EXPLANATORY MEMORANDUM TO

THE POLICE, FIRE AND CRIME COMMISSIONER FOR ESSEX (FIRE AND RESCUE AUTHORITY) ORDER 2017

2017 No. 864

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 abolishes the Essex Fire Authority and creates a fire and rescue authority, to be known as the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority 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). This enables the person who is the Police and Crime Commissioner (PCC) for Essex to also be responsible for the governance of fire and rescue services in Essex following approval of a proposal by the Secretary of State. The PCC will then be known as the Police, Fire and Crime Commissioner.

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 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. 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.

4.2 This Order makes provision for the creation of a fire and rescue authority for the areas of councils of the boroughs of Southend-on-Sea and Thurrock and Essex County Council. The person who holds the office of the Police and Crime Commissioner (PCC) for Essex is also to be the Police, Fire and Crime Commissioner Fire and Rescue Authority.

4.3 Articles 4 to 9 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, Articles 6 and 8 set out functions that the Authority may delegate only to the deputy PCC or the chief fire officer and Article 9 makes clear that the Authority must hold the chief fire officer to account for the functions they are delegated – thus seeking to mirror the arrangement that exists in policing between a PCC and their Chief Constable.

4.4 Articles 11 to 15 make transitional provision in relation to the duties of the chief finance officer until Part 8 of the Local Government Finance Act 1988 is amended to apply to fire and rescue authorities created under section 4A of the 2004 Act.

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 and publicly consult on a proposal which sets out why 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.

7.3 Having publicly consulted on the proposal as required by the Act, and obtaining the support of the relevant local authorities, the PCC formally submitted the proposal to the Home Secretary for approval.

7.4 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.

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 Home Secretary. 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 PCCs 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 Essex PCC complied with these requirements and held a 12 week consultation that received 1708 individual responses which were broadly supportive of the proposed option. Letters of support were also received from Thurrock Council, Southend-on-Sea Borough Council and Essex County Council (the three relevant top-tier local authorities) and local Members of Parliament.

8.3 The Fire Brigades Union for Essex also provided a written response to the consultation, welcoming the commitment made by the PCC regarding improving the service whilst highlighting the need for the fire service to remain neutral. Unison Essex provided an email response stating that they would prefer the fire service to remain with the existing fire authority.

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[1], adopting the key headings contained in HM Treasury's 'five case' model for public sector business cases - the 'Green Book'[2].

9.2 The 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 The Order gives effect to a transfer of governance from the Essex Fire Authority to the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority in order to facilitate closer collaboration between the emergency services. All staff currently employed by the Essex Fire Authority will transfer to the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority on their existing terms and conditions with the exception of current members of the Fire and Rescue Authority.

10.2 The Essex PCC produced an Equality Impact Assessment[3] as part of the proposal which indicates that the proposed governance changes will not affect any particular group or sector of the community differentially. Additionally, the PCC has confirmed

[1] '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

[2] 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-governent

[3] https://www.essex.pcc.police.uk/wp-content/uploads/2017/01/LBC-Equality-Impact-Assessment.pdf

that a separate equality impact assessment will be carried out before any collaboration opportunities identified within the proposal are taken forward.

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 Essex will be accountable to the public for the implementation of the 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 / kate.yeung@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.