

Explanatory Memorandum to the Fire and Rescue Services (National Framework) (Wales) (Revision) (No. 2) Order 2015

This Explanatory Memorandum has been prepared by the Education and Public Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Fire and Rescue Services (National Framework) (Wales) (Revision) (No. 2) Order 2015. I am satisfied that the benefits outweigh any costs.

Leighton Andrews
Minister for Public Services
8 December 2015

1. Description

The Fire and Rescue Services (National Framework) (Wales) (Revision) (No. 2) Order 2015 (“the Order”) revokes the Fire and Rescue Services (National Framework) (Wales) (Revision) Order 2015 (S.I. 2015/1931 (W.289)) (“the original Order”) and re-enacts its provisions in order to correct an error which was identified in the original Order.

The Order brings into effect a revision of the Fire and Rescue National Framework for Wales 2012. The Framework sets priorities and objectives and provides guidance for Fire and Rescue Authorities (FRAs) in Wales. FRAs must have regard to the Framework in carrying out their functions.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

The Order revokes the original Order and re-enacts its provisions in order to correct the following error: the Fire and Rescue National Framework 2016 was published on 25 November 2015, but the original Order, which intended to bring the Framework into effect, was made on 23 November 2015. The original Order therefore purported to give effect to a document that had not yet been published when the original Order was made.

The Order brings into effect the 2016 Framework which was published on 25 November 2015. In order to achieve a coming into force date of 1 January 2016, the Order must be made and laid before the Assembly on or before Thursday 10th December, in order to comply with the 21 day rule.

3. Legislative background

The Order is made in exercise of the powers conferred on the Welsh Ministers by sections 21(6) and 62 of the Fire and Rescue Services Act 2004 (“the Act”). Section 21 imposes an obligation on the Welsh Ministers to prepare and review a Fire and Rescue National Framework. The Framework must set out priorities and objectives for FRAs and may contain guidance to FRAs in connection with the discharge of their functions; and it may contain other matters relating to FRAs or their functions as the Welsh Ministers consider appropriate. The Welsh Ministers must keep the Framework under review.

In respect of FRAs in Wales, the functions of the Secretary of State in the Act were originally conferred on the National Assembly for Wales under section 62 of the Act. Those functions were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

4. Purpose & Intended effect of the legislation

The Order revokes the original Order and re-enacts its provisions in order to correct an error which was identified. The Fire and Rescue National Framework 2016 was published on 25 November 2015, but the original Order,

which intended to bring the Framework into effect, was made on 23 November 2015. The original Order therefore purported to give effect to a document that was not in existence when the original Order was made.

The Order brings into effect the Fire and Rescue National Framework for Wales 2016, which has effect as a revision of the Fire and Rescue National Framework 2012 and was published in 25 November 2015. The revised Framework sets priorities and objectives for, and gives guidance to, Fire and Rescue Authorities in Wales from 2016 onwards. The Framework applies to all three Fire and Rescue Authorities in Wales.

It is intended that the Order will come into force on 1 January 2016.

5. Consultation

The Welsh Government consulted on the draft revised Framework from 16 July 2015 for 12 weeks. Please refer to the Regulatory Impact Assessment consultation paragraph below for further information.

As the Order merely brings the Framework into effect, there has been no further or separate consultation on its terms.

REGULATORY IMPACT ASSESSMENT

6. Options

Option 1: Do Nothing

The Welsh Ministers are required by Section 21 of the Fire and Rescue Services Act 2004 to prepare a Fire and Rescue National Framework for Wales. The Framework may contain guidance for FRAs in connection with the discharge of their functions. The Framework must also set out the priorities and objectives for FRAs which are connected to the discharge of their functions. It may also contain other matters relating to FRAs or their functions as the Welsh Ministers consider appropriate. The Fire and Rescue Services Act 2004 requires Welsh Ministers to keep the terms of the Framework under review and to make appropriate revisions. The existing Fire and Rescue National Framework for Wales 2012 has an open-ended duration and will therefore remain in place until a new Framework is introduced by Order. The 2012 Framework contains references to policies and strategies that are now out of date and does not take account of new legislation such as the Well-being of Future Generations (Wales) Act 2015.

