent City Council and Staffordshire County Council. The person

who holds the office of the PCC for Staffordshire is also to be the Staffordshire Commissioner Fire and Rescue Authority.

- 4.4 Articles 4 to 8 of the Order set out the framework for how the Authority may exercise its functions. In particular, Article 4 sets out the general proposition that the Authority may, subject to articles 5, 6 and 8, make such arrangements for the delegation of their functions to the deputy police and crime commissioner, staff of the Authority or staff of the PCC as it considers appropriate. This is intended to provide an appropriate level of local flexibility. Article 5 sets out the functions that must be retained by the Authority, while articles 6 and 8 set out functions that the Authority may delegate only to the deputy PCC or the chief fire officer.
- 4.5 Article 9 makes clear that the Authority must hold the chief fire officer to account for the functions with which they have been delegated – thus seeking to mirror the arrangement that exists in policing between a PCC and their Chief Constable. Article 10 makes provision for indemnity from personal liability.
- 4.6 Article 11 makes consequential provision in respect of pensions and article 12 abolishes the previous Fire and Rescue Authority. Article 13 makes clear for the avoidance of doubt that there is a continuity of functions from the previous Fire and Rescue Authority transferring to the new Commissioner Fire and Rescue Authority. Anything done on or before the date of implementation by or in relation to the previous Fire and Rescue Authority shall be deemed to have been done by or in relation to the new Commissioner Fire and Rescue Authority.

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 support 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. It aims to bring to the fire and rescue services the same oversight as exists in policing. PCCs will have clear local accountability and a strong mandate to pursue reform and maximise the benefits of joint working between police and fire. A PCC needs to show that it is in the interests of economy, efficiency and effectiveness, or in the interests of public safety (the statutory tests) for an order transferring governance to be made.
- 7.2 The PCC for Staffordshire developed and publicly consulted on proposals to take on governance of his local fire and rescue service. The proposals demonstrated that a transfer of governance would be in the interests of economy, efficiency and effectiveness and does not have an adverse effect upon public safety. There is clear

ambition for stronger collaboration between the police and fire and rescue service in Staffordshire; in particular, there are plans for further collaboration in areas such as enabling services, estates, specialist skills and procurement.

- 7.3 The relevant local authorities in the PCC's area – Stoke on Trent City Council and Staffordshire County Council – were opposed to the proposal. Therefore, as required by the 2004 Act, the Secretary of State sought an Independent Assessment of the proposal.
- 7.4 The Chartered Institute of Public Finance and Accountancy (CIPFA) was commissioned to undertake the independent assessment. The 2004 Act is clear that the Secretary of State must have regard to the independent assessment before making a decision, and must publish the independent assessment as soon as is reasonably practicable after making the decision (see paragraphs 4 and 5 of Schedule A1 to the 2004 Act).
- 7.5 For the avoidance of doubt, the independent assessment is not a substitute for the Secretary of State decision-making process. The Secretary of State would not be properly discharging his duties simply by adopting the conclusions of an independent assessment, and anyone undertaking the independent assessment function is not discharging the role of Secretary of State in assessing whether the statutory tests have been met.
- 7.6 Having carefully reviewed the proposal, consultation materials, the views and representations made by statutory consultees and the PCC's responses to them, together with the independent assessment, the Secretary of State found that the proposal appeared to be in the interests of economy, efficiency and effectiveness, and that there would be no adverse effect on public safety.
- 7.7 Being satisfied that the proposal meets the statutory tests, the Secretary of State is required to make an order that abolishes the existing Fire and Rescue Authority and creates a legal corporation which enables the PCC to become the new Commissioner Fire and Rescue Authority.

8. Consultation outcome

- 8.1 Paragraph 3 of Schedule A1 to the 2004 Act requires a PCC to consult on their proposal before submitting it to the Secretary of State. They are required to consult each relevant local authority, people in the police area, persons appearing to represent employees who may be affected and persons appearing to represent members of a police force who may be affected. They are also required to publish the PCC's response to the views expressed in response to the consultation. The manner in which the PCC chooses to consult, and its duration, is for PCCs to determine.
- 8.2 The Staffordshire PCC held an 8 week consultation that received 2,323 individual responses, including 1,671 from the general public, with the remainder from elected representatives and police and fire and rescue service employees. The responses were evenly split between those who favoured some change and those who preferred no change. Stoke on Trent City Council and Staffordshire County Council did not support the proposal. The Retained Firefighters' Union was open to change while Staffordshire Fire Brigades Union was opposed to the proposal.

9. Guidance

- 9.1 The Order is considered to be self-explanatory and there are no plans to provide additional guidance.
- 9.2 PCCs have discretion about how to structure their fire governance proposals. However, to support their development, the Association of Policing and Crime Chief Executives have produced guidance, a copy of which is included with this memorandum. This guidance adopts the key headings contained in HM Treasury's comprehensive 'five case' model for public sector business cases known colloquially as the Green Book.

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.

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 As a directly elected individual, the Police Fire and Crime Commissioner (PFCC) for Staffordshire will be accountable to the public for the implementation of the proposal. Decisions of the PFCC will be subject to scrutiny from the relevant Police, Fire and Crime Panel, which, if they already use their current financial allocation for such a role, may be eligible for a temporary uplift to facilitate their fire scrutiny arrangements. Performance of the police and fire services will be subject to inspection as part of the relevant inspection programmes under Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS).

13. Contact

- 13.1 Matthew Watts / Kayleigh Chapman at the Home Office Telephone: 0207 035 5521 / 0207 035 3621 or email: matthew.watts@homeoffice.gsi.gov.uk / kayleigh.chapman2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.