

# **POLICE AND FIRE SERVICES (FINANCE) (SCOTLAND) ACT 2001**

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## **EXPLANATORY NOTES**

### **EFFECT OF THE ACT ON THE POLICE (SCOTLAND) ACT 1967 AND FIRE SERVICES ACT 1947**

21. The relevant sections of the 1967 Act and the 1947 Act, as amended by this Act, are set out below. The amendments are shown underlined and deletions scored through.
22. In these extracts, references to the Secretary of State and to either House of Parliament are shown in square brackets. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the [Scotland Act 1998 \(c.46\)](#) and these references should therefore be read as if they were references to the Scottish Ministers. Similarly, references to either House of Parliament have effect, so far as they relate to the exercise of a function by a member of the Scottish Executive within devolved competence, as if the references were references to the Scottish Parliament by virtue of section 118(2) of the Scotland Act.

### ***Sections 19 and 32 of the Police (Scotland) Act 1967***

#### **“19 Schemes for amalgamation of police forces**

- (1) If it appears to the police authorities for any two or more police areas that it is expedient that those areas should be combined for police purposes, they may for that purpose submit to the [Secretary of State] a scheme (in this Act referred to as an “amalgamation scheme”) and the [Secretary of State] may by order approve any scheme so submitted to him.
- (2) Subject to the provisions of this Act, an amalgamation scheme shall make provision with regard to the following matters—
  - (a) the dis-establishment of the police forces maintained for the several police areas, the establishment and maintenance of a police force for the combined area, the appointment of the first chief constable of that force, and the transfer to that force of constables of the forces previously maintained for the several police areas comprised in the combined area;
  - (b) the constitution for the purposes of paragraph (c) of this subsection in relation to that force of a [joint police board]<sup>1</sup> consisting of such number of persons, being members of the constituent authorities, as may be specified in the scheme;
  - (c) the delegation to the [joint police board]<sup>2</sup> of the whole functions relating to police of the constituent authorities (except their power to levy a rate, their functions under this section, and such other functions as may be specified in the scheme);

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<sup>1</sup> Words substituted by the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#), Schedule 13, paragraph 71(5)(a).

<sup>2</sup> Ditto.

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- (d) the payment by the constituent authorities in such proportions as may be specified in the scheme of the expenditure incurred by the joint police board which the joint police board estimates will be incurred, in the performance of the functions delegated to them;
  - (e) arrangements for the carry-forward from one financial year (the “carry-forward year”) to the next by the joint police board of any money received by the board in respect of the carry-forward year from the constituent authorities under provision made under paragraph (d) above and remaining unspent at the end of the carry-forward year.
- (3) The reference in subsection (2)(d) of this section to the expenditure incurred by the joint police board which the joint police board estimates will be incurred is a reference to so much of the net estimated expenditure of the [board]<sup>3</sup> as is not [provided for by a grant made to the board under section 32 of this Act]<sup>4</sup>.
- (3A) Provision made under subsection (2)(e) above shall secure—
- (a) that the money carried forward by the joint police board shall not exceed three per cent. of the total of the money paid to the board by the constituent authorities in respect of the carry-forward year; and
  - (b) that, in the case mentioned in subsection (3B) below, money shall be carried forward only with the consent of the Scottish Ministers.
- (3B) The case is where—
- (a) any money carried forward from previous carry-forward years—
    - (i) by virtue of arrangements such as are mentioned in subsection (2)(e) above; and
    - (ii) under section 32(10A) of this Act, and remaining unspent at the end of the carry-forward year;
  - (b) the money carried forward by virtue of arrangements such as are mentioned in that subsection; and
  - (c) any money carried forward under that section,
- would, taken together, amount to more than the maximum sum.
- (3C) In subsection (3B) above, “maximum sum”, in relation to a carry-forward year, means the amount equal to five per cent. of the sum of—
- (a) the total amount of grant made under section 32 of this Act to the joint police board in respect of that year; and
  - (b) the total amount of money paid to the board by the constituent authorities in respect of that year.
- (3D) The Scottish Ministers may, by order, substitute for the percentage mentioned in—
- (a) subsection (3A)(a) above; or
  - (b) subsection (3C) above,
- such other percentage as they think fit.
- (3E) An order under subsection (3D) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (3F) Paragraphs (d) and (e) of subsection (2) above are not to be taken as preventing the carrying forward of any money, being money already carried forward to a financial year under arrangements made under subsection (2)(e) above and remaining unspent at the end of that year, from that year to the next year and, if it remains unspent at the end of that next year, to the following year, and so on.

