



# Localism Act 2011

## 2011 CHAPTER 20

### PART 1

#### LOCAL GOVERNMENT

### CHAPTER 2

#### FIRE AND RESCUE AUTHORITIES

## 9 General powers of certain fire and rescue authorities

- (1) In Part 1 of the Fire and Rescue Services Act 2004 (fire and rescue authorities) after section 5 insert—

### “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,
  - (b) the London Fire and Emergency Planning Authority,
  - (c) constituted by a scheme under section 2, or
  - (d) constituted by a scheme to which section 4 applies.

### **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) a society registered or deemed to be registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969.
- (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.
- (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;

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“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.

### **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.

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- (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—
- (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).

### **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.
- (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.

### **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.

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- (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.

#### **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.

#### **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),

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- (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, 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).

#### **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.

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- (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 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.

#### **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.

**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—
  - (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

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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).

### **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.”

- (2) Omit section 5 of the Fire and Rescue Services Act 2004 (power of combined fire and rescue authorities corresponding to the power under section 111 of the Local Government Act 1972).
- (3) In section 60(1) of the Fire and Rescue Services Act 2004 (meaning of “subordinate legislation”) for “by the Secretary of State under this Act” substitute “under this Act by the Secretary of State or the Welsh Ministers”.
- (4) In section 60(4) of the Fire and Rescue Services Act 2004 (orders and regulations subject to affirmative procedure) for “subordinate legislation which amends or repeals any Act or provision of an Act may” substitute “—
  - (a) an order made by the Secretary of State under section 5C(3), other than one that is made only for the purpose mentioned in section 5C(7)(b),
  - (b) an order made by the Secretary of State under section 5C(4), other than one that is made only for that purpose or for imposing conditions on the doing of things for a commercial purpose,
  - (c) an order made by the Secretary of State under section 5C(2) that—
    - (i) amends any Act or provision of an Act, and
    - (ii) is not made in accordance with sections 15 to 19 of the Legislative and Regulatory Reform Act 2006 as applied by section 5E(3), or
  - (d) subordinate legislation made by the Secretary of State, other than an order under section 5C, that amends or repeals any Act or provision of an Act,

may”.

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- (5) In section 60(5) of the Fire and Rescue Services Act 2004 (orders and regulations subject to negative procedure) for “legislation, apart from an order under section 30 or 61, is” substitute “legislation made by the Secretary of State, apart from—
- (1) (a) an order under section 5C(1),
  - (b) an order under section 5C(2) that is made in accordance with sections 15 to 19 of the Legislative and Regulatory Reform Act 2006 as applied by section 5E(3), or
  - (c) an order under section 30 or 61,
- is”.
- (6) In section 60 of the Fire and Rescue Services Act 2004 (orders and regulations) after subsection (5) insert—
- “(6) A statutory instrument containing (alone or with other provisions)—
- (a) an order made by the Welsh Ministers under section 5C(3), other than one that it is made only for the purpose mentioned in section 5C(7)(b),
  - (b) an order made by the Welsh Ministers under section 5C(4), other than one that is made only for that purpose or for imposing conditions on the doing of things for a commercial purpose,
  - (c) an order made by the Welsh Ministers under section 5C(2) that—
    - (i) amends any Act or provision of an Act or amends any Act, or Measure, of the National Assembly for Wales or provision of such an Act or Measure, and
    - (ii) is not made in accordance with sections 5G to 5L, or
  - (d) subordinate legislation made by the Welsh Ministers, other than an order under section 5C, that amends any Act or provision of an Act, may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (7) A statutory instrument containing any other subordinate legislation made by the Welsh Ministers, apart from—
- (a) an order under section 5C(1),
  - (b) an order under section 5C(2) that is made in accordance with sections 5G to 5L, or
  - (c) an order under section 30 or 61,
- is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”
- (7) In section 62 of the Fire and Rescue Services Act 2004 (application of Act in Wales)—
- (a) in subsection (1)(b) (references to Secretary of State in sections 60 and 61) for “sections 60 and” substitute “section”,
  - (b) after subsection (1) insert—

“(1A) The reference in subsection (1)(a) to Parts 1 to 6 does not include—

    - (a) sections 5A and 5B,
    - (b) sections 5C and 5D,
    - (c) section 5E, and
    - (d) sections 5F to 5L.”, and
  - (c) omit subsection (3) (disapplication of section 60(4) and (5)).

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- (8) In section 146A of the Local Government Act 1972 (application of provisions to certain joint and other authorities)—
- (a) in subsection (1) after “Subject to subsections (1ZA), (1ZB)” insert “, (1ZC)”, and
  - (b) after subsection (1ZB) insert—  
“(1ZC) Neither a metropolitan county fire and rescue authority, nor the London Fire and Emergency Planning Authority, is to be treated as a local authority for the purposes of section 111 above (but see section 5A of the Fire and Rescue Services Act 2004).”