

EXPLANATORY MEMORANDUM TO
THE COMBINED FIRE AND RESCUE AUTHORITIES (MEMBERSHIP AND
ALLOWANCES) (AMENDMENT) REGULATIONS 2020

2020 No. 168

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 amends various fire and rescue authority (FRA) combination schemes¹ to enable the combined FRAs created by those schemes to appoint a police and crime commissioner (PCC) as one of their members with voting rights. This instrument also provides that there is no requirement for a combined FRA to pay any allowances to a PCC who is, in that capacity, appointed as a member of the 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 only.
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 7 of the Policing and Crime Act 2017 (the 2017 Act) amended the Local Government Act 1972, the Local Government Act 1985, the Local Government and Housing Act 1989, the Local Government Act 2000, the Fire and Rescue Services Act 2004, and the Localism Act 2011 to make provision for the person who is for the time being the PCC for a specified area to be represented on the FRA(s) (and/or its committees) of that area with voting rights.

¹ See explanatory note of the statutory instrument for a list of all affected combined FRAs.

- 6.2 These changes provide that a PCC must submit a request to be represented on the FRA, and the FRA must consider the request, give reasons for their decision to agree to or refuse the request, and publish those reasons in such manner as they think appropriate.
- 6.3 This instrument amends the combination schemes of 19 different combined FRAs in order to enable PCCs to make such a request. Articles 3 to 21 set out all the combination schemes which the instrument amends.
- 6.4 The instrument also sets out the requirement that PCCs represented on a specified FRA are not to receive any allowances from that FRA as a result of their representation.

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 Local Government Act 1972 and other legislation to enable PCCs to be represented on their local FRA (and/or its committees), with voting rights, subject to the consent of the FRA.
- 7.2 While these provisions are already applied to County and Metropolitan FRAs, and Hampshire combined FRA, this instrument amends the combination schemes of all other combined FRAs in order to also enable a PCC to make a request to be represented on their local combined FRA.
- 7.3 The instrument will amend the various combination schemes in order to set out the procedure for appointment of a PCC to an FRA. These are enabling powers and do not mandate a PCC to sit on a combined FRA, nor require FRAs to agree to a PCC's request. It also sets out provisions allowing a PCC to send a representative to attend meetings on their behalf. Such a representative will not be allowed to vote and is not a member of an FRA for any purpose. The provisions will enable a PCC to be a member of the FRA until the end of their term of office, or until a vacancy is created.
- 7.4 Finally, the instrument enables the maximum number of 25 FRA members to be exceeded, to allow for the appointment of a PCC to a specified FRA.

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 At this stage we do not consider it necessary to consolidate the relevant secondary legislation.

10. Consultation outcome

- 10.1 Where the Secretary of State wishes to proactively make amendments to an FRA's combination scheme, a period of formal consultation is required. Such a consultation started in November 2017 and closed on 15 January 2018. The Government

considered the consultation responses, and a Government response to the consultation, published in May 2018, provided a summary of the findings.

- 10.2 All affected combined FRAs responded to the consultation. 91% agreed with the proposed amendments, demonstrating strong support among those directly affected to implement the provisions in this instrument. Two FRAs objected to the proposed amendments; Cleveland and Dorset & Wiltshire. As these FRAs did not agree to the proposed variation, the legislation required an inquiry be held to better understand the concerns of the FRAs and to help come to a view on whether to make the proposed amendments to their respective combination schemes.
- 10.3 In June 2018 an independent person was appointed to consider the objections of FRAs, the position of other relevant stakeholders such as the PCCs and the Government's position and to then come to a judgement on the strength of objections. The inquiry report and a Government response to the inquiry were published in November 2018. The inquiry concluded that the objections presented by the Cleveland and Dorset & Wiltshire FRAs did not carry sufficient strength to prevent the provisions under this instrument from being made. As such, the enquiry came to the view that each of the objecting FRA's combination scheme should be amended to enable the PCCs to sit on the authorities as a member with voting rights, where the FRA agrees to such a request.
- 10.4 The Government accepted recommendations from the inquiry to offer further clarification on the issues raised by the two authorities; on political balance and deputyship. On political balance, the Government remains clear that it is up to individual FRAs to consider the impact of a PCC's membership locally and to determine how to proceed. The issue of proportional representation is distinct to the issue of ensuring political balance, the principles of which are set out in section 15 of the Local Government and Housing Act 1989 (duty to allocate seats to political groups). On deputyship, the policy position is that a PCC should be able to appoint a deputy to attend and speak at FRA meetings, but that deputy cannot vote or be treated as an authority member.
- 10.5 The views of FRAs on membership allowances were also carefully considered, and subsequently this instrument also seeks to amend provisions on allowances to ensure that PCCs are not expected to receive any additional allowance for being represented on an FRA. The rationale behind this is that the PCC will be represented on the FRA in their capacity as a PCC and would therefore be exercising their functions in that capacity. As they are already remunerated for their role and functions, the PCC's representation on the authority should not increase the cost of governance of the FRA. PCCs may still claim expenses in relation to their role as a PCC but not as a member of the FRA. This will ensure that PCCs can claim what they reasonably require, but not at an additional cost to the FRA.
- 10.6 Wider departmental prioritisation at the beginning of 2019 put the implementation of the provisions on hold, but we are now in a position to lay the SI to vary the combination schemes of the 19 combined FRAs.

11. Guidance

- 11.1 The instrument is considered to be self-explanatory and there are no plans to provide additional guidance. The Home Office has engaged FRAs on a draft statutory instrument prior to it being finalised and whilst full guidance is not necessary, we will

engage all key stakeholders including the Association of Police and Crime Commissioners (APCC).

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 no impact on business is foreseen.

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 instrument.
- 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 PCC will be accountable to the public for their actions as a member of the FRA. The instrument does not include a statutory review clause.

15. Contact

- 15.1 Nur Begum at the Home Office Telephone: 0207 035 3874 or email: Nurjahan.begum5@homeoffice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Sally Parkinson, Deputy Director for the Police Strategy and Reform Unit, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kit Malthouse MP, Minister of State for Crime, Policing and the Fire Service at the Home Office can confirm that this Explanatory Memorandum meets the required standard.