



HAMPSHIRE  
& ISLE OF WIGHT  
**FIRE AND  
RESCUE**  
AUTHORITY



## Shadow Authority

Purpose: Approval

Date: **3 June 2020**

Title: **CONSTITUTIONAL ARRANGEMENTS FOR THE HAMPSHIRE AND ISLE OF WIGHT FIRE AND RESCUE SHADOW AUTHORITY**

Report of Committee Clerk

### SUMMARY

1. The Hampshire and Isle of Wight Fire and Rescue Authority (Combination Scheme) Order 2020 established the Hampshire and Isle of Wight Fire and Rescue Authority (“H&IWFRA” or “the Authority”) with effect from 1 April 2020.
2. H&IWFRA will operate in “shadow form” until 31 March 2021. During the shadow period, H&IWFRA is required to operate in accordance with relevant local government legislation.
3. This report informs members of the political composition of H&IWFRA and seeks approval for various constitutional arrangements to enable it to operate lawfully during the shadow year.
4. It also asks the Authority to note the new Regulations allowing Authority meetings to be held virtually

### BACKGROUND

5. The Hampshire and Isle of Wight Fire and Rescue Authority (Combination Scheme) Order 2020 came into force on 1 April 2020. The Order constitutes H&IWFRA with effect from 1 April 2020 but from this date until 31 March 2021 (also known as the “shadow period” or “shadow year”), it exists only for the performance of any functions necessary for bringing the combination scheme into full force (also known as the “shadow form” or “Shadow Authority”). The remainder of the Order comes into force on 1 April 2021 and it is only at that point, that H&IWFRA will take over responsibility for the fire and rescue functions in the Hampshire and Isle of Wight areas.
6. The Order provides for elected members to be appointed from the Constituent Authorities, as far as practicable, in proportion to the number of electors in each Constituent Authority area relative to the others. The initial number of members of H&IWFRA is 11 (and this is the number that must be in place on 1 April 2021). Thereafter the number is to be determined by H&IWFRA up to a maximum of 25.

## ESTABLISHMENT AND POLITICAL COMPOSITION OF H&IWFRA

7. Hampshire County Council (HCC), Portsmouth City Council (PCC) and Southampton City Council (SCC) have appointed the existing members of Hampshire Fire and Rescue Authority (HFRA) to H&IWFRA. Isle of Wight Council (IWC) has appointed the relevant portfolio holder. The initial membership and political composition of H&IWFRA can be found at **Appendix 1**. The political proportionality provisions of the Local Government and Housing Act 1989 apply to the Authority. These require, inter alia, that where one political group has an overall majority, that group must have a majority on any Committee. It is not envisaged that H&IWFRA will appoint to committees during the shadow year. However, if this becomes necessary then such appointments would need to be made in accordance with proportionality requirements based on the political composition of the Authority set out in Appendix 1.

## THE LOCAL AUTHORITIES AND POLICE AND CRIME PANELS (CORONAVIRUS) (FLEXIBILITY OF LOCAL GOVERNMENT MEETINGS AND POLICE AND CRIME PANEL MEETINGS (ENGLAND AND WALES) REGULATIONS 2020

8. As part of its response to the Covid-19 pandemic, the Government introduced emergency legislation in April 2020 to temporarily allow local authorities (including fire and rescue authorities) to hold virtual member meetings. The Regulations came into force on 4 April 2020 and apply to any meetings held before 7 May 2021.
9. Under the Regulations, not all members of a local authority now need to be in the same place for public meetings, and members can attend by remote means. "Remote attendance" is allowed, as long as those members who are remotely attending can:
  - (a) Hear (and where practicable, see) other members in attendance; and be heard (and where practicable be seen) by the other members in attendance; and
  - (b) Hear (and where practicable, see) any member of the public who is exercising a right to speak; and be heard (and where practicable be seen) by any member of the public who is exercising a right to speak (e.g. deputations); and
  - (c) Be heard (and where practicable be seen) by any other members of the public who are attending the meeting.
10. The rules set out in the Regulations override anything in an authority's standing orders or other rules that prohibit remote attendance at meetings. Therefore, the Authority is legitimately able to hold virtual meetings from 4 April 2020 until 7 May 2021.

