POLICING AND CRIME ACT 2017 CONSULTATION: CHANGES TO THE AUTHORITY'S COMBINATION SCHEME

REPORT OF THE CHIEF FIRE OFFICER

For Information

1. PURPOSE OF REPORT

1.1 The purpose of this report is to:

(i) bring to the Authority's attention the consultation issued by the Home Office on 27 November 2017; and

(ii) in order for it to consider its response, seek Elected Members views on the proposal to vary the combination schemes of Fire and Rescue Authorities (FRAs) established under section 2 or continued in existence under section 4 of the Fire and Rescue Services Act 2004 (the 2004 Act) to implement the 'representation model' of the Policing and Crime Act 2017 (the 2017 Act).

2. RECOMMENDATIONS

2.1 It is recommended that:

(i) the Chairman be authorised to respond on the Authority's behalf in respect of the proposed amendments to its Combination Scheme as set out at page 6 of the Home Office consultation that it:

a) agrees with the proposed amendments; or

b) does not agree with the proposed amendments.

(iii) it be noted that, if the amendments are made, there will be some minor consequential amendments to its Combination Scheme as indicated at page 7 of the Home Office consultation.

3. BACKGROUND

3.1 Building on the Government's commitment to enable fire and rescue and police services to work more closely together and develop the role of our elected and accountable Police and Crime Commissioners (PCCs), the Policing and Crime Act 2017 (the 2017 Act), which received Royal Assent on 31 January, introduced a raft of measures to ensure that collaboration between the emergency services – including emergency ambulance services - can go further and faster. These are enabling provisions and recognise that local leaders are well placed to determine the sort of collaboration that is best locally.

3.2 Members have previously acknowledged that collaboration presents a real opportunity for emergency service partners to increase efficiency and effectiveness, and enhance the service delivered to the public.

3.3 The 2017 Act introduced a new statutory duty on police, fire and rescue and emergency ambulance services to keep collaboration opportunities under review, and to enter these where it is in the interests of their efficiency or effectiveness. This sets a clear expectation that opportunities for closer working and cooperation should be fully explored and the government expected the pace and ambition of collaboration to increase as a result.

3.4 The 2017 Act also includes a number of governance provisions, including the 'representation model', whereby PCCs can be represented on a Fire and Rescue Authority (FRA) and treated as a member of that authority with voting rights, where a FRA agrees. The government's view is that the representation model can help drive greater collaboration between these two emergency services.

3.5 As it currently stands, the representation model *only applies* to County and Metropolitan FRAs. In line with the requirements of the Fire and Rescue Services Act 2004 (2004 Act), and as part of the next stage of implementation of the 2017 Act, the Government are consulting on varying the combination schemes of Combined Fire and Rescue Authorities established under section 2 or continued in existence under section 4 Enabling Police and Crime Commissioners (PCCs) to sit and vote on Combined Fire and Rescue Authorities (FRAs) 3 of the 2004 Act. **This consultation focuses on applying the representation model provisions to Combined FRAs only.**

3.6 Nick Hurd MP, the Minister for Policing and the Fire Service, has made it clear that these are enabling powers, and therefore there is no mandate for a PCC to sit on a Combined FRA, nor any requirement for FRAs agree to a PCC request. Instead this proposed change is about ensuring that Combined FRAs can appoint a PCC with voting rights, and that the same level of transparency applies to Combined FRAs as it does to County or Metropolitan FRAs.

4. THE CONSULTATION

4.1 This consultation seeks views on the proposal to vary the combination schemes of Fire and Rescue Authorities (FRAs) established under section 2 or continued in existence under section 4 of the Fire and Rescue Services Act 2004 (the 2004 Act) to implement the 'representation model' of the Policing and Crime Act 2017 (the 2017 Act).

4.2 The 2017 Act enables PCCs to become a fire and rescue authority where a local case is made and it appears to the Home Secretary to be in the interests of economy, efficiency and effectiveness, or public safety. PCCs have clear local accountability and a strong mandate to pursue ambitious reform and maximise the benefits of joint working between police and fire.

4.3 To encourage greater collaboration in areas where a PCC does not take on responsibility for local fire and rescue services, the 2017 Act also enables a PCC to be represented on the FRA (outside London) with voting rights, where the FRA agrees (the representation model). In addition, the provisions of the 2017 Act set out the procedure that must be followed where a PCC makes a request to sit on the FRA, that is: for the FRA to consider the request, give reasons for its decision to agree to or refuse the request and publish those reasons in such a manner it thinks appropriate.

4.4 While these provisions apply to County and Metropolitan FRAs as of 3 April 2017 on commencement of the primary legislation , Combined FRAs established (or continued in existence) under sections 2 and 4 of the Fire and Rescue Services Act 2004 must have their combination schemes amended for these provisions to apply. As expressed during the passage of the legislation through Parliament, the policy intention remains that the representation model applies to all types of FRAs in England.

4.5 These provisions will enable PCCs and Combined FRAs to consider the representation model as an option for promoting greater collaboration between the two services. As required by the 2004 Act, before such amendments are made to a Combined FRAs combination scheme, the Government are conducting this consultation to seek views of affected stakeholders.

4.6 The consultation has been sent to all Combined Fire and Rescue Authorities Chairs and Chief Fire Officers in England, all affected Police and Crime Commissioners in England, Local Authorities who form all or part of a Combined FRA and the Local Government Association's (LGA) Fire Services Management Committee.

