



# Fire and Rescue Services Act 2004

## 2004 CHAPTER 21

### PART 1

#### FIRE AND RESCUE AUTHORITIES

*[<sup>F1</sup>Fire and rescue authorities]*

#### Textual Amendments

- F1** S. 1 crossheading inserted (31.1.2017 for specified purposes, 3.4.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(1)(5)(e), [Sch. 1 para. 2](#); S.I. 2017/399, reg. 2, Sch. para. 38

#### 1 Fire and rescue authorities

- (1) The fire and rescue authority for an area is the authority determined under this section.
- (2) In England—
- (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;
  - (c) the [<sup>F2</sup>London Fire Commissioner] 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;
  - (e) the Council of the Isles of Scilly is the fire and rescue authority for the Isles of Scilly.
- (3) In Wales—
- (a) a county council is the fire and rescue authority for the county;

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- (b) a county borough council is the fire and rescue authority for the county borough.
- (4) This section is subject to <sup>F3</sup>—
- (a) sections 2 and 4 (schemes constituting combined fire and rescue authorities for particular areas), and
- (b) sections 4A and 4B (orders providing for police and crime commissioners to be fire and rescue authorities).]
- <sup>F4</sup>(5) This section is also subject to an order under Part 6 of the Local Democracy, Economic Development and Construction Act 2009 which transfers the functions of a fire and rescue authority to a combined authority established under section 103 of that Act.]

#### Textual Amendments

- F2** Words in s. 1(2)(c) substituted (31.1.2017 for specified purposes, 1.4.2018 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(1)(5)(e), [Sch. 2 para. 111](#); [S.I. 2018/227](#), [reg. 4\(c\)](#)
- F3** Words in s. 1(4) substituted (31.1.2017 for specified purposes, 3.4.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(1)(5)(e), [Sch. 1 para. 3](#); [S.I. 2017/399](#), [reg. 2](#), [Sch. para. 38](#)
- F4** S. 1(5) inserted (8.5.2017) by [The Greater Manchester Combined Authority \(Fire and Rescue Functions\) Order 2017 \(S.I. 2017/469\)](#), arts. 1(3), [12](#)

#### Commencement Information

- I1** S. 1 in force at 7.9.2004 for specified purposes except in relation to W. and 1.10.2004 otherwise except in relation to W. by [S.I. 2004/2304](#), [art. 2](#) (with [art. 3](#))
- I2** S. 1 in force at 10.11.2004 for W. by [S.I. 2004/2917](#), [art. 2](#)

*<sup>F5</sup>Combined fire and rescue authorities]*

#### Textual Amendments

- F5** S. 2 crossheading inserted (31.1.2017 for specified purposes, 3.4.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(1)(5)(e), [Sch. 1 para. 4](#); [S.I. 2017/399](#), [reg. 2](#), [Sch. para. 38](#)

## 2 Power to create combined fire and rescue authorities

- (1) The Secretary of State may by order make a scheme constituting a fire and rescue authority for the combined area of two or more existing fire and rescue authorities.
- (2) A scheme under this section may be made only if it appears to the Secretary of State that, in the interests of—
- (a) economy, efficiency and effectiveness, or
- (b) public safety,
- there should be a single fire and rescue authority for the combined area.
- (3) A scheme under this section may be made by the Secretary of State—

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- (a) to give effect to a draft scheme submitted to him by the existing authorities in question, or
  - (b) on his own initiative.
- (4) A scheme under this section made as mentioned in subsection (3)(a) may include any modifications to the draft scheme which seem appropriate to the Secretary of State after consulting the existing authorities in question.
- (5) Before making a scheme under this section as mentioned in subsection (3)(b) the Secretary of State must consult—
  - (a) the existing authorities in question,
  - (b) any local authority all or part of whose area forms part of the combined area, and
  - (c) any other persons he considers appropriate.
- (6) The Secretary of State may by order vary or revoke a scheme under this section but before doing so must consult—
  - (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.
- [<sup>F6</sup>(6A) The duty to consult under subsection (6) does not apply if—
  - (a) the scheme constituted a fire and rescue authority for an area in England, and
  - (b) the variation or revocation has been proposed by the fire and rescue authority.]
- (7) An order under subsection (6) varying or revoking a scheme may include provision for the transfer of staff, property, rights and liabilities from the combined fire and rescue authority to any other fire and rescue authority.
- (8) The Secretary of State <sup>F7</sup>...—
  - (a) [<sup>F8</sup>must cause an inquiry to be held] before making a scheme as mentioned in subsection (3)(b), <sup>F9</sup>...
  - [<sup>F10</sup>(b) where a scheme constituted a fire and rescue authority for an area in England, must cause an inquiry to be held before varying or revoking the scheme under this section, or]
  - [<sup>F11</sup>(c) where a scheme constituted a fire and rescue authority for an area in Wales, must cause an inquiry to be held before—
    - (i) varying the scheme in a way which changes the combined area (and may cause an inquiry to be held before varying the scheme in any other way), or
    - (ii) revoking the scheme.]
- (9) The Secretary of State is not required to cause an inquiry to be held under subsection (8) (but may do so) if—
  - (a) in a case within subsection (8)(a), the existing authorities in question agree to the making of the scheme,
  - (b) in a case within subsection (8)(b) [<sup>F12</sup>or (c)], the combined fire and rescue authority and any other authority which would, apart from the scheme, be a

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fire and rescue authority under section 1 and which would be affected by the variation or revocation, agree to the variation or revocation,

- (c) in [<sup>F13</sup>any] case, it appears to the Secretary of State that the scheme, variation or revocation is to be made solely for the purpose of giving effect to an order under Part 4 of the Local Government Act 1972 (c. 70), <sup>F14</sup>[<sup>F15</sup>... Part 1 of the Local Government and Public Involvement in Health Act 2007 [<sup>F16</sup>or Part 3 of the Local Government (Democracy) (Wales) Act 2013, or to regulations under Part 7 of the Local Government and Elections (Wales) Act 2021]], or
- (d) in [<sup>F17</sup>any] case, the Secretary of State considers that, in the interests of public safety, the scheme should be made, varied or revoked without delay.

(10) Subsection (11) applies if—

- (a) an order is made under Part 4 of the Local Government Act 1972 (c. 70), <sup>F18</sup>[<sup>F19</sup>... Part 1 of the Local Government and Public Involvement in Health Act 2007 [<sup>F20</sup>or Part 3 of the Local Government (Democracy) (Wales) Act 2013, or regulations are made under Part 7 of the Local Government and Elections (Wales) Act 2021,]] in relation to any area, but
- (b) the order, or any provision of the order, has not come into force.

(11) If this subsection applies—

- (a) a scheme under this section may be made as if the order or provision referred to in subsection (10)(b) were in force, and
- (b) this section has effect in relation to any scheme so made, or proposed to be so made, as if the order or provision were in force;

but a scheme so made may not come into force before the order or provision does.

#### Textual Amendments

- F6** S. 2(6A) inserted (26.5.2015) by [Deregulation Act 2015 \(c. 20\)](#), s. 115(3)(l), **Sch. 22 para. 16(2)**
- F7** Words in s. 2(8) omitted (20.3.2021) by virtue of [Local Government and Elections \(Wales\) Act 2021 \(asc 1\)](#), **ss. 166(2)(a)(i)**, 175(3)(r)
- F8** Words in s. 2(8)(a) inserted (20.3.2021) by [Local Government and Elections \(Wales\) Act 2021 \(asc 1\)](#), **ss. 166(2)(a)(ii)**, 175(3)(r)
- F9** Word in s. 2(8)(a) omitted (20.3.2021) by virtue of [Local Government and Elections \(Wales\) Act 2021 \(asc 1\)](#), **ss. 166(2)(a)(iii)**, 175(3)(r)
- F10** S. 2(8)(b) substituted (20.3.2021) by [Local Government and Elections \(Wales\) Act 2021 \(asc 1\)](#), **ss. 166(2)(a)(iv)**, 175(3)(r)
- F11** S. 2(8)(c) inserted (20.3.2021) by [Local Government and Elections \(Wales\) Act 2021 \(asc 1\)](#), **ss. 166(2)(a)(v)**, 175(3)(r)
- F12** Words in s. 2(9)(b) inserted (20.3.2021) by [Local Government and Elections \(Wales\) Act 2021 \(asc 1\)](#), **ss. 166(2)(b)(i)**, 175(3)(r)
- F13** Word in s. 2(9)(c) substituted (20.3.2021) by [Local Government and Elections \(Wales\) Act 2021 \(asc 1\)](#), **ss. 166(2)(b)(ii)**, 175(3)(r)
- F14** Words in s. 2(9)(c) repealed (1.4.2010) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), **ss. 146(3)**, 148(5), 148(5), **Sch. 7 Pt. 4**; S.I. 2009/3318, art. 4(ii)
- F15** Words in s. 2(9)(c) substituted (1.11.2007 for E.) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#), s. 245(5), **Sch. 1 para. 22(2)**; S.I. 2007/3136, art. 2(b)
- F16** Words in s. 2(9)(c) inserted (21.1.2021) by [Local Government and Elections \(Wales\) Act 2021 \(asc 1\)](#), **ss. 166(2)(b)(iii)**, 175(1)(i)
- F17** Word in s. 2(9)(d) substituted (20.3.2021) by [Local Government and Elections \(Wales\) Act 2021 \(asc 1\)](#), **ss. 166(2)(b)(iv)**, 175(3)(r)

