

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

**2018 No. 1072**

**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 transfers responsibility for the governance of fire and rescue services from Northamptonshire County Council (NCC) to the Police and Crime Commissioner for Northamptonshire (PCC). The PCC will then be known as the Police, Fire and Crime Commissioner (PFCC) for Northamptonshire. The instrument is made under the powers available in 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), and transfers the fire and rescue functions currently delivered by NCC and establishes a new ‘Northamptonshire Commissioner Fire and Rescue Authority’ (NCFRA) to carry out those functions.

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

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

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.  
4.2 The territorial application of this instrument is England only.

**5. European Convention on Human Rights**

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

**6. Legislative Context**

- 6.1 Section 6 of, and Schedule 1 to, the 2017 Act amends Part 1 of the 2004 Act to make provision for the creation by order of a corporation sole as the fire and rescue authority (FRA) 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.

- 6.2 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 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 if they believe it would have an adverse effect on public safety.
- 6.3 This Order makes provision for the creation of a fire and rescue authority for the area of the Northamptonshire County Council. The person who holds the office of the PCC for Northamptonshire is also to be the Police, Fire and Crime Commissioner for Northamptonshire.
- 6.4 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 that the Authority may make arrangements for the delegation of their functions to the deputy police and crime commissioner, staff of the Authority or staff of the PCC, subject to the restrictions set out in articles 5, 6 and 8. This is intended to provide an appropriate level of local flexibility. Article 5 sets out the strategic functions that must be retained by the PCC as the FRA. Articles 6 and 8 set out functions that the Authority may delegate only to the deputy PCC or the chief fire officer.
- 6.5 Article 9 makes clear that the Authority must hold the Chief Fire Officer to account for the functions delegated to them – thus mirroring the arrangement that exists in policing between a PCC and a Chief Constable.
- 6.6 Article 10 makes provision for indemnity from personal liability. Article 11 makes clear the new PFCC FRA must prepare a statement of accounts for the 3-month accounting period of 1 January to 31 March 2019 as a result of the transfer taking place in-year, which has been agreed between both parties.

## **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. This aims to bring the same directly-elected oversight to fire and rescue services as exists in policing. It also enables the pace of collaboration between policing and fire services to accelerate. PCCs have clear local accountability and a strong mandate to pursue reform and maximise the benefits of joint working between police and fire.
- 7.2 During summer 2017, the PCC for Northamptonshire developed, and publicly consulted on, proposals to take on governance of the local fire and rescue service, and submitted a proposal to the Home Office in August 2017. The PCC's proposal was made on the grounds that it would be in the interests of economy, efficiency and effectiveness for a transfer of governance to take place. The PCC argued that the benefits include enabling greater transparency and certainty of budgets for Northamptonshire Fire and Rescue Service (NFRS), as well as enabling faster decision-making and further collaboration.

- 7.3 This proposal by the PCC, and its consideration by the Home Secretary, was made against a well-publicised background of growing concern about Northamptonshire County Council’s financial management and governance. On 9 January 2018, the Ministry for Housing, Communities and Local Government (MHCLG) announced that it had commissioned a ‘Best Value’ inspection of Northamptonshire County Council. This inspection report was published in March 2018, with its prime finding being that *‘Northamptonshire County Council (NCC) has failed to comply with its duty under the Local Government Act 1999 (as amended) to provide best value in the delivery of its services.’*
- 7.4 Also in March 2018, the Home Office commissioned the Chair of the National Fire Chiefs’ Council (Roy Wilsher OBE QFSM) to review Northamptonshire Fire and Rescue Service (NFRS) to provide advice *‘as to the current and foreseeable operational viability of the service, based on existing financial plans, including whether it is able to fulfil its core functions as defined in sections 6 to 9 of the Fire and Rescue Services Act 2004 and comply with the requirements of the Fire and Rescue National Framework for England.’* As was made public following an FOI request by the BBC, his advice stated that *‘there is no immediate concern for public safety, but it is not clear how much longer this will remain to be the case – especially with further year-on-year reductions on the horizon by NCC. The circumstances of NFRS must change in the immediate future for my assurance to remain. Becoming a PCC fire and rescue authority will remove NFRS from the concerns regarding the County Council resources and financial position, allowing NFRS a better chance to stabilise itself as a precepting authority.’*
- 7.5 On 10 May 2018, the Secretary of State for MHCLG, the Rt Hon James Brokenshire MP, made a written ministerial statement (HCWS673 refers) to announce the appointment of two commissioners to take over various functions in Northamptonshire County Council, including governance, the appointment of statutory officers and the strategic handling of its finances. These Commissioners are expected to be in post until 2021.
- 7.6 Contemporaneous with these events, the Chief Financial Officer of the County Council issued two s114<sup>1</sup> notices – one in February 2018, and another in July 2018. A s114 notice prevents new agreements that incur expenditure and require the Council to strive to set a balanced budget. Throughout these events, Northamptonshire County Council has remained supportive of the PCC’s proposal. Furthermore, the Home Office and MHCLG agree that the formal s114 processes do not present a barrier to this transfer.
- 7.7 The Secretary of State was not required to seek an independent assessment of the proposal. Having carefully reviewed the proposal, consultation materials, the views and representations made by statutory consultees and the PCC’s responses to them, and the wider context as described above, the Secretary of State found that the PCC’s proposal appeared to be in the interests of economy, efficiency and effectiveness, and that there would be no adverse effect on public safety. The Home Secretary’s decision to approve the proposal was announced on 11 April 2018. Such a decision is not novel. There are currently two PFCCs; one in Essex (as of 1 October 2017) and the other in Staffordshire (as of 1 August 2018). Legislation has also been laid to establish a third PFCC in North Yorkshire. Two other PCCs (the PCCs for