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<sup>3</sup> Ditto.

<sup>4</sup> Words substituted by the [Crime and Punishment \(Scotland\) Act 1997 \(c.48\)](#), Schedule 1, paragraph 2(4).

- (4) Subject to the provisions of this Act, an amalgamation scheme may make provision with regard to all or any of the following matters—
- (a) the transfer of property, rights and liabilities;
  - (b) the adjustment of liabilities between the constituent authorities;
  - (c) the settlement of differences between the constituent authorities;
  - (d) the transfer to the [joint police board]<sup>5</sup> of officers of any of the constituent authorities;
  - (e) the furnishing, on such terms and conditions as may be specified in the scheme, by one of the constituent authorities of any service connected with the administration of the police force maintained for the combined area;
  - (f) any other matters incidental to or consequential on the provisions contained in the scheme.
- (5) ... [6]
- (6) The expenses incurred by a constituent authority for the purpose of the payment to the [joint police board]<sup>7</sup> of the expenditure referred to in subsection (2)(d) of this section shall be defrayed in like manner as expenses of that authority for the purposes of their functions relating to police would have required to be defrayed if the amalgamation scheme had not been made.
- (7) [For the purposes of the Local Government (Scotland) Regulations 1974]<sup>8</sup> the appropriate superannuation fund in relation to the [pensionable employees]<sup>9</sup> of a [joint police board]<sup>10</sup> shall be the superannuation fund of such one of the constituent authorities as may be determined by or under the amalgamation scheme.
- (8) Where an amalgamation scheme is to come into operation on a date subsequent to that on which it is approved, any appointment to be made, direction to be given or other thing to be done for the purposes of the scheme may be made, given or done at any time after the approval of the scheme so far as may be necessary for the purpose of bringing the scheme into operation on the first-mentioned date.
- (9) In this Act, unless the context otherwise requires—
- (a) any reference to a police area shall be construed as including a reference to a combined area; and
  - (b) in relation to a police force maintained for a combined area, any reference to the police authority shall be construed as a reference to the police authorities for the several police areas comprised in the combined area, without prejudice however to any delegation of functions to the [joint police board]<sup>11</sup> by or under the amalgamation scheme.
- (10) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of [either House of Parliament].<sup>12</sup>

## **32 Police grant<sup>13</sup>**

- (1) Subject to the following provisions of this section, the [Secretary of State] shall for the financial year 1997-98 and for each subsequent financial year make grants out of

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<sup>5</sup> Words substituted by the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#), Schedule 13, paragraph 71.

<sup>6</sup> Words repealed by the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#), Schedule 13, paragraph 71(5)(c).

<sup>7</sup> Words substituted by the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#), Schedule 13, paragraph 71.

<sup>8</sup> Words substituted by [SI 1974/812](#).

<sup>9</sup> Words substituted by [SI 1974/812](#).

<sup>10</sup> Words substituted by the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#), Schedule 13, paragraph 71(5)(a).

<sup>11</sup> Ditto.

<sup>12</sup> Subsection (10) was inserted by the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#), Schedule 13, paragraph 71(5)(d).

<sup>13</sup> Section as substituted by section 45 of the [Crime and Punishment \(Scotland\) Act 1997 \(c.48\)](#) and subsequently amended.

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money [provided by Parliament]<sup>14</sup> for police purposes to police authorities and joint police boards.