4.7 **The consultation period will be open for 7 calendar weeks commencing from today (27 November 2017) closing on 15 January 2018 and a response paper will be published shortly thereafter.**

5. CONSULTATION PROPOSALS

5.1 The proposed changes will be to each Combined FRA combination scheme to ensure that the representation model applies to all types of FRAs in England.

Please find below the proposed amendments for you to comment on;

(A) Subject to paragraphs B and C, the Authority may appoint a relevant police and crime commissioner to be a member of the Authority.

(B) A relevant police and crime commissioner may only be appointed as a member of the Authority in response to a request by the commissioner.

(C) If a relevant police and crime commissioner makes such a request the Authority must:-

(a) consider the request,

(b) give reasons for its decision to agree to or refuse the request, and

(c) publish those reasons in such a manner as it thinks appropriate.

(D) Paragraph E applies where the Authority appoints a relevant police and crime commissioner to be a member of the Authority and the police and crime commissioner makes arrangements under section 18 of the Police Reform and Social Responsibility Act 2011 to delegate their attendance at a meeting of the Authority.

(E) A person who attends a meeting of the Authority on behalf of a relevant police and crime commissioner -

(a) may speak at the meeting but not vote, and

(b) is not to be treated as a member of the Authority for any purpose.

The above amendments will;

(A) – Enable a PCC to be appointed with voting rights;

(B) – Set out this provision can only take place after a request has been made by a PCC;

(C) – Set out the process for making such a request;

(D) and (E) – Enable a PCC to delegate to a deputy to attend and speak at FRA meetings, but that this deputy does not have any voting rights and will not be treated as a member of the Authority for any purpose, for example being part of the meeting quorate. This is owing to Fire and Rescue Authorities comprising of elected individuals, who do not themselves have similar rights to delegate to an unelected official as exists for PCCs.

These amendments will enable a PCC to have representation on their local FRA and/or its committees, with voting rights; this will be subject to PCCs making clear reasons for seeking membership and the FRA agreeing. The FRA will be required to publish their response to ensure transparency. The provisions will enable a PCC to be a member of the FRA until there is either a vacancy in the OPCC or if there were to be no vacancy in the office before then, the day on which their term of office as PCC would end.

To note, there will be some minor consequential amendments as necessary to ensure these provisions apply as intended in the context of the rest of the combined FRAs combination scheme.

6. FINANCIAL IMPLICATIONS

6.1 None arising from the recommendations. In the event that the Cleveland Police and Crime Commissioner (CPCC) were to request the consent of the Authority to become a member a financial appraisal would be submitted with the officer's report when the Authority comes to consider whether to agree to the request.

7. LEGAL IMPLICATIONS

7.1 The proposed amendments to Cleveland Fire Services (Combination Scheme) Order 1995 will transpose into it, verbatim, amendments made to the Local Government Acts 1972 and 1985 by the Policing and Crime Act 2017 in force for county and metropolitan fire and rescue authorities.

7.2 Section 4 of the Fire and Rescue Services Act 2004 applies to the Authority as its Combination Scheme predates 1 October 2004. Under section 4(4) the Secretary of State may vary the Combination Scheme provided that she has first consulted as described on page 5 of the Home Office consultation document.
She must then cause an inquiry to be held unless one of the following rules applies:

(a) the Authority agrees to the variation;

(b) it appears to the Secretary of State that the scheme is to be varied or revoked solely for the purpose of giving effect to an order made under Part 4 of the Local Government Act 1972 (c. 70), or Part 1 of the Local Government and Public Involvement in Health Act 2007 [not applicable here]; or

(c) she considers that, in the interests of public safety, the scheme should be varied […] without delay.

8. HEALTH & SAFETY ISSUES

No issues arising from the recommendations.

9. EQUALITY & DIVERSITY ISSUES

No issues arising from the recommendations.

10. USE OF RESOURCES

10.1 In the event that the Cleveland Police and Crime Commissioner (CPCC) were to become a member of the Authority in the absence of any other amending regulations:

a) the CPCC would be a member for the purposes of the Local Authorities (Members' Allowances)(England) Regulations 2003 and therefore references to members in the Authority's Scheme of Allowances would include, where specified in the Scheme of Allowances, entitlements for the PCC under the Scheme; and

b) the CPCC would be a member for the purposes of the Local Government (Committees and Political Groups) Regulations 1990 such that the CPCC would be entitled to be counted as a member of a political group on the Authority. The Authority would therefore be required to take such membership into account when calculating proportionality in accordance with section 15 of the Local Government and Housing Act 1989 when making the division of seats amongst groups on committees of the Authority.

10.2 It should be noted that **if** the CPCC were to become a member of the Authority, the Policing and Crime Act 2017 amends the Localism Act 2011 so that the Authority must include in its Code of Conduct Procedure arrangements for allegations against the CPCC to be referred to the Cleveland Police and Crime Panel and for dealing with any resulting report made to the Authority by that Panel.

11. BACKGROUND PAPERS

- Public Consultation on Emergency Services Fire Authority – Cleveland Fire Authority Report, 12 February 2017
- The Cleveland Fire Services (Combination Scheme) Order 1995

12. APPENDICES

- APPENDIX A - 'Enabling Police and Crime Commissioners (PCCs) to sit and vote on Combined Fire and Rescue Authorities (FRAs) Government consultation' The Home Office, 27 November 2017

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