Option 2: Make the Legislation

Making the legislation will introduce the Fire and Rescue National Framework for Wales 2016, published on 25 November 2015. The 2016 Framework has been subject to full consultation and includes priorities and objectives for the

FRAs based on the changing context of the environment in which they operate, including the severe medium to long term pressure on public finances, an aging population in Wales and a shift from residential to home-based care, which potentially increases the number of people at risk of fire, and a more general focus in the public sector on prevention. These priorities are focussed around 6 key objectives:

- continually and sustainably reducing risk and enhancing the safety of citizens and communities;
- responding swiftly and effectively to incidents;
- being clearly and publicly accountable for delivery and funding, manifesting the highest standards of governance;
- maintaining downward pressure on costs and taking all opportunities to realise efficiencies;
- working effectively with partners to improve efficiency and citizen and community well-being;
- valuing and developing the workforce to the highest standards.

a) Benefits

The 2016 Framework sets out priorities and objectives for FRAs and provides guidance for FRAs in carrying out their functions. It also provides strategic direction from the Welsh Government while allowing FRAs to deliver services which reflect local needs and risks.

b) Costs

The Framework does not alter FRAs' core duties (e.g. of promoting fire safety, fighting fires and effecting rescues). Its provisions in respect of those duties are considered to be cost neutral and do not constitute new burdens.

The Framework also encourages FRAs to use their enabling powers to address other risks and to respond to other types of incidents. FRAs already carry out much of this work on a voluntary basis; the Framework seeks only to focus and codify it. The Framework acknowledges that further expansion and diversification would be subject to the falling incidence of fire creating spare capacity for FRAs. Therefore, these provisions are also considered to be cost-neutral.

The Framework highlights the principle of FRAs undertaking a wider role, but does not commit FRAs to doing so to any particular extent. This is a matter for FRAs based on what is safe and reasonable, and within capacity.

7. Consultation

The consultation commenced on 16 July 2015 for 12 weeks. The Welsh Government drew the consultation to the attention of FRAs, firefighters' unions and associations, all Local Authorities, Local Health Boards and NHS Trusts, Police and Crime Commissioners and Chief Constables, the Welsh

Local Government Association, the Wales Audit Office and Natural Resources Wales. Twenty-three responses were received in as follows:-

Mid and West Wales Fire and Rescue Authority
North Wales Fire and Rescue Authority
South Wales Fire and Rescue Authority
Fire Brigades Union
Fire Officers Association (Mid and West Wales Branch)
Retained Firefighters Union
Welsh Local Government Association
Carmarthenshire County Council
Isle of Anglesey County Council
Wales Audit Office
Aneurin Bevan Local Health Board
Hywel Dda Local Health Board
Welsh Ambulance Service Trust
Public Health Wales
Natural Resources Wales
Wales and West Utilities Ltd
Private individuals and groups (6)

A detailed analysis of responses is provided at the following link :-

<http://gov.wales/consultations/people-and-communities/fire-rescue-national-framework-2016-onwards/?skip=1&lang=cy>

<http://gov.wales/consultations/people-and-communities/fire-rescue-national-framework-2016-onwards/?status=closed&lang=en>

In summary, there was general support for the draft National Framework in terms of its references to the changing context within which FRAs operate, and the main objectives and priorities for FRAs as set out in the Framework.

14 respondents agreed in principle with the proposals for further diversification of the functions undertaken by the FRA and firefighters with several respondents pointing to activity already being undertaken or planned in this area, either by the FRAs or other agencies. Responses indicated the importance of developing and delivering proposals locally and in partnership with all organisations with an involvement/interest including the public sector and third sector. Respondents felt this was particularly important where FRAs were not the lead agencies, but were or would be delivering a service on behalf of another organisation. FRAs referred to the need for priorities for collaboration in the Framework to be reflected in other partners' plans too. A similar issue was raised about the need for priorities around data sharing to be reflected in all public sector and third sector plans.

There was general support for Welsh Government's proposals to review and consult on extending the statutory functions of FRAs to include flooding. Respondents again noted that this would need to be in the context of

collaboration with other partners with a statutory responsibility. One respondent indicated that whilst there was a role for FRAs in supporting the delivery of emergency medical response, statutory responsibility should remain solely with the Wales Ambulance Services Trust (“WAST”).

However, nine respondents, including all three FRAs, questioned references to using latent capacity as a result of falling number of fires to expand the prevention and response roles of FRAs. Comments relating to this included :-

- The need to take into account efficiencies or budget savings that FRAs had already made as a result of the reduction in fires over the last ten years. This and austerity measures had left little capacity. The Framework focused on expanding roles but did not address any risk to FRAs’ primary response functions as a result of budgetary constraints.
- There was no recognition of the potential difference in capacity between wholetime and Retained Duty (on-call) firefighters. One respondent indicated the majority of costs associated with RDS related to providing on-call availability and that prevention work undertaken by RDS staff had previously been funded via central grant. The suggestion therefore was that capacity issues were only applicable to a small element of the service.
- The Framework needed to make clear that the percentage reduction in fires did not equate to an equivalent percentage increase in capacity. In reality only a small amount of a firefighter’s time was taking up responding to fires; the rest was used for acquiring and maintaining firefighter skills (the need for such training was increasing as experience from real-life exposure to such decreased), an increase in other emergency responses and the associated training for these non-fire emergencies, and a need to maintain fire cover.