- (2) Where a grant is made under subsection (1) above to a joint police board, no grant under that subsection shall be payable to a constituent authority.
- (3) For each financial year the [Scottish Ministers shall]<sup>15</sup> by order determine—
  - (a) the aggregate amount of grants to be made under subsection (1) above; and
  - (b) the amount of the grant to be made to each police authority or joint police board, and any determination under this subsection for any financial year may be varied or revoked by a subsequent such determination for that year.
- (4) In making a determination under subsection (3)(b) above, the [Secretary of State] may exclude certain categories of expenditure for police purposes from a grant made under subsection (1) above.
- (5) A grant made to a police authority or to a joint police board by virtue of an order made under subsection (3) above may be subject to such conditions and shall be paid at such times and in such manner as the [Scottish Ministers]<sup>16</sup> may by order determine; and any such time may fall within or after the financial year concerned.
- (6) The [Secretary of State] shall prepare a report stating the considerations which he took into account in making the determinations mentioned in subsection (3) above.
- (7) The considerations which the [Secretary of State] takes into account in making a determination under subsection (3)(b) above may be different for different authorities or different joint police boards.
- (8) A statutory instrument containing an order made under subsection (3) above shall be subject to annulment in pursuance of a resolution of [either House of Parliament].
- (9) A copy of a report prepared under subsection (6) above shall be laid before [each House of Parliament] at the time at which the statutory instrument containing the order made under subsection (3) above to which it relates is so laid.
- (10) Where in consequence of the variation or revocation of an order made under subsection (3) above the amount of a police authority's or a joint police board's grant is less than the amount already paid to it for the year concerned, a sum equal to the difference shall, subject to subsection (10K) below, be paid by the authority or, as the case may be, board to the [Secretary of State] on such day as he may specify.
- (10A) Where, at the end of the financial year, any part of police grant made to the police authority or joint police board under this section for that financial year has not been spent, the authority or board may, subject to subsections (10B) and (10C) below, carry forward from one financial year (the "carry-forward year") to the next the sum unspent.
- (10B) In respect of any financial year, the police authority or joint police board shall carry forward no more than three per cent. of the police grant made to that authority or board in respect of that financial year.
- (10C) In the cases mentioned in subsections (10D) and (10E) below, grant may be carried forward as mentioned in subsection (10A) above only with the consent of the Scottish Ministers.

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<sup>14</sup> Subject to section 119(5) of the [Scotland Act 1998 \(c.48\)](#), the reference to money provided by Parliament has ceased to have effect, in relation to functions of the Scottish Ministers which are exercisable within devolved competence, by virtue of section 119(2) of the [Scotland Act 1998 \(c.46\)](#). 119(5) makes the reference to money provided by Parliament have effect, in relation to functions of the Scottish Ministers which are exercisable within devolved competence, as if it authorised those sums to be applied as if they had been paid out of the Scottish Consolidated Fund in accordance with rules under section 65(1)(c).

<sup>15</sup> Words substituted by the Scotland Act 1998 (Consequential Modifications) (No.2) Order 1999 ([SI 1999/1820](#)), Schedule 2, paragraph 41(2)(a).

<sup>16</sup> Ditto.

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- (10D) The case is where, in relation to a police authority—
- (a) any sums previously carried forward under subsection (10A) above and remaining unspent at the end of the carry-forward year; and
  - (b) the sum carried forward,
- would, taken together, amount to more than the maximum sum.
- (10E) The case is where, in relation to a joint police board—
- (a) any sums previously carried forward—
    - (i) under subsection (10A) above; and
    - (ii) by virtue of arrangements such as are mentioned in section 19(2)(e) of this Act,and remaining unspent at the end of the carry-forward year;
  - (b) the sum carried forward under that subsection; and
  - (c) any money carried forward by virtue of arrangements such as are mentioned in that section,
- would, taken together, amount to more than the maximum sum.
- (10F) The “maximum sum”, in relation to a carry-forward year, means—
- (a) in subsection (10D) above, the amount equal to five per cent of the total amount of grant made under this section to the police authority in respect of that year; and
  - (b) in subsection (10E) above, the amount equal to five per cent. of the sum of—
    - (i) the total amount of grant made under this section to the joint police board in respect of that year; and
    - (ii) the total amount of money paid to the board by virtue of section 19(2) (d) of this Act by the constituent authorities in respect of that year.
- (10G) The Scottish Ministers may, by order, substitute for the percentage mentioned in—
- (a) subsection (10B) above; or
  - (b) paragraph (a) or (b) of subsection (10F) above,
- such other percentage as they think fit.
- (10H) An order under subsection (10G) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (10J) Subsection (10A) above is not to be taken as preventing the carrying forward of any sum, being a sum already carried forward to a financial year under that subsection and remaining unspent at the end of that year, from that year to the next year and, if it remains unspent at the end of that next year, to the following year, and so on.
- (10K) In a financial year in respect of which subsection (10) above applies, the sum to be paid to the Scottish Ministers by the police authority or joint police board under subsection (10) above shall be the balance, if any, of the sum payable under subsection (10) less the sum carried forward in respect of that financial year under subsection (10A).
- (11) In this section “financial year” has the meaning assigned to it by section 116 of the Local Government Finance Act 1992.

