

REPORT REFERENCE NO.	DSFRA/17/6
MEETING	DEVON & SOMERSET FIRE & RESCUE AUTHORITY (Budget Meeting)
DATE OF MEETING	17 FEBRUARY 2017
SUBJECT OF REPORT	REQUEST FROM EXETER CITY COUNCIL FOR MEMBERSHIP ON THE AUTHORITY
LEAD OFFICER	Director of Corporate Services
RECOMMENDATIONS	<i>That the Authority writes to Exeter City Council and the Minister of State for Policing and the Fire Service advising that the Authority is not able to support the request of Exeter City Council for a place on the Authority as to do so would be incompatible with existing legislation.</i>
EXECUTIVE SUMMARY	<p>Exeter City Council, at its full meeting on 13 December 2016, passed a motion to write to the Fire Minister to request that the City Council be given a place on the Devon and Somerset Fire and Rescue Authority. This report provides details of that request and the response received from the Minister of State for Policing and the Fire Service (the Rt. Hon. Brandon Lewis MP) to that request.</p> <p>The report also sets out the historical background to the establishment of combined fire and rescue authorities and the current legislative position.</p>
RESOURCE IMPLICATIONS	Nil.
EQUALITY RISKS AND BENEFITS ANALYSIS (ERBA)	Not applicable
APPENDICES	A. Letter from the Rt. Hon. Brandon Lewis MP (Minister of State for Policing and the Fire Service)
LIST OF BACKGROUND PAPERS	<p>Fire & Rescue Services Act 2004</p> <p>The Devon & Somerset Fire & Rescue Authority (Combination Scheme) Order 2006</p>

1. **INTRODUCTION**

1.1 At its full meeting on 13 December 2016, Exeter City Council passed a motion to:

“...write to the Fire Minister Brandon Lewis MP to request under the Fire Service Act 2004 that a member of the Council sit on the County Fire Authority so that a clear voice from this City is heard in how the Fire service is run and how the monies raised through Council Tax are used”.

1.2 A letter was duly sent and a copy of the response received from the Minister is attached (Appendix A).

2. **HISTORICAL BACKGROUND**

2.1 From 1947 to 1974, Exeter City was responsible for the fire and rescue service (as was Plymouth City). This position changed with local government reorganisation in 1974, when responsibility for the discharging fire and rescue functions was transferred to the [then] newly created Devon County.

2.2 Further local government reorganisation in Devon in 1998 saw the establishment of two unitary authorities – namely, Torbay and Plymouth. More significantly, it also saw the establishment – by the Devon Fire Services (Combination) Scheme Order 1997 (“the 1997 Order”) under the [then] Fire Services Act 1947 – of the Devon Fire Authority as a body corporate (i.e. separate, legal entity) with responsibility for discharging fire and rescue functions in the “combined area”, defined as:

“...the areas of the following councils, namely the councils of the City of Plymouth and Borough of Torbay and Devon County Council...” (Part 2, Paragraph 3 of the 1997 Order) i.e. the combined areas of those authorities (“constituent authorities”) which, were it not for the 1997 Order, would otherwise have had responsibility for discharging fire and rescue functions.

2.3 Exeter City Council also sought unitary status during this reorganisation but this was rejected.

2.4 The 1997 Order also specified, amongst other things:

- the overall size of the Devon Fire Authority (*“...The Authority shall consist of not more than 25 members save that, where the minimum number of members of the Authority resulting from the operation of paragraph 12 would be greater than 25, the Authority shall consist of that number of members”*); and
- the apportionment mechanism for determining the number of members each constituent authority can appoint (*“...proportionate to the number of local government electors in its area in relation to the number of such electors in each of the other constituent authorities’ areas”*) i.e. by relative electoral roll.

2.5 The current Devon & Somerset Fire & Rescue Authority was the first voluntary merger of its kind and came into being from 1 April 2007. It was established by the Devon & Somerset Fire & Rescue Authority (Combination Scheme) Order 2006 (“the 2006 Order” – made under Section 2 of the Fire and Rescue Services Act 2004 (“the Act”). The 2006 Order redefined the “combined area” to include Somerset County Council (which, until that point, had responsibility for the discharge of fire and rescue functions in Somerset) as an appointing constituent authority. The overall size of the Authority and apportionment mechanism remained as per the 1997 Order.

