EXPLANATORY MEMORANDUM TO

THE POLICE, FIRE AND CRIME COMMISSIONER FOR NORTH YORKSHIRE (FIRE AND RESCUE AUTHORITY) ORDER 2018

2018 No. 970

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 North Yorkshire 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 North Yorkshire Fire and Rescue Authority and in its place creates the 'North Yorkshire Police, Fire and Crime 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.

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 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 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 areas of the City of York Council and North Yorkshire County Council. The person who holds the office of the PCC for North Yorkshire is also to be the North Yorkshire Police, Fire and Crime Commissioner Fire and Rescue Authority.

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 the general proposition that the Authority may 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, 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, while 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 with which they have been delegated – thus mirroring the arrangement that exists in policing between a PCC and the Chief Constable.

6.6 Article 10 makes provision for indemnity from personal liability. 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 North Yorkshire Police, Fire and Crime 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.

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. The country's first Police, Fire and Crime Commissioner (PFCC) was established in Essex in October 2017 and a second PFCC was created in Staffordshire in August 2018.

7.2 The PCC for North Yorkshire developed and publicly consulted on proposals to take on governance of the local fire and rescue service during summer 2017 and submitted a proposal to the Home Office in October 2017. The PCC's plans for stronger collaboration between the police and fire and rescue service in North Yorkshire

include in particular streamlining senior management, collaboration on back office support services and sharing buildings between the two services.

7.3 The relevant local authorities in the PCC's area – the City of York Council and North Yorkshire 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. 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). The Independent Assessment was published on 13th June 2018 and a copy was placed in the House Library.

7.4 For the avoidance of doubt, the independent assessment is not a substitute for the Secretary of State's 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.

7.5 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 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 13th June 2018.

7.6 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 Police, Fire and Crime Commissioner Fire and Rescue Authority.

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. It 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 manner in which the PCC chooses to consult, and its duration, is for the PCC to determine.

10.2 In summer 2017, the North Yorkshire PCC held a 10 week consultation that received 2,572 individual responses, including 2,380 from the general public, with the

remainder from elected representatives, and police and fire and rescue service employees. Of the 3 options consulted upon, 55% of respondents supported the PCC's proposal to take on responsibility for the fire service. The City of York Council and North Yorkshire County Council did not support the proposal. The North Yorkshire Fire Brigades Union supported the proposal whilst Unison was opposed. The PCC has published its 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 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 the Panel claims its current 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. 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 This 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 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.

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.