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<sup>1</sup> S144 Local Government Act 1988 -

West Mercia and Cambridgeshire) have had their proposals to take on fire governance approved by the former Secretary of State. These are currently at various stages of implementation.

- 7.8 Being satisfied that the Northamptonshire PCC's proposal meets the statutory tests, the Secretary of State is required to make an order that establishes the PCC for Northamptonshire as the 'Northamptonshire PFCC FRA'.
- 7.9 Where a proposal is approved involving a transfer of county fire and rescue functions, a decision is needed on the amount of funding to transfer from the relevant county council to the PFCC FRA, for funding for fire and rescue is not ring-fenced within county councils' funding allocations. Northamptonshire County Council and the PCC have agreed the exact splits of central government funding (including revenue support grant, retained business rates and a range of specific grants) along with council tax (precept) for the next Local Government Settlement, which will take effect from 1 April 2019. As agreed locally, and set out within the Property Transfer Scheme, Northamptonshire County Council must arrange for the transfer to the account of the Authority on 2 January 2019 the sum of £2.383million and on the first day of the succeeding two months of the sum of £1.882 million.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 None. This instrument does not amend or supplement existing legislation.

## **10. Consultation outcome**

- 10.1 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. The PCC is 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 their response to the views expressed in response to the consultation. The way the PCC chooses to consult, and its duration, is for the PCC to determine.
- 10.2 From 20 June to 1 August 2017, the Northamptonshire PCC held an 8-week consultation that received 1,212 individual responses. Responses were received from a range of stakeholders, from the police and fire services staff and unions, and wider community. A total of 60.8% of respondents agreed with the PCC's proposal to take on the governance of NFRS. 92% of employees or volunteers of NFRS agreed with the proposal and a total of 57% of individual members of the community agreed. Nine of the ten lower tier local authorities agreed with the proposal. Corby Borough Council disagreed with the proposal, as members were concerned that they did not have enough information on the benefits that would accrue in terms of service provision and delivery, and the financial advantages of the business case. The PCC's proposal outlines anticipated transition costs and his intention to protect and ideally over time increase funding to the frontline for fire and rescue. The Association of Principal Fire Officers strongly agreed with the proposal, and the Retained

Firefighters Union somewhat agreed. The PCC published<sup>2</sup> his response to the views expressed during the consultation on the PCC website.

## **11. Guidance**

- 11.1 The Order is considered to be self-explanatory and there are no plans to provide additional guidance.
- 11.2 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 aimed at the chief executives and other senior staff of PCCs. 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.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because there is no significant impact on businesses.

## **13. Regulating small business**

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

## **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is not to put in place any formal mechanism for monitoring and reviewing this Order.
- 14.2 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).
- 14.3 As a directly elected individual, the Police Fire and Crime Commissioner (PFCC) will be accountable to the public for the implementation of the proposal. The relevant Police, Fire and Crime Panel will scrutinise decisions of the PFCC and, where a Panel currently claims its full grant allocation for police scrutiny, it may be eligible for a temporary grant uplift to facilitate the transition to taking on its fire scrutiny responsibilities.
- 14.4 The Order does not include a statutory review clause.

## **15. Contact**

- 15.1 Matthew Watts, Home Office, Telephone: 0207 035 5521 or email: [matthew.watts@homeoffice.gov.uk](mailto:matthew.watts@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Sally Parkinson, Head of Police Strategy and Reform Unit, Home Office, can confirm that this Explanatory Memorandum meets the required standard.

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<sup>2</sup> PCCs [published](#) response: Consultation results on the Governance of Northamptonshire Fire and Rescue Service – August 2017.

15.3 The Rt Hon Nick Hurd MP, Minister for Policing and the Fire Service, Home Office, can confirm that this Explanatory Memorandum meets the required standard.