

Draft Regulations laid before Parliament under section 180(4) of the Policing and Crime Act 2017, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.

**CRIMINAL LAW, ENGLAND AND WALES
FIRE AND RESCUE SERVICES, ENGLAND
LOCAL GOVERNMENT, ENGLAND
LONDON GOVERNMENT
POLICE, ENGLAND AND WALES**

The Policing and Crime Act 2017
(Consequential Amendments) Regulations 2018

Made - - - -

Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the powers conferred by sections 180(1) and (3) of the Policing and Crime Act 2017⁽¹⁾, makes the following Regulations.

A draft of these Regulations has been laid before Parliament and has been approved by each House of Parliament in accordance with section 180(4) of that Act.

Citation and commencement

1.—(1) These Regulations may be cited as the Policing and Crime Act 2017 (Consequential Amendments) Regulations 2018.

(2) Subject to paragraphs (3) to (5), these Regulations come into force on the day after these Regulations are made.

(3) Regulations 4 and 14 come into force 21 days after the day on which these Regulations are made.

(4) Regulation 7 comes into force on 1st March 2018.

(5) Regulations 11 and 12 come into force on 1st April 2018.

Amendment to the Fire Services Act 1947

- 2.—(1) The Fire Services Act 1947(2) is amended as follows.
- (2) After section 26(2)(aa) (firefighters’ pension scheme) insert—
- “(ab) for treating, for all or any of the purposes of the Scheme, holding office as the London Fire Commissioner as employment by a fire and rescue authority in England where the terms and conditions of appointment to that office include—
- (i) resolving operational incidents, or
- (ii) leading and supporting others in the resolution of operational incidents;”.

Amendments to the Trustee Investments Act 1961

- 3.—(1) The Trustee Investments Act 1961(3) is amended as follows.
- (2) In section 11(4)(a) (local authority investment schemes)(4) after “a combined authority established under section 103 of that Act,” insert “a fire and rescue authority created by an order under section 4A of the Fire and Rescue Services Act 2004(5)”.
- (3) In Part 2 of Schedule 1 (narrower-range investments requiring advice)(6) in paragraph 9, after sub-paragraph (i), insert—
- “(j) a fire and rescue authority created by an order under section 4A of the Fire and Rescue Services Act 2004.”.

Amendment to the Contempt of Court Act 1981

- 4.—(1) The Contempt of Court Act 1981(7) is amended as follows.
- (2) In Schedule 1 (times when proceedings are active for purposes of section 2), in paragraph 7(8)—
- (a) in sub-paragraph (c), omit “England and Wales or”;
- (b) after sub-paragraph (c), insert—
- “(ca) in the case of proceedings in England and Wales commenced by arrest without warrant, if the person arrested is notified that the person is not to be prosecuted (whether under section 34(5C), 37(6B), 37B(5), 37CA(6), 41(11), 42(13), 43(21) or 44(10) of the Police and Criminal Evidence Act 1984(9) or otherwise);”.

Amendment to the Police and Criminal Evidence Act 1984

- 5.—(1) The Police and Criminal Evidence Act 1984(10) is amended as follows.

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- (2) 1947 c. 41; repealed by sections 52 and 54 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c. 21). Subsections (1) to (5) of section 26 continue to have effect, for the purposes of a scheme established under that section, in relation to England and Scotland by virtue of S.I. 2004/2306 and in relation to Wales by virtue of S.I. 2004/2918 W.25.
- (3) 1961 c. 62.
- (4) Relevant amendments were made by section 99 of, and paragraphs 77 and 78 of Schedule 16 to, the Police Reform and Social Responsibility Act 2011 (c. 13).
- (5) 2004 c. 21.
- (6) Relevant amendments were made by section 99 of, and paragraphs 77 and 78 of Schedule 16 to, the Police Reform and Social Responsibility Act 2011.
- (7) 1981 c. 49.
- (8) Paragraph 7 was amended by paragraph 4 of Schedule 1 to the Prosecution of Offences Act 1985 (c. 23) and by paragraph 34 of Schedule 17 to the Crime and Courts Act 2013 (c. 22).
- (9) 1984 c. 60. Section 37B(5) was inserted by paragraph 3 of Schedule 2 to the Criminal Justice Act 2003 (c. 44). Sections 34(5C), 37(6B) and 37CA(6) were inserted by section 66 of the Policing and Crime Act 2017. Sections 41(11), 42(13), 43(21) and 44(10) were inserted by section 67 of the Policing and Crime Act 2017.
- (10) 1984 c. 60.