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- F18** Words in s. 2(10)(a) repealed (1.4.2010) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), ss. 146(3), 148(5), 148(5), [Sch. 7 Pt. 4](#); S.I. 2009/3318, art. 4(ii)
- F19** Words in s. 2(10)(a) substituted (1.11.2007 for E.) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#), s. 245(5), [Sch. 1 para. 22\(2\)](#); S.I. 2007/3136, art. 2(b)
- F20** Words in s. 2(10) inserted (21.1.2021) by [Local Government and Elections \(Wales\) Act 2021 \(asc 1\)](#), [ss. 166\(2\)\(c\), 175\(1\)\(i\)](#)

#### Commencement Information

- I3** S. 2 in force at 7.9.2004 for specified purposes except in relation to W. and 1.10.2004 otherwise except in relation to W. by [S.I. 2004/2304](#), [art. 2](#) (with [art. 3](#))
- I4** S. 2 in force at 10.11.2004 for W. by [S.I. 2004/2917](#), [art. 2](#)

### 3 Creation of combined fire and rescue authorities: supplementary

- (1) A combined fire and rescue authority constituted under a scheme under section 2 must be constituted as a body corporate.
- (2) A scheme under section 2 may, subject to this section, make any supplementary and incidental provision which the Secretary of State considers appropriate.
- (3) In particular, a scheme under section 2 may make provision about—
  - (a) the composition of the combined authority (including provision for the appointment of members by the existing authorities [<sup>F21</sup>or by the Secretary of State][<sup>F21</sup>, by the Secretary of State or, in the case of a combined authority for an area which is wholly within England, by the combined authority] );
  - (b) the proceedings of the combined authority (including different provision in respect of the voting rights of different categories of member);
  - (c) the financing of the combined authority (including provision for the payment of expenses out of a combined fire and rescue service fund maintained by the existing authorities);
  - (d) the discharge of the functions of the combined authority (including provision for the discharge of functions by committees);
  - (e) officers of the combined authority;
  - (f) the acquisition, appropriation and disposal of land by the combined authority (including provision for the acquisition of land by agreement or compulsorily);
  - (g) the transfer of staff, property, rights and liabilities to or from the combined authority;
  - (h) the payment of compensation in respect of loss suffered by any person in consequence of the constitution of the combined authority.
- (4) A scheme under section 2 may not make provision for the appointment by the Secretary of State of a number of members equal to, or exceeding, half the total number of members capable of being appointed.
- (5) If a scheme under section 2 provides for members of a combined authority to be appointed by the Secretary of State, it must also provide that any decision of the authority to—
  - (a) issue a precept under section 40 of the Local Government Finance Act 1992 (c. 14), or
  - (b) make the calculations required by section 43 of that Act,

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must be approved by more than half of the members of the authority not appointed by the Secretary of State.

- [<sup>F22</sup>(6) The following provisions apply if a scheme under section 2 provides for members of a combined authority to be appointed by the authority.
- (7) The scheme must provide that a relevant police and crime commissioner may only be appointed as a member of the authority in response to a request by the commissioner.
- (8) The scheme must provide that, if such a request is made to the authority, the authority must—
- (a) consider the request,
  - (b) give reasons for its decision to agree to or refuse the request, and
  - (c) publish those reasons in such manner as it thinks appropriate.
- (9) In this section “relevant police and crime commissioner”, in relation to a combined authority, means a police and crime commissioner—
- (a) whose area is the same as, or contains all of, the area of the authority, or
  - (b) all or part of whose area falls within the area of the authority.]

#### Textual Amendments

- F21** Words in s. 3(3)(a) substituted (31.1.2017 for specified purposes, 3.4.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), **ss. 7(11)**, 183(1), (5)(e); S.I. 2017/399, reg. 2, Sch. para. 3
- F22** S. 3(6)-(9) inserted (31.1.2017 for specified purposes, 3.4.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), **ss. 7(12)**, 183(1), (5)(e); S.I. 2017/399, reg. 2, Sch. para. 3

#### Modifications etc. (not altering text)

- C1** S. 3(7)(9) excluded (8.5.2017) by [The Greater Manchester Combined Authority \(Transfer of Police and Crime Commissioner Functions to the Mayor\) Order 2017 \(S.I. 2017/470\)](#), art. 1(2), **Sch. 2 para. 20(a)**

#### Commencement Information

- I5** S. 3 in force at 7.9.2004 for specified purposes except in relation to W. and 1.10.2004 otherwise except in relation to W. by [S.I. 2004/2304](#), **art. 2** (with art. 3)
- I6** S. 3 in force at 10.11.2004 for W. by [S.I. 2004/2917](#), **art. 2**

## 4 Combined authorities under the Fire Services Act 1947

- (1) This section applies to a scheme approved under section 5 of the Fire Services Act 1947 (c. 41) (voluntary schemes for combining fire authorities), or made under section 6 of that Act (combination schemes made by the Secretary of State), which is in force immediately before the repeal of those sections by this Act.
- (2) A scheme to which this section applies continues to have effect despite that repeal.
- (3) The combined authority constituted by a scheme to which this section applies is the fire and rescue authority for the area for which it is constituted.
- (4) The Secretary of State may by order vary or revoke a scheme to which this section applies.

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- (5) Before making an order under subsection (4) in relation to a scheme the Secretary of State must consult—
- (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.
- [<sup>F23</sup>(5A) The duty to consult under subsection (5) does not apply if—
- (a) the scheme constituted a fire and rescue authority for an area in England, and
  - (b) the variation or revocation has been proposed by the fire and rescue authority.]
- (6) Before making an order under subsection (4) varying or revoking a scheme the Secretary of State [<sup>F24</sup>—
- (a) where the scheme constituted a fire and rescue authority for an area in England, must cause an inquiry to be held, and
  - (b) where the scheme constituted a fire and rescue authority for an area in Wales, must cause an inquiry to be held if under the order—
    - (i) the scheme would be varied in a way which changes the combined area (and may cause an inquiry to be held if the scheme would be varied in any other way), or
    - (ii) the scheme would be revoked.]
- (7) The Secretary of State is not required to cause an inquiry to be held under subsection (6) (but may do so) if—
- (a) the combined 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,
  - (b) it appears to the Secretary of State that the scheme is to be varied or revoked solely for the purpose of giving effect to an order made under Part 4 of the Local Government Act 1972 (c. 70), <sup>F25</sup>[<sup>F26</sup>... Part 1 of the Local Government and Public Involvement in Health Act 2007]<sup>F27</sup> or Part 3 of the Local Government (Democracy) (Wales) Act 2013, or to regulations under Part 7 of the Local Government and Elections (Wales) Act 2021], or
  - (c) the Secretary of State considers that, in the interests of public safety, the scheme should be varied or revoked without delay.

