



# Fire and Rescue Services Act 2004

## 2004 CHAPTER 21

### PART 1

#### FIRE AND RESCUE AUTHORITIES

*<sup>F1</sup>Fire and rescue authority involving police and crime commissioner*

#### Textual Amendments

- F1** 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.

*Status: Point in time view as at 31/01/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Fire and Rescue Services Act 2004,  
 Cross Heading: Fire and rescue authority involving police and crime commissioner. (See end of Document for details)*

- (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.

#### **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).

#### **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;

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- (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;
  - (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.

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- (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
  - (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).

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#### **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.
- (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—

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- (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.
- (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—

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- (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;
  - (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).



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#### **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.
- (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—



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- (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—
- (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.

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- (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,
  - (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>F2</sup>Independent Police Complaints Commission][<sup>F2</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.

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#### Textual Amendments

- F2** 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—
  - (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—

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- (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).
- (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.]

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