(2) In section 118(2A) (treatment of lawful custody in certain cases)(**11**) omit “22”.

Amendments to Part 8 of the Local Government Finance Act 1988

6. The Schedule to these Regulations (amendments to Part 8 of the Local Government Finance Act 1988)(**12**) has effect.

Amendment to the Criminal Justice and Public Order Act 1994

7.—(1) The Criminal Justice and Public Order Act 1994(**13**) is amended as follows.

(2) In section 137(9) (cross border powers of arrest etc)(**14**), in the definition of “designated police station”, for “the 1989 Order” substitute “the Police and Criminal Evidence (Northern Ireland) Order 1989”.

Amendments to the Police Act 1996

8.—(1) The Police Act 1996(**15**) is amended as follows.

(2) In Schedule 6 (appeals to police appeals tribunals)—

- (a) in paragraph 1(1)(**16**), after “a senior officer” insert “or a former senior officer”;
- (b) in paragraph 2(1)(**17**), for “a member of a police force (other than a senior officer) or a special constable” substitute “a person to whom sub-paragraph (3) applies”;
- (c) after paragraph 2(2), insert—

“(3) The persons to whom this sub-paragraph applies are—

- (a) a member of a police force (other than a senior officer),
- (b) a former member of a police force (other than a former senior officer),
- (c) a special constable, and
- (d) a former special constable.”.

Amendment to the Criminal Justice Act 2003

9.—(1) The Criminal Justice Act 2003(**18**) is amended as follows.

(2) In section 24B(5) (application of PACE provisions)(**19**) for “section 24A(2)(b)” substitute “section 24A(2)(c)”.

Amendments to the Fire and Rescue Services Act 2004

10.—(1) The Fire and Rescue Services Act 2004(**20**) is amended as follows.

(**11**) Section 118(2A) was inserted by section 107(9) of, and paragraph 9(9) of Schedule 7 to, the Police Reform Act 2002 (c. 30).

(**12**) 1988 c. 41.

(**13**) 1994 c. 33.

(**14**) Section 137(9) was amended by paragraph 47 of Schedule 7 to the Serious Organised Crime and Police Act 2005 (c. 15) and paragraph 2 of Schedule 17 to the Policing and Crime Act 2017.

(**15**) 1996 c. 16.

(**16**) There have been amendments to paragraph 1 but none is relevant.

(**17**) Sub-paragraph (1) was substituted by paragraph 11 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c. 4). There have been other amendments to sub-paragraph (1) but none is relevant.

(**18**) 2003 c. 44.

(**19**) Section 24B was inserted by section 18 of the Police and Justice Act 2006 (c. 48) and subsection (5) was amended by section 64(8)(b) of the Policing and Crime Act 2017 (c. 3).

(**20**) 2004 c. 21.

(2) In section 24 (best value)(21) after subsection (2) insert—

“(2A) When carrying out an inspection under section 10 of the Local Government Act 1999 as applied by subsection (1) of a fire and rescue authority created by an order under section 4A, an inspector must not review or scrutinise decisions made, or other action taken, by the fire and rescue authority in connection with the discharge of an excluded function.

(2B) In subsection (2A) “excluded function”, in relation to a fire and rescue authority, means a function which is an excluded function in relation to that authority for the purposes of subsection (A6) of section 28 (inspections by English inspectors) (see subsections (A7) and (A8) of that section).”.

(3) After section 34(2)(b)(pensions etc)(22) insert—

“(ba) provide for treating, for any purpose of the scheme, to the extent specified in the scheme and subject to any conditions specified in the scheme, holding office as the London Fire Commissioner as if it were employment by a fire and rescue authority in England where the terms and conditions of appointment to that office include—

(i) resolving operational incidents, or

(ii) leading and supporting others in the resolution of operational incidents;”.

Amendment to the Housing and Planning Act 2016

11.—(1) The Housing and Planning Act 2016(23) is amended as follows.

(2) In Schedule 20 (authorities specified for purposes of section 210)(24), for paragraph 7 substitute—

“7. The London Fire Commissioner.”.

Amendment to the High Speed Rail (London-West Midlands) Act 2017

12.—(1) The High Speed Rail (London-West Midlands) Act 2017(25) is amended as follows.