***Section 36 of the Fire Services Act 1947***

23. The relevant subsections of section 36 of the 1947 Act, as amended by this Act, are set out below. The amendments are shown underlined and deletions scored through.

**“36 Application to Scotland**

- (3A) If it appears to any two or more fire authorities that it is expedient that their areas should be combined for fire-fighting purposes, they may submit to the [Secretary of State] a scheme in that behalf (in this section referred to as an “administration scheme”) and the [Secretary of State] may by order approve any such scheme submitted to him.
- (3B) A scheme under subsection (3A) above shall make provision with respect to the matters mentioned in paragraphs (c) and (d) of subsection (8A) below.
- (3C) The power to make an order under subsection (3A) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of [either House of Parliament]<sup>17</sup>.
- (4) An administration scheme shall make provision with regard to the following matters—
- (a) [the dis-establishment of the fire brigades maintained by the several fire authorities, the establishment and maintenance of a combined fire brigade for the combined area, and the appointment, subject to any regulations made under this Act, of a firemaster of that combined brigade]<sup>18</sup>; and
  - (b) the constitution for the administration of the combined fire brigade of a [joint board]<sup>19</sup> consisting of such number of members, being members of the fire authorities in the area, as may be specified in the scheme;
  - (c) the transfer to the [joint board]<sup>20</sup> of the functions of the fire authorities (except the power to levy a rate and such other functions as may be specified in the administration scheme);
  - (d) the payment out of a fund constituted in accordance with the scheme of the expenses incurred by the [joint board]<sup>21</sup> in the administration of the combined fire brigade;
  - (e) the payment by the fire authorities into the aforesaid fund, for the purpose set out in subsection (4A) below, of contributions in such proportions as may be determined by or under the scheme;
  - (f) arrangements for the carry-forward from one financial year (the “carry-forward year”) to the next by the joint board of any money paid by way of contributions by the fire authorities in respect of the carry-forward year under provision made under paragraph (e) above and remaining unspent at the end of the carry-forward year.
- (4A) The purpose referred to in subsection (4)(e) above is that of meeting the expenses which the joint board estimates will be incurred by it in the administration of the combined fire brigade.
- (4B) Provision made under subsection (4)(f) above shall secure—
- (a) that the money carried forward by the joint board shall not exceed three per cent. of the total of the contributions paid into the fund by the fire authorities in respect of the carry-forward year; and
  - (b) that, in the case mentioned in subsection (4C) below, money shall be carried forward only with the consent of the Scottish Ministers.
- (4C) The case is where—

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**17** Subsections (3A) to (3C) were inserted by the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#), Schedule 13, paragraph 27(2)(c).

**18** Paragraph (a) was substituted by the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#), Schedule 13, paragraph 27(2)(d)(i).

**19** Words substituted by the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#), Schedule 13, paragraph 27(2)(d)(ii).

**20** Ditto

**21** Ditto.

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- (a) any money carried forward from previous carry-forward years by virtue of arrangements such as are mentioned in subsection (4)(f) above and remaining unspent at the end of the carry-forward year; and
  - (b) the money carried forward,
- would, taken together, amount to more than the maximum sum.
- (4D) In subsection (4C) above, “maximum sum”, in relation to a carry-forward year, means the amount equal to five per cent. of the total amount of the contributions paid into the fund by the fire authorities in respect of that year.
- (4E) The Scottish Ministers may, by order, substitute for the percentage mentioned in—
- (a) subsection (4B)(a) above; or
  - (b) subsection (4D) above,
- such other percentage as they think fit.
- (4F) An order under subsection (4E) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4G) Paragraphs (e) and (f) of subsection (4) above are not to be taken as preventing the carrying forward of any money, being money already carried forward to a financial year under arrangements made under subsection (4)(f) above and remaining unspent at the end of that year, from that year to the next year and, if it remains unspent at the end of that next year, to the following year, and so on.
- (5) An administration scheme may contain provision regarding—
- (a) the furnishing, on such terms and conditions as may be specified in the scheme, by one of the fire authorities of any service connected with the administration of the combined fire brigade;
  - (b) the transfer to the [joint board]<sup>22</sup> of property, rights or liabilities;
  - (c) the appointment of officers by the [joint board]<sup>23</sup> and the transfer to the [joint board]<sup>24</sup> of officers of any of the fire authorities;
  - (d) the settlement of differences between the fire authorities; and
  - (e) any other matters incidental to or consequential on any provision contained in the scheme.
- (5A) Not later than 3 months before the date on which a scheme approved under subsection (3A) above or, as the case may be, made under subsection (8B) below is intended to come into effect, every fire authority in respect of whose area or combined area such a scheme has been approved or made shall prepare and submit to the [Secretary of State] for his approval an establishment scheme for their area or combined area under section 19 of this Act, and the [Secretary of State] may approve the scheme as submitted to him or subject to such modifications as he may direct.<sup>25</sup>
- (6) ...<sup>26</sup>
- (7) Where an administration scheme has been approved under subsection (3A) above or an administration scheme made under section 147(4) of the [Local Government \(Scotland\) Act 1973 \(c.65\)](#), the fire authorities affected by it may amend or revoke that scheme by a subsequent scheme submitted to the [Secretary of State] by them jointly and the [Secretary of State] may by order approve any such subsequent scheme submitted to him.

