

## **EXPLANATORY MEMORANDUM TO THE COMBINED FIRE AND RESCUE SERVICES SCHEMES (VARIATION) (WALES) ORDER 2009**

1. This Explanatory Memorandum has been prepared by the Social Justice and Local Government Department and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

### **2. Description**

2.1 This Variation Order will permit Fire and Rescue Authorities to hold financial reserves. These variations are described in more detail below under the heading 'Purpose and intended effect of the legislation'.

### **3. Matters of special interest to the Subordinate Legislation Committee**

#### Amendments to the 1995 Combination Schemes

3.1 This Order, (the Variation Order 2009) amends the Mid and West Wales Fire Services Combination Scheme which is set out in the Schedule to the Mid and West Wales Fire Services (Combination Scheme) Order 1995; the North Wales Fire Services Combination Scheme which is set out in the Schedule to the North Wales Fire Services (Combination Scheme) Order 1995 and the South Wales Fire Services Combination Scheme which is set out in the Schedule to the South Wales Fire Services (Combination Scheme) Order 1995.

3.2 The variation that inserts new paragraph 21A into each of the existing schemes has effect from 1 December 2009. Further detail of the variation is contained under the paragraph: 'Purpose and intended effect of the legislation'.

### **4. Legislative Background**

4.1 Combination schemes were made under the Fire Services Act 1947. That Act was largely revoked and replaced by the Fire and Rescue Services Act 2004. That Act contains new provisions for making combination schemes but also provides a power to vary schemes made under the 1947 Act. The proposed Order is to be made under section 4 of the Fire and Rescue Services Act 2004. Under that section, the Welsh Ministers must, before making a scheme variation order, consult FRAs, FRAs' constituent authorities and any other persons the Welsh Ministers consider appropriate. This Order follows the negative resolution procedure.

## **5. Purpose and intended effect of the legislation**

### Variations to 'The Schemes'

- 5.1 The variation enables Fire and Rescue Authorities in Wales to hold financial reserves.
- 5.2 The new power to create reserves is being created by permitting an FRA to include in its estimate of expenses for a forthcoming financial year, to be given to constituent authorities by the end of December each year, such a sum as the FRA determines for the purpose of holding reserves. The first opportunity for FRAs to do this will be when they provide their estimates for the financial year beginning on 1 April 2010.

## **6. Implementation**

- 6.1 It is intended that this Variation Order will come into force on 1 December 2009. FRA estimates for the financial year 2010-11 need to be submitted by 31 December 2009 which means that bringing the legislation into force on 1<sup>st</sup> December 2009 will legitimately allow FRAs, with some additional administrative arrangements, to hold reserves for 2010-11 and following financial years. There could be implications for FRAs estimates of accounts in future years if this date is not met. This is because the Order cannot be retrospective due to the enabling Act (Fire and Rescue Services Act 2004) which can only allow the accumulation of reserves from the day on which it comes into force.

## **7. Consultation**

- 7.1 The Order is being made under section 4 of the Fire and Rescue Services Act 2004. Under that section, the Welsh Ministers must consult FRAs, FRAs' constituent authorities and any other persons the Welsh Ministers consider appropriate. Accordingly, the Finance Directors of all 22 Local Authorities in Wales along with the 3 Fire and Rescue Services in Wales were consulted. Officials also held ongoing talks with the Wales Audit Office and the Welsh Local Government Association to ensure they were content with the proposals.
- 7.2 Section 4(6) of the 2004 Act provides that, before making an order which varies a combination scheme, the Welsh Ministers must hold an inquiry. However, it also sets out certain circumstances in which such an inquiry need not be held; and here those circumstances are met. Each FRA and each constituent authority has agreed to the variation. In order to permit the new power to be available at the earliest opportunity, the Welsh Assembly Government invited FRAs and their constituent authorities to agree to the proposed variation by means of returning a signed agreement. All parties who were consulted on the proposal to allow Fire and Rescue Authorities to hold reserves returned the signed agreement, meaning that the legislation can be made without the need for an inquiry.

## **8. Regulatory Impact Assessment**

### **Options**

#### Option 1: To make the variation order

- 8.1 Making the variation order will regularise the holding of financial reserves by FRAs in Wales.

#### Option 2: Not to make the Order

- 8.2 Not making the variation order will place FRAs in a difficult position in that they will not have clear legal authority to hold financial reserves.

## **9. Benefits**

- 9.1 The principal benefit is the ability for FRA's to hold financial reserves.

## **10. Costs**

- 10.1 There are no additional costs for Fire and Rescue Authorities in respect of the power to hold reserves. Nothing in this legislation compels Fire and Rescue Authorities to hold reserves, rather it gives them the option to do so should they wish.

## **11. Competition Assessment**

N/A

## **12. Consultation**

- 12.1 Lead Finance Officers in Local authorities and FRA's (as the parties with a direct interest in FRA's holding reserves) have been sent letters explaining the proposals and asking them to sign and return their agreement if they agree with the power to allow FRAs to hold reserves. In addition to local authorities and FRAs, the letter was also copied to the WLGA and WAO.

## **13. Post Implementation Review**

- 13.1 There is no intention for the Welsh Assembly Government to review the requirements and expectations in the Variation Order. The Wales Audit Office will follow their usual procedures to ensure that there are no financial irregularities in the way any reserves are handled.

## **14. Summary**

- 14.1 There are no significant costs to Local Authorities or Fire and Rescue Authorities as a result of this legislation, but Fire and Rescue Authorities will benefit from being able to hold reserves in any given financial year which will allow them to plan for future additional expenses.