(2) In Part 2 (interference with highways) of Schedule 4 (highways) in paragraph 3(11), for paragraph (b) substitute—

“(b) the London Fire Commissioner.”.

Transitional provision in relation to amendment of the Criminal Justice Act 2003

13.—(1) Regulation 9 does not apply in relation to a person in respect of an offence for which a conditional caution is given if the person was—

(a) first arrested for the offence on or before 2nd April 2017; or

(b) given the conditional caution on or before 2nd April 2017.

(2) In this regulation “conditional caution” has the same meaning as in Part 3 of the Criminal Justice Act 2003.

(21) Section 24 was amended by paragraph 26 of Schedule 8 to the Local Government and Public Involvement in Health Act 2007 (c. 28).

(22) The powers conferred by section 34 of the Fire and Rescue Services Act 2004 are now vested in Welsh Ministers so far as they are exercisable in Wales. There were previously vested in the National Assembly for Wales by virtue of section 62 of that Act. By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c. 32), they were transferred to Welsh Ministers. Powers under section 34 of the Fire and Rescue Services Act 2004 are now vested in Scottish Ministers so far as they are exercisable in Scotland (S.I. 2005/849). Section 34 was amended by paragraph 27 of Schedule 8 to the Public Service Pension Act 2013 (c. 25) and section 8(8) of, and paragraphs 1 and 11 of Schedule 1 to, the Policing and Crime Act 2017 (c. 3).

(23) 2016 c. 22.

(24) Schedule 20 is not yet in force.

(25) 2017 c. 7.

Saving provision in relation to amendment of the Contempt of Court Act 1981

14.—(1) Regulation 4 does not apply in relation to proceedings in respect of a publication made before the day on which regulation 4 comes into force.

(2) In this regulation ‘publication’ has the same meaning as in section 2(1) of the Contempt of Court Act 1981~~(26)~~

Date

Name
Minister of State
Home Office

SCHEDULE

Regulation 6

Amendments to Part 8 of the Local Government Finance Act 1988

General

1. Part 8 (financial administration) of the Local Government Finance Act 1988⁽²⁷⁾ is amended as follows.

Amendments to section 111

2.—(1) Section 111 (interpretation)⁽²⁸⁾ is amended as follows.

(2) In subsection (2) after paragraph (m) insert—

“(n) a section 4A fire and rescue authority.”.

(3) In subsection (3) after “the Greater London Authority Act 1999” insert “and the 2004 Act is the Fire and Rescue Services Act 2004⁽²⁹⁾”.

(4) After subsection (3B) insert—

“(3C) In this Part—

“section 4A fire and rescue authority” means a fire and rescue authority created by an order under section 4A of the 2004 Act;

“fire and rescue functions”, in relation to a chief officer of police, means—

- (a) functions which are delegated to the chief officer under provision made under section 4H of the 2004 Act; and
- (b) functions relating to fire and rescue services which are conferred on the chief officer by or by virtue of any enactment;

“policing functions”, in relation to a person who is a chief officer of police, means functions of that person relating to the police force of which that person is the chief officer;

“relevant police and crime commissioner”, in relation to a section 4A fire and rescue authority, means the 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;

“relevant police and crime panel”, in relation to a section 4A fire and rescue authority, means the police and crime panel 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;

“relevant section 4A fire and rescue authority”, in relation to a chief officer of police, means a section 4A fire and rescue authority some of whose functions have been delegated to the chief officer under provision made under section 4H of the 2004 Act.”.

⁽²⁷⁾ 1988 c. 41.

⁽²⁸⁾ Section 111 was amended by paragraph 68(1) and (3) of Schedule 1 to the Fire and Rescue Services Act 2004 and paragraph 10(1) and (2) of Schedule 2 to the Civil Contingencies Act 2004 (c. 36). There are other amendments but none is relevant.

⁽²⁹⁾ 2004 c. 21.

Amendments to section 114

3.—(1) Section 114 (functions of responsible officer as regards reports)(**30**) is amended as follows.