Respondents also questioned the additional cost implications of undertaking wider activities, including additional training and development, and equipment costs. Comments mentioned that there was no indication of the extent of resources likely to be required and the extent of resources available for redistribution. One FRA indicated that the additional responsibilities proposed in the Framework would be balanced against cost and the ability to reduce risk in the community.

Some respondents believed that reference to “a shift in emphasis from response to prevention” could imply less of a focus on responding to emergencies.

Welsh Government Response

The Welsh Government welcomes the responses received to the consultation.

The Framework’s proposals about diversifying the role of FRAs and firefighters represent a major shift, and the Welsh Government is particularly

concerned to accommodate the comments which respondents made about this. Notwithstanding the capacity issues raised by respondents, the Welsh Government is pleased to note the general support for the priorities and objectives set out in the Framework. In particular, we were pleased to note the support for further diversification of the role and functions of FRAs and firefighters.

The Welsh Government notes the issues raised about provision of support to WAST. The Framework does not propose giving FRAs the same duties or functions as WAST; however, FRAs already have statutory powers (in s11 of the 2004 Act) to respond to medical emergencies. The Framework has been amended to reflect this. More generally, the Framework does not propose FRAs taking on the role of other professionals, but is aimed at complementing those roles within collaborative arrangements.

The Welsh Government recognises the issues raised relating to retained firefighters being flexible “on call” frontline workers. We also accept points about increased training needs, both in terms of any new requirements, and as a result of firefighters having less experience because of falling incidents. We have amended the Framework accordingly. However, whilst the Framework highlights the principle of FRAs undertaking diverse roles to support wider outcomes, it does not detail the extent to which each FRA should do so. That is clearly a matter for FRAs based on what is safe and reasonable and within capacity. The Welsh Government remains convinced that there is some capacity for such diversification in all FRAs; and we are aware of and support work which FRAs are already undertaking.

We recognise that diversifying roles may cost money, for instance on training staff and purchasing new equipment. However, FRAs are already undertaking some of this work within their existing resources – for instance, all routinely respond to flooding incidents. As the Framework does not mandate particular levels of activity, and as FRAs do not receive core funding from the Welsh Government in any event, we do not see any case for providing FRAs with further resources at this stage.

The Welsh Government accepts the concerns which respondents raised about the proposed “ shift in emphasis from response to prevention”. We did not intend this to be interpreted as implying a lesser focus on responding to emergencies. We agree that effective response will always be of utmost importance and have therefore amended references in the Framework to the effect that an effective balance between response and prevention is the key aim.

The Welsh Government supports comments which proposed developing and delivering diversification proposals locally and in collaboration with all relevant partners. The Welsh Government agrees that success in terms of widening the prevention and response role of FRAs, and targeting those at most risk through effective information sharing, will rely heavily on the commitment of all relevant partners. The Framework can only set priorities for the FRAs, however the Welsh Government accepts that it has a wider role in ensuring

other public-sector bodies also have a similar focus. Officials are working across Welsh Government Departments, and with relevant public sector organisations, such as Public Health Wales, the Emergency Ambulance Services Commissioner, and Natural Resources Wales, to support progress on collaboration and data sharing issues.

8. Competition Assessment

Not applicable.

9. Post implementation review

The Welsh Ministers must keep the terms of the Framework under review pursuant to section 21 (3) of the Fire and Rescue Services Act 2004. Welsh Ministers are also required to prepare a biennial report on the extent to which the FRAs are acting in accordance with the Framework pursuant to section 25 of the Fire and Rescue Services Act 2004.

The Welsh Ministers will keep the terms of the Framework under review and may from time to time make revisions to it.

10. Equality Impact Assessment

A copy of the Equality Impact Assessment and Welsh Language Impact Assessment can be accessed via the links below :-

<http://gov.wales/topics/people-and-communities/communities/safety/fire/national-framework/?skip=1&lang=cy>

<http://gov.wales/topics/people-and-communities/communities/safety/fire/national-framework/?skip=1&lang=en>

<http://gov.wales/docs/dsjlg/consultation/150716-fire-framework-consultation-impact-assessment-cy.pdf>

<http://gov.wales/docs/dsjlg/consultation/150716-fire-framework-consultation-impact-assessment-en.pdf>