## CONSTITUTIONAL ARRANGEMENTS

11. H&IWFRA is subject to the same Local Government legislative requirements as currently apply to HFRA. This means, amongst other things, that the usual democratic processes must be followed, including meetings being held in public in compliance with the access to information requirements (as modified by recent Regulations permitting virtual meetings).
12. H&IWFRA is also required to designate a Monitoring Officer and Chief Financial Officer, pursuant to the Local Government and Housing Act 1989.
13. In order to ensure efficient and cost-effective compliance with governance and democratic requirements, and to achieve continuity with existing arrangements, it is recommended that the Chief Executive of Hampshire County Council, John Coughlan, be appointed as Clerk and Monitoring Officer of H&IWFRA (Mr Coughlan is currently appointed as the Clerk and Monitoring Officer of HFRA and does not receive any additional remuneration for the role). It is further recommended that Rob Carr, currently HFRA's Chief Financial Officer, be appointed as H&IWFRA's Chief Financial Officer.
14. Appointing Mr Coughlan as Clerk and Monitoring Officer of H&IWFRA and Mr Carr as Chief Financial Officer will enable the financial, governance and democratic processes currently provided for HFRA to be provided in the same way to H&IWFRA. Democratic functions are delivered on Mr Coughlan's behalf through Hampshire County Council's Democratic and Member Services Team. Legal and Monitoring Officer functions are delivered by Paul Hodgson as Deputy Monitoring Officer and by Hampshire County Council's legal team.
15. The above proposals will enable the transition from the shadow period to implementation of the full scheme in 2021 to be managed seamlessly and with minimal additional bureaucracy.

## CONSTITUTIONAL DOCUMENTS

16. H&IWFRA will need to adopt constitutional documents in order to enable it to undertake its functions effectively and in compliance with local government law requirements.
17. It is recommended that modified versions of HFRA's existing constitutional documents are adopted, as this will assist in ensuring smooth and efficient running of the Shadow Authority. It will also mean that the same democratic processes can be followed during the shadow year for both HFRA and H&IWFRA, thus ensuring efficiency and simplicity.
18. A modified version of HFRA's Constitution appears at **Appendix 2**. This has been amended to reflect the status of H&IWFRA. Most parts of the Constitution will apply to H&IWFRA with immediate effect (i.e. throughout the shadow period). Some parts will only apply with effect from 1 April 2021.
19. The table below sets out which parts will apply with immediate effect and which parts will only apply from 1 April 2021 onwards.

<b>Part of Constitution</b>	<b>Applicable with effect from June 2020 onwards</b>	<b>Applicable with effect from 1 April 2021 only</b>
<b>Part 1 – Introduction and Background</b>	Yes (in whole)	N/A
<b>Part 2 – Members of the Authority</b>	Yes (in whole)	N/A
<b>Part 3 – Arrangements to Perform Functions</b>	Partly, as per 3.1 to 3.7 below.	N/A
3.1 Full Authority Terms of Reference	Yes, but only in so far as they relate to the performance of the Shadow Authority's Functions to bring the Combination Scheme into full effect on 1 April 2021. Applicable in full from 1 April 2021.	N/A
3.2 Full Authority Timetable and Workplan	Yes, but only in so far as they relate to the performance of the Shadow Authority's Functions to bring the Combination Scheme into full effect on 1 April 2021. Applicable in full from 1 April 2021.	N/A
3.3 S&GC Terms of Reference	No	Yes
3.4 S&GC Timetable and Workplan	No	Yes
3.5 3SFire Ltd Stakeholder Committee Terms of Reference	No	Yes
3.6 Terms of Reference for the Pension Board	No	Yes
3.7 Scheme of Delegation	Yes (subject to paragraph 20).	N/A
<b>Part 4 – Rules of Procedure</b>	Partly as per 4.1 to 4.3	
4.1 Standing Orders	Yes	N/A
4.2 Financial Regulations	Yes (subject to paragraph 20).	N/A
4.3 Contract Standing Orders	Yes (subject to paragraph 20).	N/A
<b>Part 5 Appendices, Codes and Protocols</b>	Partly as per Appendices 1 to 8 below.	
Appendix 1 Members' Allowance Scheme	No	Yes

Appendix 2 Arrangement for Handling Member Complaints	Yes	N/A
Appendix 3 Code of Conduct for Members	Yes	N/A
Appendix 4 Filming and Broadcasting Protocol	Yes	N/A
Appendix 5 Protocol for Member – Officer Relations	Yes	N/A
Appendix 6 Communications Protocol	Yes	N/A
Appendix 7 Code of Corporate Governance	Yes	N/A
Appendix 8 The Authority’s Key Statutory Responsibilities	No	Yes

20. The Scheme of Delegation, Financial Regulations and Contract Standing Orders specifically refer to responsibilities held by the Chief Fire Officer or other HFRA officers. During the shadow year from June 2020 to 31 March 2021, references to the Chief Fire Officer (or to other specific officers, such as the Chief of Staff) in any of the parts of the Constitution that are adopted by H&IWFRA with effect from 3 June 2020 shall be construed as meaning the Chief Fire Officer (or other specific officer) of HFRA. With effect from 1 April 2021, all staff (including the Chief Fire Officer) will transfer to H&IWFRA and therefore no amendments will be needed to the constitutional documents at that point to reflect the transfer.
21. By adopting the constitutional arrangements as set out above, the Member Allowance Scheme will not apply to H&IWFRA until 1 April 2021. Up to that point HFRA members will continue to receive an allowance as usual under the HFRA Member Allowance Scheme, but will not receive any additional allowances for attending H&IWFRA Shadow Authority meetings, which are due to take place immediately after the HFRA meetings.
22. It is not proposed to make other member appointments during the shadow period (such as to the Member Development role) due to the Authority’s limited functions during the shadow period.