- (2) In subsection (1) after “the 1999 Act,” insert “section 4D or 4I of the 2004 Act”.
- (3) After subsection (2) insert—

“(2ZA) In the case of a section 4A fire and rescue authority the reference to a person holding any office or employment under the authority includes a member of staff of the relevant police and crime commissioner who is exercising functions of that authority by virtue of an order under section 4A of the 2004 Act.”.
- (4) In subsection (4)(b)—
 - (a) in sub-paragraph (iii) after “a chief officer of police” insert “in relation to a report about the exercise of policing functions of the chief officer”; and
 - (b) after sub-paragraph (iii) (but before the “and” at the end of that sub-paragraph) insert—
 - “(iiia) a chief officer of police in relation to a report about the exercise of fire and rescue functions of the chief officer, the chief officer and the relevant section 4A fire and rescue authority;
 - (iiib) a chief officer of police in relation to a report about the exercise of policing and fire and rescue functions of the chief officer, the chief officer, the elected local policing body and the relevant section 4A fire and rescue authority;
 - (iiic) a section 4A fire and rescue authority, the relevant police and crime commissioner and each member of the relevant police and crime panel;”.

Amendments to section 115

4.—(1) Section 115 (authority’s duties as regards reports)(**31**) is amended as follows.

- (2) After subsection (1B) insert—

“(1BA) In the case of a report made by the chief finance officer of a section 4A fire and rescue authority, that authority must consider the report and decide whether the authority agrees or disagrees with the views contained in the report and what action (if any) the authority proposes to take in consequence of it.”.
- (3) In subsection (1E)—
 - (a) for “or the chief officer of police, has” substitute “the section 4A fire and rescue authority or the chief officer of police has”; and
 - (b) after “that body” in each place those words appear insert “, authority”.
- (4) After subsection (1F) insert—

“(1FA) As soon as practicable after the section 4A fire and rescue authority has prepared a report under subsection (1E), the authority must arrange for a copy of the report to be sent to—

 - (a) the chief finance officer;
 - (b) the person who at the time the report is made has the duty to audit the authority’s accounts; and
 - (c) each member of the relevant police and crime panel.”.

(30) Section 114 was amended by paragraphs 180 and 188(1), (2) and (5) of Schedule 16 to the Police Reform and Social Responsibility Act 2011. There are other amendments but none is relevant.

(31) Section 115 was amended by paragraphs 180 and 189(1), (2) and (3) of Schedule 16 to the Police Reform and Social Responsibility Act 2011. There are other amendments but none is relevant.

(5) In subsection (1G) after “subsection (1E)” insert “in relation to the exercise of policing functions of the chief officer”.

(6) After subsection (1G) insert—

“(1H) As soon as practicable after the chief officer of police has prepared a report under subsection (1E) in relation to the exercise of fire and rescue functions of the chief officer, the chief officer of police must arrange for a copy of the report to be sent to—

- (a) the chief finance officer;
- (b) the person who at the time the report is made has the duty to audit the chief officer’s accounts; and
- (c) the relevant section 4A fire and rescue authority.

(1I) As soon as practicable after the chief officer of police has prepared a report under subsection (1E) in relation to the exercise of policing and fire and rescue functions of the chief officer, the chief officer of police must arrange for a copy of the report to be sent to—

- (a) the chief finance officer;
- (b) the person who at the time the report is made has the duty to audit the chief officer’s accounts;
- (c) the elected local policing body which maintains the police force in which the chief officer serves; and
- (d) the relevant fire and rescue authority.”.

(7) In subsection (2) after “elected local policing body” insert “, a section 4A fire and rescue authority”.

Amendments to section 116

5. In section 116 (information about consideration of reports etc)(**32**) after subsection (2B) insert—

“(2BA) In the case of a section 4A fire and rescue authority, the chief finance officer of that authority must notify the authority’s auditor of any decisions taken by the authority in accordance with section 115.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make various amendments consequential on the Policing and Crime Act 2017 (c. 3).

Regulation 2 amends the Fire Services Act 1947 (c. 41) in consequence of the creation of the London Fire Commissioner as the fire and rescue authority for Greater London under provisions in Chapter 3 of Part 1 of the Policing and Crime Act 2017. The amendment enables secondary legislation to be made to treat a person holding the office of London Fire Commissioner and exercising operational

(32) Section 116 was amended by paragraphs 180 and 190(1) and (3) of the Police Reform and Social Responsibility Act 2011. There are other amendments but none is relevant.

functions as being employed by a fire and rescue authority in England for the purposes of the Firefighters' Pension Scheme 1992. Regulation 10(3) amends the Fire and Rescue Services Act 2004 (c. 21) to enable secondary legislation to be made to treat a person holding the office of London Fire Commissioner and exercising operational functions as being employed by a fire and rescue authority in England for the purposes of the Firefighters Compensation Scheme (England) 2006 and the New Firefighters' Pension Scheme (England) 2006.