3. CURRENT LEGISLATIVE CONTEXT – THE FIRE AND RESCUE SERVICES ACT 2004 (“THE ACT”)

- 3.1 Section 2 of the Act gives the Secretary of State power to constitute combined fire and rescue authorities “...**from the combined area of two or more existing fire and rescue authorities**” (Section 2[1]) where to do so would be in the interests of “...**economy, efficiency or effectiveness...**” or “**public safety**” (Section 2[2]).
- 3.2 Section 1 of the Act defines (subject to Sections 2 and 4 which deal with schemes constituting combined fire and rescue authorities for particular areas) a fire and rescue authority for England as:
- (a) a non-metropolitan county council is the fire and rescue authority for the county;
 - (b) a non-metropolitan district council for an area for which there is no county council is the fire and rescue authority for the area (i.e. a unitary authority such as Plymouth and Torbay);
 - (c) the London Fire and Emergency Planning Authority is the fire and rescue authority for Greater London;
 - (d) a metropolitan county fire and civil defence authority is the fire and rescue authority for the county; or
 - (e) the Council of the Isles of Scilly is the fire and rescue authority for the Isles of Scilly.
- 3.3 Exeter City Council, as currently constituted, does not fall within any of the above definitions in Section 1 of the Act.
- 3.4 For the purposes of request from Exeter City Council for a place on the Authority, the key provision of the Act – as indicated in the response from the Minister – is Section 2(6) of the Act which gives the Secretary of State the power to vary a combination scheme made under Section 2. Further, by virtue of amendments to the Act made by the Deregulation Act 2015, where the variation is proposed by the existing fire and rescue authority in question, the Secretary of State is **not** required to consult any of the organisations which he would otherwise be required to consult under Section 2(6) of the Act, namely:
- (a) any fire and rescue authority which appears to him likely to be affected,
 - (b) any other authority which would, apart from the scheme, be a fire and rescue authority under section 1 and which appears to him likely to be affected,
 - (c) any local authority all or part of whose area forms part of the combined area or would, under the scheme as varied, form part of the combined area, and
 - (d) any other persons he considers appropriate.
- 3.5 Section 2(8) of the Act, however, requires that the Secretary of State **must** cause “an inquiry” to be held before agreeing to any variation to an existing scheme unless “...the combined fire and rescue authority **and any other authority which would, apart from the scheme, be a fire and rescue authority under section 1 and which would be affected by the variation or revocation**, agree to the variation or revocation.”
- 3.6 What is unclear in the Act is whether Section 2(6) gives the Secretary of State power to vary a combination scheme to provide for representation on an existing fire and rescue authority by a local authority that **would not** otherwise be a fire and rescue authority. Given Sections 1 and 2 as a whole, however, this would seem unlikely.

4. IMPLICATIONS OF EXETER CITY REQUEST ON APPORTIONMENT OF PLACES ON THE AUTHORITY

4.1 As set out in paragraph 2.4 above, both the 1997 Order (which established the former Devon Fire Authority) and the 2006 Order establishing this Authority provides for indicative overall Authority membership (25) and the mechanism - by reference to relative electoral rolls - for appointments by constituent authorities.

4.2 Unless any variation to the 2006 Order was to alter either of these matters in affording representation on the Authority for Exeter City Council then, to undertake the necessary calculation to determine the apportionment of places, it would be necessary to deduct the electoral roll for Exeter City Council from that of Devon County Council (the electoral roll for which is the total for all non-unitary district councils in Devon) to avoid double-counting. The effect of this on appointments to the Authority would be as set out in the table below.

Authority	Current Position			Position with Exeter City Council as additional constituent authority		
	A	B	C	D	E	F
	Electoral Roll	No. of seats (ind. authority electoral roll/total electoral rolls x 25)	No. of seats to nearest whole	No. of seats to nearest whole	No. of seats (ind. authority electoral roll/total electoral rolls x 25)	Electoral Roll
Devon CC	584,426	11.60	12	10	9.94	500,366
Somerset CC	395,388	7.85	8	8	7.85	395,388
Plymouth	179,871	3.57	4	4	3.57	179,871
Torbay	99,338	1.97	2	2	1.97	99,338
Exeter	-	-	-	2	1.67	84,060
TOTALS	1,259,023	25.00	26	26	25.00	1,259,023

4.3 From the above it can be seen that, by application of the apportionment method for places on the Authority, agreement to the request would see two seats allocated to Exeter City Council (which would **not otherwise** be a fire and rescue authority in its own right) at the expense of places currently filled by Devon County Council (which **would otherwise** be a fire and rescue authority).

4.4 Extending this argument, if the Secretary of State was minded to approve a variation to allow for representation by Exeter City Council, it would then seem difficult to decline any similar request that may be made by any - or, indeed, all - of the other non-unitary district councils in both Devon and Somerset, who could each mount an identical argument to that put forward by Exeter City Council (i.e. having a voice in how the Authority is run and how monies raised through Council Tax are used).

4.5 The end result of this would be that the non-unitary district councils (who would **not otherwise** be fire and rescue authorities in their own right) would have seats on the combined fire and rescue authority whereas Devon and Somerset County Councils (which **would otherwise** be fire and rescue authorities) would not. This would be incompatible with the existing legislation which provides for establishment of combined fire and rescue authorities **from authorities which would otherwise be fire and rescue authorities in their own right.**

5. CONCLUSION

- 5.1 Following a meeting in December 2016, Exeter City Council wrote to the Minister of State for Policing and the Fire Service requesting a place on the Devon & Somerset Fire & Rescue Authority. The response of the Minister advocates, in the first instance, that this Authority might wish to propose the variation to obviate the need for a consultation.
- 5.2 This report highlights, though, that - irrespective of whether or not this Authority was minded to agree – giving effect to the request would be incompatible with the legislation as currently drafted.
- 5.3 The Authority is therefore invited to consider the contents of this report with a view to advising Exeter City Council and the Secretary of State that it is not able to support the request of Exeter City Council as to do so would be incompatible with existing legislation.

MIKE PEARSON
Director of Corporate Services