#### Textual Amendments

- F23** S. 4(5A) inserted (26.5.2015) by [Deregulation Act 2015 \(c. 20\)](#), s. 115(3)(l), [Sch. 22 para. 16\(3\)](#)
- F24** S. 4(6)(a)(b) substituted for words in s. 4(6) (20.3.2021) by [Local Government and Elections \(Wales\) Act 2021 \(asc 1\)](#), [ss. 166\(3\)\(a\)](#), [175\(3\)\(r\)](#)
- F25** Words in s. 4(7)(b) repealed (1.4.2010) by [Local Democracy, Economic Development and Construction Act 2009 \(c. 20\)](#), [ss. 146\(3\)](#), [148\(5\)](#), [148\(5\)](#), [Sch. 7 Pt. 4](#); S.I. 2009/3318, art. 4(ii)
- F26** Words in s. 4(7)(b) substituted (1.11.2007 for E.) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#), s. 245(5), [Sch. 1 para. 22\(3\)](#); S.I. 2007/3136, art. 2(b)
- F27** Words in s. 4(7)(b) inserted (21.1.2021) by [Local Government and Elections \(Wales\) Act 2021 \(asc 1\)](#), [ss. 166\(3\)\(b\)](#), [175\(1\)\(i\)](#)

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#### Commencement Information

- I7** S. 4 in force at 7.9.2004 for specified purposes except in relation to W. and 1.10.2004 otherwise except in relation to W. by [S.I. 2004/2304](#), [art. 2](#) (with [art. 3](#))
- I8** S. 4 in force at 10.11.2004 for W. by [S.I. 2004/2917](#), [art. 2](#)

<sup>F28</sup> *Fire and rescue authority involving police and crime commissioner*

#### Textual Amendments

- F28** S. 4A-4M and crossheading inserted (31.1.2017 for specified purposes, 3.4.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(1)(5)(e), [Sch. 1 para. 5](#); [S.I. 2017/399](#), reg. 2, [Sch. para. 38](#)

#### 4A Power to provide for police and crime commissioner to be fire and rescue authority

- (1) The Secretary of State may by order provide—
  - (a) for the creation of a corporation sole as the fire and rescue authority for the area specified in the order, and
  - (b) for the person who is for the time being the police and crime commissioner for the relevant police area to be for the time being that fire and rescue authority.
- (2) In subsection (1) “the relevant police area” means the police area which—
  - (a) is the same as the area of the fire and rescue authority created by the order, or
  - (b) if the order creates two or more fire and rescue authorities, is the same as the areas of those authorities taken together.
- (3) The whole of an area of a fire and rescue authority created by an order under this section must be—
  - (a) within England, and
  - (b) outside the metropolitan police district and the City of London police area.
- (4) An order under this section may be made only if the relevant police and crime commissioner has submitted a proposal for the order to the Secretary of State.
- (5) An order under this section may be made only if it appears to the Secretary of State that—
  - (a) it is in the interests of economy, efficiency and effectiveness for the order to be made, or
  - (b) it is in the interests of public safety for the order to be made.
- (6) The Secretary of State may not make an order under this section in a case within subsection (5)(a) if the Secretary of State thinks that the order would have an adverse effect on public safety.
- (7) In this section “relevant police and crime commissioner” has the same meaning as in Schedule A1; and that Schedule makes further provision about the procedure for an order under this section.



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**Modifications etc. (not altering text)**

- C2** S. 4A excluded (8.5.2017) by [The Greater Manchester Combined Authority \(Transfer of Police and Crime Commissioner Functions to the Mayor\) Order 2017 \(S.I. 2017/470\)](#), art. 1(2), **Sch. 2 para. 20(b)**
- C3** S. 4A applied (with modifications) (8.5.2017) by [The Greater Manchester Combined Authority \(Fire and Rescue Functions\) Order 2017 \(S.I. 2017/469\)](#), art. 1(3), **Sch. para. 6(2)**

**4B Changes to existing fire and rescue authorities**

- (1) An order under section 4A may make alterations to the areas of fire and rescue authorities in England outside Greater London.
- (2) The alterations that may be made by virtue of subsection (1) include alterations that result in a reduction or an increase in the number of such areas.
- (3) An order under section 4A(1) may make provision for the abolition of—
  - (a) a metropolitan county fire and rescue authority,
  - (b) a combined fire and rescue authority constituted by a scheme under section 2,
  - (c) a combined fire and rescue authority constituted by a scheme to which section 4 applies, or
  - (d) a fire and rescue authority created by an order under section 4A(1).

**Modifications etc. (not altering text)**

- C4** S. 4B(1) applied (with modifications) (8.5.2017) by [The Greater Manchester Combined Authority \(Fire and Rescue Functions\) Order 2017 \(S.I. 2017/469\)](#), art. 1(3), **Sch. para. 6(3)**

**4C Transfer of property, rights and liabilities**

- (1) This section applies if the Secretary of State makes an order under section 4A.
- (2) The Secretary of State may make one or more schemes for the transfer of property, rights and liabilities from an existing fire and rescue authority (“the transferor”) to the fire and rescue authority created by the order (“the transferee”).
- (3) The things that may be transferred under a transfer scheme include—
  - (a) property, rights and liabilities that could not otherwise be transferred;
  - (b) property acquired, and rights and liabilities arising, after the making of the scheme;
  - (c) criminal liabilities.
- (4) A transfer scheme may make supplementary, incidental, transitional and consequential provision and may in particular—
  - (a) create rights, or impose liabilities, in relation to property or rights transferred;
  - (b) make provision about the continuing effect of things done by the transferor in respect of anything transferred;
  - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred;

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- (d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee;
  - (e) make provision for the shared ownership or use of property.
- (5) A transfer scheme may provide—
- (a) for the scheme to be modified by agreement after it comes into effect, and
  - (b) for any such modifications to have effect from the date when the original scheme comes into effect.
- (6) In this section—
- (a) references to the transfer of property include the grant of a lease;
  - (b) references to rights and liabilities include rights and liabilities under a contract of employment.

#### **4D Further provision about authority created by section 4A order**

- (1) A person who is a fire and rescue authority created by an order under section 4A is to be paid allowances, in respect of expenses incurred by the person in the exercise of the authority's functions, which are of the kinds and amounts determined by the Secretary of State as payable in accordance with this subsection.
- (2) A determination under subsection (1) may make different provision for different cases.
- (3) Payments under subsection (1) are to be made by the fire and rescue authority.
- (4) A fire and rescue authority created by an order under section 4A must appoint a person to be responsible for the proper administration of the authority's financial affairs (a "chief finance officer").
- (5) A fire and rescue authority created by an order under section 4A must appoint a person to act as chief finance officer of the authority if and so long as—
  - (a) that post is vacant, or
  - (b) the holder of that post is, in the authority's opinion, unable to carry out the duties of that post.
- (6) Section 113 of the Local Government Finance Act 1988 (qualifications of responsible officer) applies to a person appointed under subsection (4) or (5) as it applies to the persons having responsibility for the administration of financial affairs mentioned in that section.
- (7) A fire and rescue authority created by an order under section 4A may—
  - (a) appoint such other staff as the authority thinks appropriate to enable the authority to exercise the functions of the authority;
  - (b) pay remuneration, allowances and gratuities to members of the authority's staff.
- (8) In subsection (7) "allowances", in relation to a member of the authority's staff, means allowances in respect of expenses incurred by the member of staff in the course of employment as such a member of staff.
- (9) A fire and rescue authority created by an order under section 4A may pay—
  - (a) pensions to, or in respect of, persons who are or have been members of the authority's staff, and

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*Changes to legislation: There are currently no known outstanding effects for the Fire and Rescue Services Act 2004, Part 1. (See end of Document for details)*

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- (b) amounts for or towards the provision of pensions to, or in respect of, persons who are or have been members of the authority's staff.
- (10) An order under section 4A may make provision—
- (a) about the delegation by the fire and rescue authority created by the order of the authority's functions to the person who is for the time being the relevant deputy police and crime commissioner;
  - (b) about the further delegation of such functions by that person to a member of staff of the authority or of the relevant police and crime commissioner;
  - (c) about the delegation by the authority of such functions to a member of staff of the authority or of the relevant police and crime commissioner.
- (11) In subsection (10)—
- “the relevant deputy police and crime commissioner” means the deputy police and crime commissioner for the police area—
    - (a) which corresponds to the area of the fire and rescue authority, or
    - (b) within which the area of the fire and rescue authority falls;
  - “the relevant police and crime commissioner” means the police and crime commissioner for that police area.
- (12) References in subsection (10) to a member of staff of a police and crime commissioner are to any of the following persons appointed under Schedule 1 to the Police Reform and Social Responsibility Act 2011—
- (a) the commissioner's chief executive;
  - (b) the commissioner's chief finance officer;
  - (c) other staff.
- (13) Provision made under subsection (10) may—
- (a) enable the delegation of any of the functions of the fire and rescue authority;
  - (b) enable the delegation of any of the functions of the authority other than those specified or described in the order;
  - (c) enable the delegation of the functions of the authority specified or described in the order.
- (14) An order under section 4A may make provision about—
- (a) the personal liability of a person who is the fire and rescue authority created by the order for acts or omissions done by the person in the exercise of the authority's functions;
  - (b) the personal liability of a person who is a member of staff of the fire and rescue authority created by the order for acts or omissions done by the person in the carrying out of duties as a member of staff.
- (15) A fire and rescue authority created by an order under section 4A may acquire land compulsorily.
- (16) The Acquisition of Land Act 1981 applies in relation to the compulsory purchase of land pursuant to subsection (15).

#### **4E Requirement for authority created by section 4A order to have fire fund**

- (1) Each fire and rescue authority created by an order under section 4A must keep a fund to be known as the fire fund.

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- (2) All of the receipts of a fire and rescue authority created by an order under section 4A must be paid into the relevant fire fund.
- (3) All of the expenditure of a fire and rescue authority created by an order under section 4A must be paid out of the relevant fire fund.
- (4) A fire and rescue authority created by an order under section 4A must keep accounts of payments made into or out of the relevant fire fund.
- (5) Subsections (2) and (3) are subject to the provisions of—
  - (a) the scheme established under section 26 of the Fire Services Act 1947 (Firemen’s Pension Scheme) (as continued in force by order under section 36),
  - (b) a scheme under section 34 (pensions etc), or
  - (c) scheme regulations within the meaning of the Public Service Pensions Act 2013.
- (6) In this section “relevant fire fund”, in relation to a fire and rescue authority created by an order under section 4A, means the fire fund which that authority keeps.

#### **4F Exercise of functions pursuant to section 4A order**

- (1) A fire and rescue authority created by an order under section 4A must exercise its functions efficiently and effectively.
- (2) A person who is the fire and rescue authority by virtue of an order under section 4A may not act in that office unless the person has made and delivered a declaration of acceptance of office under section 70 of the Police Reform and Social Responsibility Act 2011 in accordance with that section.
- (3) Subsections (4) and (5) apply if—
  - (a) an order under section 4A has effect for the area of a fire and rescue authority, and
  - (b) an acting commissioner is appointed under section 62 of the Police Reform and Social Responsibility Act 2011 for the police area—
    - (i) which corresponds to the area of the fire and rescue authority, or
    - (ii) within which the area of the fire and rescue authority falls.
- (4) The acting commissioner is to act as the fire and rescue authority for the period of the acting commissioner’s appointment.
- (5) Accordingly—
  - (a) all of the functions of the fire and rescue authority are exercisable by the acting commissioner during that period, and
  - (b) any property or rights vested in the fire and rescue authority may be dealt with by the acting commissioner in that period as if vested in the acting commissioner.
- (6) Subsection (7) applies if a person elected as police and crime commissioner for a police area—
  - (a) is disqualified from being, or being elected as, a police and crime commissioner, or
  - (b) is disqualified from being, or being elected as, the police and crime commissioner for that area.

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- (7) Any acts of the person when acting in the office of fire and rescue authority are, despite that disqualification, as valid and effectual as if the person had not been disqualified.

#### **4G Section 4A order: transitional provision**

- (1) The transitional provision which may be made by an order under section 4A by virtue of section 60(2)(b) includes, in particular, provision of the kind described in the following provisions of this section.
- (2) An order under section 4A may make provision for a specified person to be the shadow fire and rescue authority for the area to which the order relates for a specified period.
- (3) A shadow fire and rescue authority is a person who has the specified functions of a fire and rescue authority in relation to that area, but is not otherwise the fire and rescue authority for that area.
- (4) An order under section 4A which includes provision by virtue of subsection (2) may make provision about the operation of any enactment in relation to—
- (a) the shadow fire and rescue authority, or
  - (b) any other person to whom the enactment would otherwise apply.
- (5) This includes provision for the enactment to apply with modifications in relation to a person within subsection (4)(a) or (b).
- (6) An order under section 4A may make provision about the operation of the Local Government Finance Act 1992 in relation to the fire and rescue authority created by the order during a specified period beginning with the time when the authority becomes the fire and rescue authority for the area to which the order relates.
- (7) This includes provision for that Act to apply for that period with modifications in relation to—
- (a) the authority, or
  - (b) any other person to whom that Act would otherwise apply.
- (8) Provision under subsection (4) or (6) may, in particular, make different provision for different parts of an authority's area.
- (9) In this section—
- (a) “specified” means specified in an order under section 4A;
  - (b) “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
  - (c) references to the Local Government Finance Act 1992 include any provision made under that Act.

#### **4H Delegation to chief constable for police area**

- (1) The Secretary of State may by order make provision about—
- (a) the delegation of functions of a fire and rescue authority created, or to be created, by an order under section 4A to the chief constable of the police force for the police area—
    - (i) which corresponds to the area of the fire and rescue authority, or
    - (ii) within which the area of the fire and rescue authority falls;

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- (b) the delegation by such a chief constable of the chief constable’s fire and rescue functions.
- (2) Provision made under subsection (1) may—
- (a) enable the delegation of any of the functions mentioned in that subsection;
  - (b) enable the delegation of any of the functions mentioned in that subsection other than those specified or described in the order;
  - (c) enable the delegation of such of the functions mentioned in that subsection as are specified or described in the order.
- (3) Provision made under subsection (1)(b) may enable delegation to—
- (a) members of the chief constable’s police force;
  - (b) the civilian staff of that police force, as defined by section 102(4) of the Police Reform and Social Responsibility Act 2011;
  - (c) members of staff transferred to the chief constable under a scheme under section 4I(1);
  - (d) members of staff appointed by the chief constable under section 4I(4).
- (4) An order under this section may be made only if the relevant police and crime commissioner has submitted a proposal for the order to the Secretary of State.
- (5) An order under this section may be made only if it appears to the Secretary of State that—
- (a) it is in the interests of economy, efficiency and effectiveness for the order to be made, or
  - (b) it is in the interests of public safety for the order to be made.
- (6) The Secretary of State may not make an order under this section in a case within subsection (5)(a) if the Secretary of State thinks that the order would have an adverse effect on public safety.
- (7) In this section “relevant police and crime commissioner” has the same meaning as in Schedule A1; and that Schedule makes provision about the procedure for an order under this section which is not combined, or not proposed to be combined, with an order under section 4A (see in particular paragraph 7 of that Schedule).
- (8) In this section “fire and rescue functions”, in relation to a chief constable, means—
- (a) functions which are delegated to the chief constable under provision made under subsection (1)(a), and
  - (b) functions relating to fire and rescue services which are conferred on the chief constable by or by virtue of any enactment.
- (9) This section is subject to section 37 (prohibition on employment of police in fire-fighting).

#### **4I Further provision about chief constable covered by section 4H order**

- (1) If an order is made under section 4H, the Secretary of State may make one or more schemes for the transfer of property, rights and liabilities—
- (a) from a fire and rescue authority to the chief constable to whom the order applies, or
  - (b) from that chief constable to the fire and rescue authority to which the order applies.

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- (2) The fire and rescue authority mentioned in subsection (1)(a) may be one created by an order under section 4A or another kind of fire and rescue authority.
- (3) Subsections (3) to (6) of section 4C apply to a transfer scheme under subsection (2) as they apply to a transfer scheme under that section.
- (4) A chief constable to whom an order under section 4H applies may appoint staff for the purpose of the exercise of the chief constable’s fire and rescue functions.
- (5) A chief constable to whom an order under section 4H applies may—
  - (a) pay remuneration, allowances and gratuities to members of the chief constable’s fire and rescue staff;
  - (b) pay pensions to, or in respect of, persons who are or have been such members of staff;
  - (c) pay amounts for or towards the provision of pensions to, or in respect of, persons who are or have been such members of staff.
- (6) In subsection (5) “allowances”, in relation to a member of staff, means allowances in respect of expenses incurred by the member of staff in the course of employment as such a member of staff.
- (7) Subject to subsections (8) to (10), a person who is employed pursuant to a transfer by virtue of subsection (1) or an appointment under subsection (4) may not at the same time be employed pursuant to an appointment by a chief constable of the police force for a police area under Schedule 2 to the Police Reform and Social Responsibility Act 2011.
- (8) Where an order under section 4H is in force in relation to the chief constable of the police force for a police area, the person who is for the time being the police force’s chief finance officer is to be responsible for the proper administration of financial affairs relating to the exercise of the chief constable’s fire and rescue functions.
- (9) Subsection (7) does not prevent a person who is employed as a finance officer for fire functions from being at the same time employed as a finance officer for police functions.
- (10) In subsection (9)—

“finance officer for fire functions” means a member of a chief constable’s fire and rescue staff who—

  - (a) is not a chief finance officer of the kind mentioned in subsection (8), and
  - (b) is employed to carry out duties relating to the proper administration of financial affairs relating to the exercise of the chief constable’s fire and rescue functions;

“finance officer for police functions” means a member of a chief constable’s civilian staff within the meaning of the Police Reform and Social Responsibility Act 2011 who—

  - (a) is not a chief finance officer of the kind mentioned in subsection (8), and
  - (b) is employed to carry out duties relating to the proper administration of a police force’s financial affairs.
- (11) Where an order under section 4H is in force, the fire and rescue authority to which the order applies must pay—

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- (a) any damages or costs awarded against the chief constable to whom the order applies in any proceedings brought against the chief constable in respect of the acts or omissions of a member of the chief constable's fire and rescue staff;
  - (b) any costs incurred by the chief constable in any such proceedings so far as not recovered by the chief constable in the proceedings;
  - (c) any sum required in connection with the settlement of any claim made against the chief constable in respect of the acts or omissions of a member of the chief constable's fire and rescue staff, if the settlement is approved by the authority.
- (12) Where an order under section 4H is in force, the fire and rescue authority to which the order applies may, in such cases and to such extent as appears to the authority to be appropriate, pay—
- (a) any damages or costs awarded against a member of the fire and rescue staff of the chief constable to whom the order applies in proceedings for any unlawful conduct of that member of staff;
  - (b) costs incurred and not recovered by such a member of staff in such proceedings;
  - (c) sums required in connection with the settlement of a claim that has or might have given rise to such proceedings.
- (13) In this section—
- “fire and rescue functions” has the same meaning as in section 4H;
  - “fire and rescue staff”, in relation to a chief constable to whom an order under section 4H applies, means—
- (a) staff transferred to the chief constable under a scheme under subsection (1), and
  - (b) staff appointed by the chief constable under subsection (4).

#### **4J Exercise of functions pursuant to section 4H order**

- (1) This section applies if—
- (a) an order under section 4H makes provision in relation to the area of a fire and rescue authority, and
  - (b) under the order, functions of the fire and rescue authority are delegated to the chief constable of the police force for the police area—
    - (i) which corresponds to the area of the fire and rescue authority, or
    - (ii) within which the area of the fire and rescue authority falls.
- (2) The chief constable must secure that good value for money is obtained in exercising—
- (a) functions which are delegated under the order, and
  - (b) functions relating to fire and rescue services which are conferred on the chief constable by or by virtue of any enactment.
- (3) The chief constable must secure that persons exercising functions delegated by the chief constable under the order obtain good value for money in exercising those functions.
- (4) The fire and rescue authority must—
- (a) secure the exercise of the duties which are delegated to the chief constable under the order,



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- (b) secure the exercise of the duties relating to fire and rescue services which are imposed on the chief constable by or by virtue of any enactment,
  - (c) secure that functions which are delegated to the chief constable under the order are exercised efficiently and effectively, and
  - (d) secure that functions relating to fire and rescue services which are conferred or imposed on the chief constable by or by virtue of any enactment are exercised efficiently and effectively.
- (5) The fire and rescue authority must hold the chief constable to account for the exercise of such functions.

#### **4K Complaints and conduct matters etc**

- (1) If an order is made under section 4H(1)(b) that enables delegation to members of a police force or the civilian staff of a police force, the Secretary of State may by order amend Part 2 of the Police Reform Act 2002 (persons serving with the police: complaints and conduct matters etc) in consequence of that provision.
- (2) If an order is made under section 4H(1)(b) that enables delegation to members of staff transferred to a chief constable under a scheme under section 4I(1) or appointed by a chief constable under section 4I(4), the Secretary of State may by order make provision of the type described in subsection (3) in relation to those members of staff.
- (3) The provision referred to in subsection (2) is—
- (a) provision corresponding or similar to any provision made by or under Part 2 of the Police Reform Act 2002;
  - (b) provision applying (with or without modifications) any provision made by or under Part 2 of that Act.
- (4) The Secretary of State may by order, in consequence of any provision made under subsection (2), amend Part 2 of the Police Reform Act 2002.
- (5) Before making an order under this section the Secretary of State must consult—
- (a) the Police Advisory Board for England and Wales,
  - (b) the <sup>F29</sup>Director General of the Independent Office for Police Conduct],
  - (c) such persons as appear to the Secretary of State to represent the views of police and crime commissioners,
  - (d) such persons as appear to the Secretary of State to represent the views of fire and rescue authorities, and
  - (e) such other persons as the Secretary of State considers appropriate.

#### **Textual Amendments**

**F29** Words in s. 4K(5)(b) substituted (31.1.2017 for specified purposes, 8.1.2018 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(1)(5)(e), [Sch. 9 para. 67](#); [S.I. 2017/1249](#), [reg. 2](#) (with [reg. 3](#))

#### **4L Application of fire and rescue provisions**

- (1) The Secretary of State may by order—

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- (a) apply (with or without modifications) any provision of a fire and rescue enactment in relation to a person within subsection (2);
  - (b) make, in relation to a person within subsection (2), provision corresponding or similar to any provision of a fire and rescue enactment.
- (2) Those persons are—
- (a) a chief constable of a police force for a police area to whom an order under section 4H applies,
  - (b) a member of staff transferred to such a chief constable under a scheme under section 4I(1),
  - (c) a member of staff appointed by such a chief constable under section 4I(4),
  - (d) a member of such a chief constable’s police force to whom functions have been delegated by virtue of section 4H(1)(b), and
  - (e) a member of the civilian staff of such a police force (as defined by section 102(4) of the Police Reform and Social Responsibility Act 2011) to whom functions have been delegated by virtue of section 4H(1)(b).
- (3) The power conferred by subsection (1)(a) or (b) includes power to apply (with or without modifications) any provision made under a fire and rescue enactment or make provision corresponding or similar to any such provision.
- (4) The Secretary of State may by order amend, revoke or repeal a provision of or made under an enactment in consequence of provision made by virtue of subsection (1).
- (5) In this section “fire and rescue enactment” means an enactment relating to a fire and rescue authority (including, in particular, an enactment relating to an employee of such an authority or property of such an authority).
- This includes an enactment contained in this Act.
- (6) References in this section to an enactment or to provision made under an enactment are to an enactment whenever passed or (as the case may be) to provision whenever the instrument containing it is made.

#### **4M Application of local policing provisions**

- (1) Schedule A2 makes provision about the application, in relation to a fire and rescue authority created by an order under section 4A, of legislation relating to police and crime commissioners.
- (2) The Secretary of State may by order—
- (a) apply (with or without modifications) any provision of a local policing enactment in relation to a fire and rescue authority created by an order under section 4A;
  - (b) make, in relation to a fire and rescue authority created by an order under section 4A, provision corresponding or similar to any provision of a local policing enactment.
- (3) The power conferred by subsection (2)(a) or (b) includes power to apply (with or without modifications) any provision made by or under a local policing enactment or make provision corresponding or similar to any such provision.
- (4) The Secretary of State may by order amend, revoke or repeal a provision of or made under an enactment in consequence of provision made by virtue of subsection (2).

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- (5) In this section “local policing enactment” means an enactment relating to a police and crime commissioner.
- (6) References in this section to an enactment or to provision made under an enactment are to an enactment whenever passed or (as the case may be) to provision whenever the instrument containing it is made.]

**F305 Powers of combined fire and rescue authorities**

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**Textual Amendments**

**F30** S. 5 repealed (18.2.2012 for specified purposes, 1.4.2012 in so far as not already in force) by [Localism Act 2011 \(c. 20\)](#), ss., 9(2), 240(4)(b), [Sch. 25 Pt. 2](#); S.I. 2012/411, art. 2(c)(f); S.I. 2012/887, art. 2(b)(h)

**Commencement Information**

**I9** S. 4 in force at 7.9.2004 for specified purposes except in relation to W. and 1.10.2004 otherwise except in relation to W. by [S.I. 2004/2304](#), [art. 2](#) (with [art. 3](#))

**I10** S. 4 in force at 10.11.2004 for W. by [S.I. 2004/2917](#), [art. 2](#)

*[<sup>F31</sup>Powers of certain fire and rescue authorities]*

**Textual Amendments**

**F31** S. 5A crossheading inserted (31.1.2017 for specified purposes, 3.4.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(1)(5)(e), [Sch. 1 para. 6](#); S.I. 2017/399, reg. 2, [Sch. para. 38](#)

**[<sup>F32</sup>5A Powers of certain fire and rescue authorities**

- (1) A relevant fire and rescue authority may do—
- (a) anything it considers appropriate for the purposes of the carrying-out of any of its functions (its “functional purposes”),
  - (b) anything it considers appropriate for purposes incidental to its functional purposes,
  - (c) anything it considers appropriate for purposes indirectly incidental to its functional purposes through any number of removes,
  - (d) anything it considers to be connected with—
    - (i) any of its functions, or
    - (ii) anything it may do under paragraph (a), (b) or (c), and
  - (e) for a commercial purpose anything which it may do under any of paragraphs (a) to (d) otherwise than for a commercial purpose.
- (2) A relevant fire and rescue authority's power under subsection (1) is in addition to, and is not limited by, the other powers of the authority.

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- (3) In this section “relevant fire and rescue authority” means a fire and rescue authority that is—
- (a) a metropolitan county fire and rescue authority,
  - <sup>F33</sup>(b) [ the London Fire Commissioner,]
  - (c) constituted by a scheme under section 2, <sup>F34</sup>...
  - (d) constituted by a scheme to which section 4 applies [<sup>F35</sup>, or
  - (e) created by an order under section 4A.]

#### Textual Amendments

- F32** Ss. 5A-5L inserted (18.2.2012 for specified purposes, 1.4.2012 in so far as not already in force) by [Localism Act 2011 \(c. 20\)](#), ss. **9(1)**, 240(4)(a); S.I. 2012/411, art. 2(c); S.I. 2012/887, art. 2(a)
- F33** S. 5A(3)(b) substituted (31.1.2017 for specified purposes, 1.4.2018 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(1)(5)(e), **Sch. 2 para. 112**; S.I. 2018/227, **reg. 4(c)**
- F34** Word in s. 5A(3)(c) omitted (31.1.2017 for specified purposes, 3.4.2017 in so far as not already in force) by virtue of [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(1)(5)(e), **Sch. 1 para. 7(a)**; S.I. 2017/399, **reg. 2**, **Sch. para. 38**
- F35** S. 5A(3)(e) and word inserted (31.1.2017 for specified purposes, 3.4.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), s. 183(1)(5)(e), **Sch. 1 para. 7(b)**; S.I. 2017/399, **reg. 2**, **Sch. para. 38**

## 5B Boundaries of power under section 5A

- (1) Section 5A(1) does not enable a relevant fire and rescue authority to do—
- (a) anything which the authority is unable to do by virtue of a pre-commencement limitation, or
  - (b) anything which the authority is unable to do by virtue of a post-commencement limitation which is expressed to apply—
    - (i) to its power under section 5A(1),
    - (ii) to all of the authority's powers, or
    - (iii) to all of the authority's powers but with exceptions that do not include its power under section 5A(1).
- (2) If exercise of a pre-commencement power of a relevant fire and rescue authority is subject to restrictions, those restrictions apply also to exercise of the power conferred on the authority by section 5A(1) so far as it is overlapped by the pre-commencement power.
- (3) Where under section 5A(1) a relevant fire and rescue authority does things for a commercial purpose, it must do them through—
- (a) a company within the meaning given by section 1(1) of the Companies Act 2006, or
  - (b) [<sup>F36</sup>a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 or a society registered or deemed to be registered under ] the Industrial and Provident Societies Act (Northern Ireland) 1969.

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- (4) Section 5A(1) does not authorise a relevant fire and rescue authority to do things for a commercial purpose in relation to a person if a statutory provision requires the authority to do those things in relation to the person.
- (5) Section 5A(1) does not authorise a relevant fire and rescue authority to borrow money.
- [ Section 5A(1) does not authorise the London Fire Commissioner to enter into a <sup>F37</sup>(5A) contract to which this subsection applies without the consent of the Mayor of London.
- (5B) Subsection (5A) applies to a contract if—
- (a) the Mayor of London has notified the London Fire Commissioner that the Commissioner requires the Mayor’s consent before entering into a contract of a kind specified in the notification, and
  - (b) the contract is of that kind.]
- (6) Section 5A(1)(a) to (d) do not authorise a relevant fire and rescue authority to charge a person for any action taken by the authority (but see section 18A).
- (7) Section 18B(1) to (8) apply in relation to charging for things done for a commercial purpose in exercise of power conferred by section 5A(1)(e) as they apply in relation to charging under section 18A(1).
- (8) In this section—
- “Act” (except in a reference to the Localism Act 2011) includes an Act, or Measure, of the National Assembly for Wales;
- “passed” in relation to an Act, or Measure, of the National Assembly for Wales means enacted;
- “post-commencement limitation” means a prohibition, restriction or other limitation imposed by a statutory provision that—
- (a) is contained in an Act passed after the end of the Session in which the Localism Act 2011 is passed, or
  - (b) is contained in an instrument made under an Act and comes into force on or after the commencement of section 9(1) of that Act;
- “pre-commencement limitation” means a prohibition, restriction or other limitation imposed by a statutory provision that—
- (a) is contained in an Act passed no later than the end of the Session in which the Localism Act 2011 is passed, or
  - (b) is contained in an instrument made under an Act and comes into force before the commencement of section 9(1) of that Act;
- “pre-commencement power” means power conferred by a statutory provision that—
- (a) is contained in an Act passed no later than the end of the Session in which the Localism Act 2011 is passed, or
  - (b) is contained in an instrument made under an Act and comes into force before the commencement of section 9(1) of that Act;
- “relevant fire and rescue authority” has meaning given by section 5A(3);
- “statutory provision” means a provision of an Act or of an instrument made under an Act.

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*Changes to legislation: There are currently no known outstanding effects for the Fire and Rescue Services Act 2004, Part 1. (See end of Document for details)*

### Textual Amendments

- F32** Ss. 5A-5L inserted (18.2.2012 for specified purposes, 1.4.2012 in so far as not already in force) by [Localism Act 2011 \(c. 20\)](#), [ss.9\(1\)](#), [240\(4\)\(a\)](#); S.I. 2012/411, [art. 2\(c\)](#); S.I. 2012/887, [art. 2\(a\)](#)
- F36** Words in s. 5B(3)(b) substituted (1.8.2014) by [Co-operative and Community Benefit Societies Act 2014 \(c. 14\)](#), [s. 154](#), [Sch. 4 para. 86](#) (with [Sch. 5](#))
- F37** S. 5B(5A)(5B) inserted (31.1.2017 for specified purposes, 1.4.2018 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), [s. 183\(1\)\(5\)\(e\)](#), [Sch. 2 para. 113](#); S.I. 2018/227, [reg. 4\(c\)](#)

## 5C Power to make provision supplemental to section 5A

- (1) If the appropriate national authority thinks that a statutory provision (whenever passed or made) prevents or restricts relevant fire and rescue authorities from exercising power conferred by section 5A(1), the appropriate national authority may by order amend, repeal, revoke or disapply that provision.
- (2) If the appropriate national authority thinks that the power conferred by section 5A(1) is overlapped (to any extent) by another power then, for the purpose of removing or reducing that overlap, the appropriate national authority may by order amend, repeal, revoke or disapply any statutory provision (whenever passed or made).
- (3) The appropriate national authority may by order make provision preventing relevant fire and rescue authorities from doing under section 5A(1) anything which is specified, or is of a description specified, in the order.
- (4) The appropriate national authority may by order provide for the exercise by relevant fire and rescue authorities of power conferred by section 5A(1) to be subject to conditions, whether generally or in relation to doing anything specified, or of a description specified, in the order.
- (5) The power under subsection (1), (2), (3) or (4) may be exercised in relation to—
  - (a) all relevant fire and rescue authorities,
  - (b) particular relevant fire and rescue authorities, or
  - (c) particular descriptions of relevant fire and rescue authorities.
- (6) Before making an order under subsection (1), (2), (3) or (4) the appropriate national authority proposing to make the order must consult—
  - (a) such relevant fire and rescue authorities,
  - (b) such representatives of relevant fire and rescue authorities, and
  - (c) such other persons (if any),
 as that appropriate national authority considers appropriate.
- (7) Subsection (6) does not apply to an order under subsection (3) or (4) which is made only for the purpose of amending an earlier such order—
  - (a) so as to extend the earlier order, or any provision of the earlier order, to a particular authority or to authorities of a particular description, or
  - (b) so that the earlier order, or any provision of the earlier order, ceases to apply to a particular authority or to authorities of a particular description.
- (8) The appropriate national authority's power under subsection (1) or (2) is exercisable by the Welsh Ministers so far as it is power to make provision that—

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- (a) would be within the legislative competence of the National Assembly for Wales if it were contained in an Act of the Assembly, and
  - (b) does not relate to a fire and rescue authority for an area in England.
- (9) The appropriate national authority's power under subsection (1) or (2) is exercisable by the Secretary of State so far as it is not exercisable by the Welsh Ministers.
- (10) The appropriate national authority's power under subsection (3) or (4) is exercisable—
- (a) in relation to England by the Secretary of State, and
  - (b) in relation to Wales by the Welsh Ministers.
- (11) In exercising power under subsection (1) or (2), the Secretary of State may make provision which has effect in relation to Wales only after having consulted the Welsh Ministers.
- (12) The Welsh Ministers may submit to the Secretary of State proposals that power of the Secretary of State under subsection (1) or (2) in relation to Wales should be exercised in accordance with the proposals.
- (13) In subsections (1) and (2) “statutory provision” means a provision of—
- (a) an Act, or
  - (b) an instrument made under an Act,
- and in this subsection “Act” includes an Act, or Measure, of the National Assembly for Wales.
- (14) In this section “relevant fire and rescue authority” has the meaning given by section 5A(3).

#### **Textual Amendments**

**F32** Ss. 5A-5L inserted (18.2.2012 for specified purposes, 1.4.2012 in so far as not already in force) by [Localism Act 2011 \(c. 20\)](#), ss.9(1), 240(4)(a); S.I. 2012/411, art. 2(c); S.I. 2012/887, art. 2(a)

### **5D Limits on power under section 5C(1)**

- (1) Provision may not be made under section 5C(1) unless the appropriate national authority making the provision considers that the conditions in subsection (2), where relevant, are satisfied in relation to that provision.
- (2) Those conditions are that—
- (a) the effect of the provision is proportionate to the policy objective intended to be secured by the provision;
  - (b) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it;
  - (c) the provision does not remove any necessary protection;
  - (d) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
  - (e) the provision is not of constitutional significance.
- (3) An order under section 5C(1) may not make provision for the delegation or transfer of any function of legislating.

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- (4) For the purposes of subsection (3) a “function of legislating” is a function of legislating by order, rules, regulations or other subordinate instrument.
- (5) An order under section 5C(1) may not make provision to abolish or vary any tax.

**Textual Amendments**

**F32** Ss. 5A-5L inserted (18.2.2012 for specified purposes, 1.4.2012 in so far as not already in force) by [Localism Act 2011 \(c. 20\)](#), ss.9(1), 240(4)(a); S.I. 2012/411, art. 2(c); S.I. 2012/887, art. 2(a)

**5E Procedure for Secretary of State's orders under section 5C(1) and (2)**

- (1) If, as a result of any consultation required by section 5C(6) and (11) with respect to a proposed order of the Secretary of State under section 5C(1), it appears to the Secretary of State that it is appropriate to change the whole or any part of the Secretary of State's proposals, the Secretary of State must undertake such further consultation with respect to the changes as the Secretary of State considers appropriate.
- (2) If, after the conclusion of the consultation required by section 5C(6) and (11) and subsection (1), the Secretary of State considers it appropriate to proceed with the making of an order under section 5C(1), the Secretary of State must lay before Parliament—
- (a) a draft of the order, and
  - (b) an explanatory document explaining the proposals and giving details of—
    - (i) the Secretary of State's reasons for considering that the conditions in section 5D(2), where relevant, are satisfied in relation to the proposals,
    - (ii) any consultation undertaken under section 5C(6) and (11) and subsection (1),
    - (iii) any representations received as a result of the consultation, and
    - (iv) the changes (if any) made as a result of those representations.
- (3) Sections 15 to 19 of the Legislative and Regulatory Reform Act 2006 (choosing between negative, affirmative and super-affirmative parliamentary procedure) are to apply in relation to an explanatory document and draft order laid under subsection (2) but as if—
- (a) section 18(11) of that Act were omitted,
  - (b) references to section 14 of that Act were references to subsection (2), and
  - (c) references to the Minister were references to the Secretary of State.
- (4) Provision proposed to be made by the Secretary of State under section 5C(2) may be included in a draft order laid under subsection (2) and, if it is, the explanatory document laid with the draft order must also explain the proposals under section 5C(2) and give details of any consultation undertaken under section 5C(6) and (11) with respect to those proposals.

**Textual Amendments**

**F32** Ss. 5A-5L inserted (18.2.2012 for specified purposes, 1.4.2012 in so far as not already in force) by [Localism Act 2011 \(c. 20\)](#), ss.9(1), 240(4)(a); S.I. 2012/411, art. 2(c); S.I. 2012/887, art. 2(a)



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## **5F Procedure for Welsh Ministers' orders under section 5C(1) and (2)**

- (1) If, as a result of any consultation required by section 5C(6) with respect to a proposed order of the Welsh Ministers under section 5C(1), it appears to the Welsh Ministers that it is appropriate to change the whole or any part of their proposals, they must undertake such further consultation with respect to the changes as they consider appropriate.
- (2) If, after the conclusion of the consultation required by section 5C(6) and subsection (1), the Welsh Ministers consider it appropriate to proceed with the making of an order under section 5C(1), they must lay before the National Assembly for Wales—
  - (a) a draft of the order, and
  - (b) an explanatory document explaining the proposals and giving details of—
    - (i) the Welsh Ministers' reasons for considering that the conditions in section 5D(2), where relevant, are satisfied in relation to the proposals,
    - (ii) any consultation undertaken under section 5C(6) and subsection (1),
    - (iii) any representations received as a result of the consultation, and
    - (iv) the changes (if any) made as a result of those representations.
- (3) Provision proposed to be made by the Welsh Ministers under section 5C(2) may be included in a draft order laid under subsection (2) and, if it is, the explanatory document laid with the draft order must also explain the proposals under section 5C(2) and give details of any consultation undertaken under section 5C(6) with respect to those proposals.

### **Textual Amendments**

**F32** Ss. 5A-5L inserted (18.2.2012 for specified purposes, 1.4.2012 in so far as not already in force) by [Localism Act 2011 \(c. 20\), ss.9\(1\), 240\(4\)\(a\)](#); S.I. 2012/411, art. 2(c); S.I. 2012/887, art. 2(a)

## **5G Determining Assembly procedures for drafts laid under section 5F(2)**

- (1) The explanatory document laid with a draft order under section 5F(2) must contain a recommendation by the Welsh Ministers as to which of the following should apply in relation to the making of an order pursuant to the draft order—
  - (a) the negative resolution procedure (see section 5H),
  - (b) the affirmative resolution procedure (see section 5J), or
  - (c) the super-affirmative resolution procedure (see section 5K).
- (2) The explanatory document must give reasons for the Welsh Ministers' recommendation.
- (3) Where the Welsh Ministers' recommendation is that the negative resolution procedure should apply, that procedure applies unless, within the 30-day period—
  - (a) the National Assembly for Wales requires the application of the super-affirmative resolution procedure, in which case that procedure applies, or
  - (b) in a case not within paragraph (a), the Assembly requires the application of the affirmative resolution procedure, in which case that procedure applies.
- (4) Where the Welsh Ministers' recommendation is that the affirmative resolution procedure should apply, that procedure applies unless, within the 30-day period,

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the National Assembly for Wales requires the application of the super-affirmative resolution procedure, in which case the super-affirmative resolution procedure applies.

- (5) Where the Welsh Ministers' recommendation is that the super-affirmative resolution procedure should apply, that procedure applies.
- (6) For the purposes of this section, the National Assembly for Wales is to be taken to have required the application of a procedure within the 30-day period if—
  - (a) the Assembly resolves within that period that that procedure is to apply, or
  - (b) in a case not within paragraph (a), a committee of the Assembly charged with reporting on the draft order has recommended within that period that that procedure should apply and the Assembly has not by resolution rejected that recommendation within that period.
- (7) In this section “the 30-day period” means the 30 days beginning with the day on which the draft order was laid before the National Assembly for Wales under section 5F(2).