## DISPENSATION FOR MEMBERS IN RESPECT OF COUNCIL TAX PRECEPT

23. Where members have a disclosable pecuniary interest in an item of Authority business then they are precluded from participating in either a discussion or a vote on that item. Interests in land amount to disclosable pecuniary interests. Members who own a house in the Authority's administrative area could be seen to have a disclosable pecuniary interest in a decision to set the level of precept. The Government has previously issued guidance stating that in its view, elected members of a Local Authority do not have a prejudicial pecuniary interest in a decision to set council tax (or by extension to a Fire and Rescue Authority, a decision to set a precept). However, many Local Authorities have chosen to err on the side of caution and grant a dispensation to all members in respect of setting council tax or precepts. This removes any questions associated with pecuniary interests in relation to precept setting.
24. In the circumstances, it is recommended that the Authority approve a dispensation to members in order to avoid any future issues or challenges.

## RESOURCE IMPLICATIONS

25. The legal, democratic and finance functions undertaken on behalf of the Clerk, Monitoring Officer and Chief Financial Officer will continue to be undertaken pursuant to existing service level agreements (SLAs) between HFRA and Hampshire County Council, in exactly the same way that these functions are currently undertaken for HFRA and within the overall combined fire authority (CFA) programme budgets.
26. Other support to H&IWFRA will be provided from within existing capacity within HFRA and IWC.
27. There are no other financial or resource implications associated with the proposals in this paper.

## ENVIRONMENTAL AND SUSTAINABILITY IMPACT ASSESSMENT

28. There are no environmental or sustainability impacts associated with the proposals in this paper.

## LEGAL IMPLICATIONS

29. With effect from 1 April 2020, H&IWFRA is subject to the same democratic, financial and legal obligations that HFRA is currently subject to. Although H&IWFRA will not have responsibility for the operational fire and rescue functions until 1 April 2021, it will need to operate in accordance with its democratic, financial and legal obligations during the shadow year.
30. The appointment of the Clerk and Monitoring Officer and Chief Financial Officer, along with adoption of the constitutional documents as set out in this

report will assist in ensuring that H&IWFRA meets its legal obligations during the shadow year and beyond.

## PEOPLE IMPACT ASSESSMENT

31. The proposals in this report are considered compatible with the provisions of equality and human rights legislation.

## OPTIONS

32. The Authority has the following options:

32.1 Option 1: to make the appointments suggested and adopt the constitutional documents attached; or

32.2 Option 2: not to make the relevant appointments or adopt the constitutional documents, and instead to make alternative appointments and adopt alternative constitutional documents.

## RISK ANALYSIS

33. Option 1 is recommended, as this provides the structure for the Authority to meet its democratic, legal and financial obligations during the shadow year, and ensures that it can operate in a largely identical way to HFRA. This is therefore the lowest risk option and the most administratively efficient approach.
34. Option 2 would require further work to be undertaken to provide alternative constitutional arrangements that would need to be adopted later. This could cause increases in the cost of setting up and running the Authority during the shadow period and also risks leaving the Authority non-compliant with statutory requirements and unable to meet its democratic, legal and financial obligations for a period of time.

## CONCLUSION

35. The Authority needs to operate in accordance with its legal obligations from the outset and for the duration of the shadow period. The recommendations in this report are intended to ensure that the Authority does so in the most simple and efficient way.

## RECOMMENDATIONS

36. H&IWFRA notes the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority Meetings and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 and their effects in enabling the Authority to hold virtual meetings, as set out in this report.

37. H&IWFRA notes the political composition of H&IWFRA as set out at Appendix 1.
38. H&IWFRA appoints John Coughlan, Chief Executive of Hampshire County Council as the Clerk and Monitoring Officer of H&IWFRA.
39. H&IWFRA appoints Rob Carr as the Chief Financial Officer of H&IWFRA.
40. H&IWFRA adopts, with immediate effect, the parts of the Constitution set out at paragraph 19 and Appendix 2 which are stated to be applicable from 3 June 2020 and notes and agrees those parts of the Constitution that will only apply with effect from 1 April 2021.
41. H&IWFRA agrees that from 3 June 2020 to 31 March 2021, references to the Chief Fire Officer (or to other specific officers, such as the Chief of Staff) in any parts of the Constitution that apply from 3 June 2020 shall be construed as meaning the Chief Fire Officer (or other specific officer) of HFRA.
42. H&IWFRA grants a dispensation to all members of the Authority who own a house or land in the Authority's administrative area to participate and vote in any item of Authority business connected to setting the precept.

#### APPENDICES ATTACHED

43. Appendix 1: Membership and political composition of Hampshire and Isle of Wight Fire and Rescue Authority, following appointments by constituent authorities in 2020.
44. Appendix 2: Constitutional Documents

Contact: Paul Hodgson, on behalf of the clerk to HFRA, [paul.hodgson@hants.gov.uk](mailto:paul.hodgson@hants.gov.uk)