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<sup>22</sup> Words substituted by the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#), Schedule 13, paragraph 27.

<sup>23</sup> Ditto.

<sup>24</sup> Ditto.

<sup>25</sup> Subsection (5A) was inserted by the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#), Schedule 13, paragraph 27(2)(f).

<sup>26</sup> Subsection (6) was repealed by the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#), Schedule 13, paragraph 27(2)(g).



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- (7A) A subsequent scheme under subsection (7) above may make provision with respect to any of the matters for which provision is required to be made, or may be made, by virtue of subsections (4), (5), (8)(b) and (8A) of this section.
- (7B) The power to make an order under subsection (7) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of [either House of Parliament].<sup>27</sup>
- (8) The [Secretary of State] may by order—
- (a) vary or revoke an administration scheme made under this section or an administration scheme made under section 147(4) of the [Local Government \(Scotland\) Act 1973 \(c.65\)](#);
  - (b) make a new administration scheme which includes provision—
    - (i) for the division of the original combined area into any two or more areas, being either areas of fire authorities comprised in such combined area or new combined areas constituted by such scheme;
    - (ii) for the inclusion in the combined area of any additional areas,and such an order may make provision with respect to any of the matters for which provision is required to be made, or may be made, by virtue of subsections (4), (5) and (8A) of this section.
- (8A) An order under subsection (8) above may make provision with respect to any of the following matters—
- (a) the transfer or retransfer to such fire brigade as may be determined by the order of the members of any fire brigade affected by the order;
  - (b) the transfer or retransfer to such fire authorities as may be determined by the order of any officers, property, rights or liabilities of any fire authority affected by the order;
  - (c) the payment, by such fire authority and subject to such provisions as may be determined by the order, of compensation to officers employed by any fire authority affected by the order who in consequence of it or of anything done under it suffer direct pecuniary loss by reason of the determination of their appointments or the diminution of their emoluments;
  - (d) in the case of any person who have immediately before the coming into operation of the order been the firemaster of any fire brigade affected by the order does not on the coming into operation of the order become the firemaster of any fire brigade established in consequence of the order, for the payment, in lieu of compensation under paragraph (c) above, of a pension, gratuity or allowance of such amount, subject to such conditions and by such fire authority as may be specified in the order; and
  - (e) any other matters incidental to or consequential on any provision contained in the order.
- (8B) Before making an order under subsection (8) above which contains provision that two or more local government areas should form a combined area for the provision in the combined area of the services mentioned in section 1 of this Act, the [Secretary of State] shall—
- (a) consult such fire authorities as appear to them to be affected by the order; and
  - (b) where any such authority submit objections to the order, inform that authority in writing whether he accepts the objections and, if he does not, why he does not.

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<sup>27</sup> Subsections (7), (7A) and (7B) were substituted by the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#), Schedule 13, paragraph 27(2)(h).



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- (8C) The power to make an order under subsection (8) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of [either House of Parliament].<sup>28</sup>
- (9) An order made by the Scottish Ministers under this section shall provide for the incorporation of a joint board with a common seal and shall confer on such a board power to hold land and to borrow money.<sup>29</sup>

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**28** Subsections (8) and (8A) to (8C) were substituted by the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#), Schedule 13, paragraph 27(2)(i).

**29** Subsection (9) was substituted by the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#), Schedule 13, paragraph 27(2)(j).