#### Textual Amendments

**F32** Ss. 5A-5L inserted (18.2.2012 for specified purposes, 1.4.2012 in so far as not already in force) by [Localism Act 2011 \(c. 20\), ss.9\(1\), 240\(4\)\(a\); S.I. 2012/411, art. 2\(c\); S.I. 2012/887, art. 2\(a\)](#)

### 5H Negative resolution procedure for draft laid under section 5F(2)

- (1) For the purposes of this Part, “the negative resolution procedure” in relation to the making of an order pursuant to a draft order laid under section 5F(2) is as follows.
- (2) The Welsh Ministers may make an order in the terms of the draft order subject to the following provisions of this section.
- (3) The Welsh Ministers may not make an order in the terms of the draft order if the National Assembly for Wales so resolves within the 40-day period.
- (4) A committee of the National Assembly for Wales charged with reporting on the draft order may, at any time after the expiry of the 30-day period and before the expiry of the 40-day period, recommend under this subsection that the Welsh Ministers not make an order in the terms of the draft order.
- (5) Where a committee of the National Assembly for Wales makes a recommendation under subsection (4) in relation to a draft order, the Welsh Ministers may not make an order in the terms of the draft order unless the recommendation is, in the same Assembly, rejected by resolution of the Assembly.
- (6) For the purposes of this section an order is made in the terms of a draft order if it contains no material changes to the provisions of the draft order.
- (7) In this section—
  - “the 30-day period” has the meaning given by section 5G(7), and
  - “the 40-day period” means the 40 days beginning with the day on which the draft order was laid before the National Assembly for Wales under section 5F(2).
- (8) For the purpose of calculating the 40-day period in a case where a recommendation is made under subsection (4) by a committee of the National Assembly for Wales but

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the recommendation is rejected by the Assembly under subsection (5), no account is to be taken of any day between the day on which the recommendation was made and the day on which the recommendation was rejected.

#### Textual Amendments

**F32** Ss. 5A-5L inserted (18.2.2012 for specified purposes, 1.4.2012 in so far as not already in force) by [Localism Act 2011 \(c. 20\)](#), ss.9(1), 240(4)(a); S.I. 2012/411, art. 2(c); S.I. 2012/887, art. 2(a)

### 5J Affirmative resolution procedure for draft laid under section 5F(2)

- (1) For the purposes of this Part, “ the affirmative resolution procedure ” in relation to the making of an order pursuant to a draft order laid under section 5F(2) is as follows.
- (2) If after the expiry of the 40-day period the draft order is approved by a resolution of the National Assembly for Wales, the Welsh Ministers may make an order in the terms of the draft.
- (3) However, a committee of the National Assembly for Wales charged with reporting on the draft order may, at any time after the expiry of the 30-day period and before the expiry of the 40-day period, recommend under this subsection that no further proceedings be taken in relation to the draft order.
- (4) Where a committee of the National Assembly for Wales makes a recommendation under subsection (3) in relation to a draft order, no proceedings may be taken in relation to the draft order in the Assembly under subsection (2) unless the recommendation is, in the same Assembly, rejected by resolution of the Assembly.
- (5) For the purposes of subsection (2) an order is made in the terms of a draft order if the order contains no material changes to the provisions of the draft order.
- (6) In this section—
  - “ the 30-day period ” has the meaning given by section 5G(7), and
  - “ the 40-day period ” has the meaning given by section 5H(7).
- (7) For the purpose of calculating the 40-day period in a case where a recommendation is made under subsection (3) by a committee of the National Assembly for Wales but the recommendation is rejected by the Assembly under subsection (4), no account is to be taken of any day between the day on which the recommendation was made and the day on which the recommendation was rejected.

#### Textual Amendments

**F32** Ss. 5A-5L inserted (18.2.2012 for specified purposes, 1.4.2012 in so far as not already in force) by [Localism Act 2011 \(c. 20\)](#), ss.9(1), 240(4)(a); S.I. 2012/411, art. 2(c); S.I. 2012/887, art. 2(a)

### 5K Super-affirmative resolution procedure for draft laid under section 5F(2)

- (1) For the purposes of this Part, “ the super-affirmative resolution procedure ” in relation to the making of an order pursuant to a draft order laid under section 5F(2) is as follows.
- (2) The Welsh Ministers must have regard to—

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- (a) any representations,
  - (b) any resolution of the National Assembly for Wales, and
  - (c) any recommendation of a committee of the Assembly charged with reporting on the draft order,made during the 60-day period in relation to the draft order.
- (3) If, after the expiry of the 60-day period, the Welsh Ministers want to make an order in the terms of the draft order, they must lay before the National Assembly for Wales a statement—
  - (a) stating whether any representations were made under subsection (2)(a), and
  - (b) if any representations were so made, giving details of them.
- (4) The Welsh Ministers may after the laying of such a statement make an order in the terms of the draft order if it is approved by a resolution of the National Assembly for Wales.
- (5) However, a committee of the National Assembly for Wales charged with reporting on the draft order may, at any time after the laying of a statement under subsection (3) and before the draft order is approved by the Assembly under subsection (4), recommend under this subsection that no further proceedings be taken in relation to the draft order.
- (6) Where a committee of the National Assembly for Wales makes a recommendation under subsection (5) in relation to a draft order, no proceedings may be taken in relation to the draft order in the Assembly under subsection (4) unless the recommendation is, in the same Assembly, rejected by resolution of the Assembly.
- (7) If, after the expiry of the 60-day period, the Welsh Ministers wish to make an order consisting of a version of the draft order with material changes, they must lay before the National Assembly for Wales—
  - (a) a revised draft order, and
  - (b) a statement giving details of—
    - (i) any representations made under subsection (2)(a), and
    - (ii) the revisions proposed.
- (8) The Welsh Ministers may after laying a revised draft order and statement under subsection (7) make an order in the terms of the revised draft order if it is approved by a resolution of the National Assembly for Wales.
- (9) However, a committee of the National Assembly for Wales charged with reporting on the revised draft order may, at any time after the revised draft order is laid under subsection (7) and before it is approved by the Assembly under subsection (8), recommend under this subsection that no further proceedings be taken in relation to the revised draft order.
- (10) Where a committee of the National Assembly for Wales makes a recommendation under subsection (9) in relation to a revised draft order, no proceedings may be taken in relation to the revised draft order in the Assembly under subsection (8) unless the recommendation is, in the same Assembly, rejected by resolution of the Assembly.
- (11) For the purposes of subsections (4) and (8) an order is made in the terms of a draft order if it contains no material changes to the provisions of the draft order.
- (12) In this section “the 60-day period” means the 60 days beginning with the day on which the draft order was laid before the National Assembly for Wales under section 5F(2).

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#### Textual Amendments

**F32** Ss. 5A-5L inserted (18.2.2012 for specified purposes, 1.4.2012 in so far as not already in force) by [Localism Act 2011 \(c. 20\), ss.9\(1\), 240\(4\)\(a\)](#); S.I. 2012/411, art. 2(c); S.I. 2012/887, art. 2(a)

### 5L Calculation of time periods

In calculating any period of days for the purposes of sections 5G to 5K, no account is to be taken of any time during which the National Assembly for Wales is dissolved or during which the Assembly is in recess for more than four days.]

#### Textual Amendments

**F32** Ss. 5A-5L inserted (18.2.2012 for specified purposes, 1.4.2012 in so far as not already in force) by [Localism Act 2011 \(c. 20\), ss.9\(1\), 240\(4\)\(a\)](#); S.I. 2012/411, art. 2(c); S.I. 2012/887, art. 2(a)

### <sup>F38</sup> Interpretation of Part 1

#### Textual Amendments

**F38** S. 5M and crossheading inserted (31.1.2017 for specified purposes, 3.4.2017 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\), s. 183\(1\)\(5\)\(e\), Sch. 1 para. 8](#); S.I. 2017/399, reg. 2, Sch. para. 38

### 5M Interpretation of Part 1

In this Part—

“City of London police area” means the City of London as defined for the purposes of the Acts relating to the City of London police force;

“metropolitan police district” means that district as defined in section 76 of the London Government Act 1963;

“police area” means a police area listed in Schedule 1 to the Police Act 1996 (police areas outside London).]

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Fire and Rescue Services Act 2004, Part 1.