Regulation 3 amends the Trustees Investments Act 1961 (c. 62) to enable a fire and rescue authority created by an order under section 4A of the Fire and Rescue Services Act 2004 (as amended by section 6 of, and Schedule 1 to, the Policing and Crime Act 2017) to invest in certain schemes approved by HM Treasury under section 11 of the Trustees Investments Act 1961. Such a fire and rescue authority is also added to the list of authorities to which paragraph 9 of Schedule 1 to the Trustees Investments Act 1961 applies.

Regulation 4 amends paragraph 7 of Schedule 1 to the Contempt of Court Act 1981 (c. 49), which sets out when proceedings are no longer 'active' for the purposes of the strict liability rule. The amendment to paragraph 7 provides that proceedings in England and Wales commenced by arrest without warrant are discontinued if the arrested person is given notice that he or she is not to be prosecuted for the offence, and the proceedings are not discontinued following release without bail. The amendment is consequential to the introduction of the presumption in favour of release without bail by Chapter 1 of Part 4 of the Policing and Crime Act 2017.

Regulation 5 amends section 118(2A) of the Police and Criminal Evidence Act 1984 (c. 60) in order to remove a reference to paragraph 22 of Schedule 4 to the Police Reform Act 2002 (c. 30). This amendment is consequential on the repeal of paragraph 22 of Schedule 4 to that Act which has been repealed by section 45(a) of, and paragraph 5(1) and (3) of Schedule 12 to, the Policing and Crime Act 2017.

Regulation 6 introduces the Schedule. The Schedule amends the Local Government Finance Act 1988 (c. 41) to make provision in connection with the financial administration of a fire and rescue authority created by an order under section 4A of the Fire and Rescue Services Act 2004.

Regulation 7 amends section 137(9) of the Criminal Justice and Public Order Act 1994 (c. 3) to clarify the definition of "designated police station", in consequence of the omission of the definition of "arrestable offence" in that subsection. The definition of "arrestable offence" was omitted by paragraph 2(4) of Schedule 11 to the Policing and Crime Act 2017.

Regulation 8 amends Schedule 6 to the Police Act 1996 (c. 16) to clarify that the provisions in that Schedule on the composition of police appeals tribunals apply to cases where the appellant is a former officer as they apply to cases where the appellant is a serving officer. These amendments are consequential on the amendments made by section 29 of the Policing and Crime Act 2017.

Regulation 9 amends section 24B(5) of the Criminal Justice Act 2003 (c. 44), which applies certain provisions in the Police and Criminal Evidence Act 1984 to persons arrested for suspected breach of a conditional caution. It is consequential on an amendment to section 24A of that Act made by section 60 of the Policing and Crime Act 2017, which means that persons will now be released on bail under section 24A(2)(c).

Regulation 10(2) amends section 24 of the Fire and Rescue Services Act 2004 to exclude certain functions of a fire and rescue authority created under section 4A of that Act from the inspection provisions in sections 10 to 13A of the Local Government Act 1999 as they apply to that authority.

Regulation 11 amends Schedule 20 to the Housing and Planning Act 2016 (c. 22) in consequence of the commencement of the provisions in chapter 3 of Part 1 of the Policing and Crime Act 2017 establishing the London Fire Commissioner. Regulation 12 makes the equivalent amendment to paragraph 3(11) of Part 2 of Schedule 4 to the High Speed Rail (London-West Midlands) Act 2017 (c. 7).

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Policing and Crime Act 2017 (Consequential Amendments) Regulations 2018 No. 226*

Regulation 13 provides that the amendment made by regulation 9 will only apply to a person in relation to an offence for which a conditional caution was given if they were first arrested for the offence on or after 3rd April 2017 or received the conditional caution on or after 3rd April 2017. It makes equivalent transitional provision to that which applies to section 60 of the Policing and Crime Act 2017 (see regulation 5 of [S.I. 2017/399](#)).

Regulation 14 provides that regulation 4, which amends when proceedings are 'active' for the purpose of the strict liability rule in the Contempt of Court Act 1981, does not apply to publications made before its commencement.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen