

# **Policing and Crime Act 2017 – implications for police and crime panels in England**

June 2017

## **Terminology**

There is a significant number of similar acronyms in this briefing. For ease of reference, these are listed below:

PCC – Police and Crime Commissioner  
PFCC – Police, Fire and Crime Commissioner  
PCP – Police and Crime Panel  
PFCP – Police, Fire and Crime Panel  
FRS – Fire and Rescue Service  
FRA – Fire and Rescue Authority  
PCA 2017 – Policing and Crime Act 2017  
FRSA 2004 – Fire and Rescue Services Act 2004

## **Overview**

This Local Government Association (LGA) briefing note provides a summary of the provisions of the Policing and Crime Act 2017 (PCA 2017) that impact on the work of Police and Crime Panels (PCPs / panels). The PCA 2017 amends the Fire and Rescue Services Act 2004 (FRSA 2004) to enable Police and Crime Commissioners (PCCs) to take on governance of their local fire and rescue service (FRS) through the creation of new PCC-style Fire and Rescue Authorities (FRA). The PCA 2017 also defines opportunities for closer working across emergency services through a new statutory duty for blue light services collaboration, and makes provision for PCCs to be represented on their local FRA.

The following sections of this note summarise:

- PCC governance of FRAs
- The process for establishing a PCC-style FRA
- The expanded role of Police, Fire and Crime Panels
- Emergency services collaboration agreements
- PCC representation on FRAs
- Further information and support

## **PCC governance of Fire and Rescue Authorities**

Chapter 2 and Schedule 1 of the PCA 2017 amend the FRSA 2004 to make provision for a PCC to take on the responsibilities of the FRA(s) in their area where a proposal to do so has been submitted to and subsequently approved by the Secretary of State. A PCC can only take on the role of FRA where it appears to the Secretary of State to be in the interests of economy, efficiency, and effectiveness or public safety. An order under section 4A of the FRSA 2004 will be required to enable a PCC to take on responsibility for fire. An order cannot be made on the basis of economy, efficiency and effectiveness if the Secretary of State thinks it would have an adverse effect on public safety.

In order to take on responsibility for fire governance, the PCC and existing FRA(s) boundaries must be coterminous; there is provision in the legislation to amend boundaries if a proposal relates to an area where boundaries are not coterminous. In areas where there is more than one FRA in the PCC area, the PCC would be required to take on responsibilities for both FRAs, either separately or by merging them together.

A PCC who takes on responsibility for fire, referred to as a PCC-style FRA will occupy two separate legal entities, that of the Police and Crime Commissioner and Fire and Rescue Authority, and will be known as the Police, Fire and Crime Commissioner (PFCC). The FRSA 2004 as amended by the PCA 2017 provides for two distinct models of PCC-style FRA, referred to as the governance model and the single employer model.

### **Governance model**

Under the governance model, the existing FRA would be abolished and its functions transferred to the new PCC-style FRA along with all FRS staff, property, rights and liabilities. The PCC-style FRA will be the employer of all FRS staff and is required to appoint a chief finance officer to be responsible for the FRA's financial affairs. The PCC-style FRA may also appoint other staff as required to exercise the functions of the FRA, but in practice will be expected to have in place a chief fire officer (or equivalent) with operational responsibility for the service. The chief constable will continue to employ all police staff.

The Home Office is in the process of revising the Fire and Rescue National Framework for England. It is anticipated that the Framework will come into effect in Spring 2018 and as part of the revision, the PCC-style FRA will be required to prepare a strategic Fire and Rescue Plan in respect of their fire and rescue functions, which must have regard to the last document prepared under the Framework by the previous FRA. The PFCC must also produce a Police and Crime Plan in respect of their policing functions. The PFCC must have regard to both plans when carrying out their functions, and can decide to combine the plans. Where a joint police and crime and fire and rescue plan is developed, the plan must set out the PCC-style FRA's priorities and objectives but does not need to have regard to the previous FRA plan.

### **Single employer model**

The FRSA 2004 as amended by the PCA 2017 provides for the creation of a single employer of fire and rescue personnel and police staff by delegating fire and rescue responsibilities to the chief constable of the local police force area. This is put into place through a section 4H order and is referred to as the single employer model. Under the single employer model, there is one organisation that provides operational police and fire functions, headed by a chief constable. A section 4H order can only be made where it is found to be in the interests of economy, efficiency and, effectiveness or public safety.<sup>1</sup> An order cannot be made on the basis of economy, efficiency and effectiveness if the Secretary of State thinks it would have an adverse effect on public safety.

Where a section 4H order is in place the PFCC would appoint a chief constable (who may be known as the chief officer) as the head of both the police and fire and rescue service, who would duly employ both fire and police personnel. In practice, the chief constable / officer may appoint a senior officer to lead fire operations and a deputy chief constable to lead police operations, but would be accountable to the PFCC for both fire and policing. Under the single employer

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<sup>1</sup> Where a section 4H order delegating FRA functions to the Chief Constable is made schemes may also transfer property, rights and liabilities between the two.

model there must be a single chief finance officer for both the police force and the fire and rescue service.

A section 4H order can be made at the same time as the governance model or at a later date. If it was at a later date, the PFCC would need to develop a new proposal, consult upon it and then go through the process of submission to the Secretary of State.

Where a single employer model has been established, both senior police officers and senior fire officers may apply for the chief officer role. A person with senior level fire service experience will be eligible for appointment to the role of chief constable if they have undertaken training in policing matters specified by the College of Policing.

## **Staffing**

In both the governance and single employer models, the distinction between operational policing and fire-fighting will be maintained; the prohibition on using police officers as firefighters remains in place and there is no intention of giving fire firefighters the power of arrest.

## **Funding**

In both the governance and single employer models, the PCC-style FRA will be required to establish and hold a fire fund, mirroring existing arrangements for the police fund. There will be two separate council tax precepts and central funding streams for policing and fire, which will be paid to the PFCC separately, and there will be separate budgets for each service, including under the single employer model. Revenue streams for fire and police and crime can only be used for delivering respective fire and rescue / police and crime functions. However, within this framework, there remains scope to pool funds for collaborative projects.

## **Responsibilities and conduct**

The overarching responsibilities that are binding on a PCC-style FRA in regard to fire reflect the existing requirements binding on PCCs in regard to policing matters. In particular, PFCPs will wish to be aware that PCC-style FRAs must:

- Exercise their functions efficiently and effectively.
- Publish any information specified by the Secretary of State which it is considered enables local people to assess the FRA's performance.
- Produce an annual fire and rescue statement on the exercise of its functions, prepared and published in accordance with the Fire and Rescue National Framework.
- Provide the PFCP with any information which it may reasonably require in order to carry out its functions.
- Have regard to:
  - the views of local people about FRA functions
  - any report or recommendation by the PFCP on the annual report by the PCC-style FRA for the previous year
  - a financial code of conduct issued by the Secretary of State.

PCC-style FRAs may delegate FRA responsibilities to the Deputy PCC, and both the PCC and Deputy PCC may also delegate FRA responsibilities to a member of staff of the FRA or PCC.<sup>2</sup> It is likely though that in developing section 4A orders, there will be some functions that cannot be delegated.

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<sup>2</sup> Subject to these arrangements being consistent with the provisions of the section 4A order creating the new FRA.

## Process by which a PCC can take on governance of fire and rescue services

The PCA 2017 sets out a series of steps that PCCs must take before they can propose to the Secretary of State that they should become the FRA for the area, but beyond this there is considerable flexibility for PCCs in how they develop their proposal. A proposal can be submitted by a PCC even if a relevant local authority objects to the proposal

### **Developing a business case for the creation of a PCC-style FRA**

A PCC's proposal to take on governance of the local FRS must contain an assessment of why it is in the interests of economy, efficiency and effectiveness and / or in the interests of public safety, referred to as 'the business case'. If the proposal is for a section 4A order to be combined with a section 4H order allowing for the creation of a single employer model, the proposal must also set out why this is being proposed.

The existing FRA is under a duty to cooperate with the PCC in preparing a proposal, regardless of whether or not it supports it. This includes providing the PCC with any information he or she reasonably requires to prepare the proposal although the FRA is not required to provide information that is subject to an obligation of confidence or other restriction on disclosure.

Before a PCC can submit a proposal to the Secretary of State, he or she is required to consult:

- each relevant local authority (broadly, any local authority whose area falls wholly or partly in the FRA area)
- people in the police force area
- representatives of FRA employees affected by the proposal, and
- representatives of members of the police force who may be affected.

The consultation is to be carried out in a manner the PCC considers appropriate. PCCs must publish their responses to the representations and views received as part of the consultations in a manner they think appropriate.

If any of the relevant local authorities do not support the PCC's proposal but the PCC still considers that the proposal meet the statutory tests, the PCC is required to provide copies of the representations made by all local authorities in their submission to the Secretary of State, as well as summaries of other views expressed during the consultation. The Secretary of State is required to obtain an independent assessment of the proposal and have regard to it in reaching a decision on whether or not to make a section 4A order. Details of how the independent assessment process will work in practice are still being developed by the Government, in consultation with the LGA, Association of Police and Crime Commissioners and others. However, by law the independent assessment must be made public.

As stated above, the Secretary of State can only approve a business case if he or she believes that the creation of a PCC-style FRA is in the interests of economy, efficiency and effectiveness or public safety. An order cannot be made where in the Secretary of State's view it would have an adverse effect on public safety.

A section 4A order will be required to create the new PCC-style FRA. In making a section 4A order, the Secretary of State can make any modifications to the PCC's proposal that he or she considers appropriate, although the relevant PCC and each relevant local authority must be consulted beforehand. The Secretary of State can also modify a single employer model proposal, but cannot modify it to

be a governance proposal. The FRSA 2004 as amended by the PCA 2017 also makes provision for a section 4H order to be made to 'convert' a governance model PCC-style FRA to a single employer model after the PCC-style FRA is originally created, but a new proposal, consultation and submission to the Secretary of State would be required.

### **Transitional arrangements**

The PCA 2017 does not specify when a transfer to a PCC-style FRA can formally take place, but there are reasons why certain points of the year may be more suitable than others. To enable PCCs to take on the specified functions of the FRA in advance of these particular dates, in preparation for formally becoming a PCC-style FRA, section 4A orders may therefore provide for the PCC to be the shadow FRA for a specified period. PCPs should plan on the basis that they will assume their wider fire scrutiny function when the PCC-style FRA is formally established.

### **The role of Police, Fire and Crime Panels in areas with PCC-style FRAs**

The Government's policy objective is for PCPs to provide equivalent scrutiny of both the PCC's fire and rescue and police and crime functions. The legislation therefore makes provision to extend the scrutiny powers of PCPs to the PFCCs' FRA functions; where a PCC becomes a PFCC, the panel will become a Police, Fire and Crime Panel (PFCP).

### **PFCP scrutiny of the PFCC's FRA role**

In summary, the role of PFCPs in regard to a PCC-style FRA's functions is to:

- Review the draft Fire and Rescue Plan, or a draft variation of it, and make a report or recommendations on it to the PCC-style FRA.
- Hold a public meeting to question the PCC-style FRA on the fire and rescue statement, review the statement and subsequently make a report or recommendations on the statement.
- Review or scrutinise any decisions or actions by the PCC-style FRA in connection with their FRA functions, and make reports or recommendations to them regarding these functions.
- Scrutinise the appointment of the PCC-style FRA's Chief Finance Officer. The process of scrutinising this appointment is the same as for other senior PCC appointments, involving a public confirmation hearing and subsequent report and recommendation to the PCC-style FRA. The PCC-style FRA can accept or reject this recommendation.
- Scrutinise the appointment of the person responsible for managing the fire and rescue service. Legislation requires the PCC-style FRA to notify the PFCP of the proposed appointment, allows the PFCP to hold a confirmation hearing, and gives the PFCP a power of veto over the PCC-style FRA's proposed appointment.
- Scrutinise the fire proposed precept. Again, the process of scrutinising the fire precept is the same as for the police precept, with PFCPs empowered to veto the original proposal and the PCC-style FRA required to have regard to any report and recommendation made by the PFCP.
- Deal with non-serious complaints against the PCC-style FRA in relation to their conduct and pass more serious conduct matters to the IPCC.

The PCC style FRA is required to provide the panel with any information necessary to allow the panel to carry out its scrutiny functions in regard to the PFCC's fire functions. Panels have the power to require PCC-style FRAs and members of their staff to appear before them and answer any question which a PFCP believes is necessary for this purpose. If there is a single employer model,

the PFCP can request the chief constable / chief officer to attend a panel hearing alongside the PCC-style FRA. Panels also have the power to require the PCC-style FRA to respond in writing to any report or recommendation made by them in regard to their fire and rescue functions.

The scrutiny of the fire and rescue plan, fire and rescue statement, FRA precept and appointment of the person responsible for managing the fire and rescue service are special functions of the PFCP and may only be discharged by the panel, not delegated to a committee or sub-committee.

### **Membership and composition of PFCP**

A person cannot be a member of a PFCP if they are member of staff of the relevant FRA, or - where there is a section 4H order in place - a member of staff of the single employer model.

A PFCP, relevant local authorities and Secretary of State are required to ensure that the panel collectively has the skills, knowledge and expertise necessary to discharge its functions in relation to the FRA. The Secretary of State will approve the number of additional co-opted members to improve a PFCP's skills, expertise and knowledge in England.

### **Implications for PFCPs**

With the PCA 2017 now in place and a number of PCCs developing a business case for taking on the FRA role, panels in those areas will need to ensure they are prepared for their expanded role. The main action for PFCPs will be to ensure that their panels are equipped to effectively scrutinise PCC-style FRAs in carrying out their FRA functions. Broadly, this will mean PFCPs need to consider:

- How they can ensure the panel has appropriate expertise and understanding of the fire and rescue service, and therefore the PCC-style FRA's governance of it.
- How the additional responsibilities will be absorbed into the existing scrutiny function.

To ensure that they have appropriate knowledge and understanding of the fire service, PFCPs will need to ensure that panel members are provided with an introduction to the fire services. As set out below, the LGA is developing guidance and training in this area.

PFCPs may wish to co-opt additional independent members with previous experience of the fire and rescue service to develop their knowledge of the service. As noted above, the legislation makes clear that the panel and councils have a responsibility to ensure they have the appropriate knowledge, suggesting an expectation that future appointments to the panel will reflect the need for knowledge of fire as well as of police.

Panels will also need to consider the most effective way for them to scrutinise the PCC-style FRA, based on existing ways of working, e.g.) will the panel hold separate meetings to scrutinise the FRA and police and crime functions or do this jointly? This may be shaped partly by whether the PFCP produces a single police and crime plan covering fire, or two separate plans; and also by the feasibility of holding additional meetings and/or existing resource constraints.

The Home Office is currently considering the case for PFCPs to receive additional resources to support their role in ensuring effective scrutiny of the PCC-style FRA.

## Other options for closer working in emergency services

As well as providing for the creation of PCC-style FRAs, the PCA 2017 also sets out other ways in which PCCs and FRA can work together more closely. This may be an issue that PCPs seek to scrutinise.

### **Emergency services collaboration agreements**

The PCA 2017 also sets out arrangements for the creation of formal collaboration agreements between FRAs, police forces and ambulance trusts (and other bodies if this is agreed locally).

The three emergency services are subject to a new statutory duty to:

- keep under review whether entering an agreement would be in the interests in improving their efficiency and effectiveness
- notify the other services of any collaboration opportunities that are in the interests of efficiency and effectiveness
- enter into an agreement if they agree that a proposed collaboration is in the interests of their efficiency and effectiveness.

If they believe that an agreement would have an adverse effect on public safety or on the service's efficiency and effectiveness, they do not have to enter it; similarly, a party can withdraw from an existing agreement if it is no longer in its interest in terms of efficiency and effectiveness.

In the case of the ambulance service the agreement can only apply to the emergency ambulance service, rather than non-emergency ambulance services. In considering whether to enter into an agreement, the ambulance trust must consider the impact of an agreement on its non-emergency services and the wider health services; trusts are not required to enter into an agreement if they believe it would have an adverse effect on them. For combined authority elected mayors or combined authorities, the agreement can only cover the FRA or PCC functions they are responsible for.

Collaboration agreements (which can subsequently be varied or replaced if agreed by the parties) will set out how the parties will work together to discharge their functions, and allow for payments between the parties. They can allow a service to exercise the functions of another service or exercise functions if there is an existing power to do so.

The Emergency Services Collaboration Working Group (ESCWG) is a sector-led forum that is already working to [promote good collaboration practice](#) across the emergency services.

### **PCC representation on FRAs**

Where a PCC does not take on responsibility for fire but still wishes to become more involved with the FRS, the PCA 2017 enables them to be represented on their local FRA(s), subject to the consent of the FRA.

Under amendments made by the PCA 2017 to existing legislation, PCCs can make a request to be appointed as a member of any committee, joint committee, or sub-committee a council has appointed to discharge its FRA functions. This request can be made to any council or councils wholly or partly in the PCC's area. The council or councils have to consider the request, give reasons for their decision to agree or refuse the request and publish those reasons.

PCCs can also request to attend, speak and vote at any meeting of a principal council that is an FRA. Where the council agrees to this request, the PCC must

be treated as a member for certain purposes<sup>3</sup>.

Where the PCC's request is accepted by councils, the PCC can attend, speak and vote at relevant meetings but only in relation to the business of the meeting concerning the functions of the FRA. The FRA will have the ability to adjust membership for political balance where necessary.

Councils' codes of conduct, including the requirement to make declarations of pecuniary and non-pecuniary interests, apply to PCCs where they are on a FRA, and any allegation of a breach of the code of conduct must be referred to the PCP. It must then report back to the authority and its report must be considered by the council in deciding whether the PCC has breached the code of conduct and if they have what action to take, if any.

## Further information and support

This note is intended to provide a short summary of the changes introduced by the PCA. PCPs seeking more detailed information about some of these issues may find it useful to refer to guidance on Police and Fire Business Cases developed by the Association of Policing and Crime Chief Executives (APACE), which this document has drawn on. The full document is available on their [website](#).

To assist PFCPs in their new, wider role, the LGA is developing guidance and training for panel members specifically:

- An introductory guide to the fire service (available late summer 2017).
- A one day training programme aimed specifically at PCPs in areas where the PCC is developing a business case to take on the role of FRA. Further details on this will be circulated to potential early adopter areas shortly.

These will cover issues including: the statutory framework for fire; what fire and rescue services do; how they are structured; the performance framework; available sources of information; and key lines of enquiry for PFCPs.

For further details on these, please contact: [ellie.greenwood@local.gov.uk](mailto:ellie.greenwood@local.gov.uk)

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<sup>3</sup> ie, a PCC's presence counts towards: a meeting being quorate; establishing if there is a majority in favour of a question before the council; and recording the names present of those at the meeting