

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

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Administration in order to assist the reader of the [Police and Fire Services \(Finance\) \(Scotland\) Act 2001 \(asp 15\)](#). They do not form part of the Act and have not been endorsed by the Scottish Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **THE ACT**

#### ***Section 1***

3. [Section 1](#) of this Act amends sections 19 and 32 of the [Police \(Scotland\) Act 1967 \(c.77\)](#) (the “1967 Act”) to make provision for the carry-forward of unspent police funds by joint police boards and by unitary police authorities. There are currently six joint police boards in Scotland: Central Scotland Joint Police Board, Grampian Joint Police Board, Lothian and Borders Joint Police Board, Northern Joint Police Board, Strathclyde Joint Police Board and Tayside Joint Police Board, the boards being established for each of the six combined police areas. Those combined police areas were created in 1996 by amalgamation schemes contained in orders made under section 21B of the 1967 Act (as inserted by section 34 of the Local Government etc. (Scotland) Act 1994). Each joint police board is made up of a number of police authorities, known as constituent authorities. In addition, there are two unitary police authorities: Fife and Dumfries and Galloway.
4. Each year a joint police board estimates how much money it will need to provide a police service for the combined police area and requisitions funds from each of its constituent authorities based on estimated police expenditure within that authority. Prior to this Act, at the end of the financial year, joint police boards were obliged to return to their constituent authorities any money which they had requisitioned but either not spent or not earmarked for a specific and known liability.
5. Prior to this Act, section 19(2)(d) of the 1967 Act required amalgamation schemes to make provision with regard to the payment by constituent authorities of expenditure incurred by the joint police board. The effect of this was that amalgamation schemes could not make provision with regard to the carry-forward of unspent requisitions since, in terms of the 1967 Act, amalgamation schemes could make provision only with regard to expenditure incurred and not that which it was estimated would be incurred. Therefore, section 1(1)(a)(i) of this Act amends section 19(2)(d) of the 1967 Act to require amalgamation schemes to make provision with regard to the payment by the

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constituent authorities, in such proportions as may be specified, of the amounts which the joint police board estimates will be incurred.

6. [Section 1\(1\)\(a\)\(ii\)](#) amends section 19(2) of the 1967 Act, by inserting new paragraph (e), to require amalgamation schemes to make provision for arrangements for the carry-forward of balances of unspent constituent authority requisitions from one year to the next. Such balances represent the difference between the board's estimated expenditure and its actual expenditure (after taking into account receipts and police grant – see paragraph 7 for an explanation of police grant), where the actual expenditure is less than the estimate.
7. As well as money requisitioned from constituent authorities, joint police boards and unitary police authorities receive, under section 32 of the 1967 Act, police grant direct from the Scottish Ministers, normally covering 51 per cent of net eligible police expenditure up to a cash limit set for each joint police board. Section 19(3) of the 1967 Act makes it clear that the expenditure referred to in subsection (2)(d) of that section is a reference to the expenditure which is not provided for by grant made to the joint police board under section 32 of the 1967 Act – i.e. it is constituent authority requisitions and not police grant. Section 1(1)(b) of this Act makes two amendments of section 19(3) in consequence of the amendment of section 19(2)(d) made by section 1(1)(a)(i) of this Act, to substitute, for references to expenditure incurred, references to estimated expenditure.
8. [Section 1\(1\)\(c\)](#) inserts new subsections (3A) to (3F) into section 19 of the 1967 Act. These provide for limitations on the carry-forward of balances by joint police boards. New subsection (3A) limits any carry-forward to 3 per cent of the total of the money paid to the joint police board by its constituent authorities in that year. The carry-forward limit of 3 per cent can be varied by means of a statutory instrument subject to negative resolution in terms of new subsections (3D)(a) and (3E). Subsection (3A) also provides that, in certain circumstances, money may be carried forward only with the consent of the Scottish Ministers. New subsection (3B) sets out those circumstances. Essentially, where the amount of unspent requisitioned money and police grant which a joint board wishes to carry forward, when added to existing accumulated reserves of unspent requisitioned money and police grant, exceeds the “maximum sum”, that money can be carried forward only with the consent of the Scottish Ministers. New subsection (3C) defines the maximum sum as meaning 5 per cent of the total amount of requisitions and grant made to the board in that year. In terms of new subsections (3D)(b) and (3E), the 5 per cent figure in subsection (3C) can be varied by means of a statutory instrument subject to negative resolution procedure.
9. New subsection (3F) provides that once consent has been given to carry forward a working balance from one year to the next, that balance can be carried forward indefinitely without further reference to the Scottish Ministers. In subsequent years, additional monies can be added to the amount being carried forward, thus allowing the accumulation of working balances over time. Ministers' consent will still be required in the circumstances set out in subsection (3B). Consent will not be required to carry forward money from the current year unless that would, when taken together with existing balances, exceed the maximum sum.
10. As mentioned above at paragraph 7, joint police boards and unitary police authorities receive police grant direct from the Scottish Ministers, normally amounting to 51 per cent of net eligible police expenditure. Section 1(2)(b) of this Act inserts new subsections (10A) to (10K) into section 32 of the 1967 Act. Those new subsections set out the conditions under which police grant can be carried forward by unitary police authorities and joint police boards. These conditions are broadly the same as those that apply to the carry-forward of requisitions by joint police boards. New subsection (10A) gives unitary police authorities and joint police boards the power to carry-forward unspent police grant. New subsection (10B) limits any carry-forward by police authorities or joint police boards to 3 per cent of the total grant paid to the

authority or board, as the case may be, in respect of that financial year. The carry forward limit of 3 per cent can be varied by means of a statutory instrument subject to negative resolution in terms of subsections (10G)(a) and (10H).

11. Further, subsection (10C) provides that, in certain circumstances, unspent grant may be carried forward only with the consent of the Scottish Ministers. In the case of police authorities, those circumstances are, in terms of subsection (10D), where the police grant to be carried forward, plus accumulated police grant brought forward from previous years and remaining unspent, would exceed the “maximum sum”. The maximum sum is defined in subsection (10F)(a) as being 5 per cent of the total amount of grant paid to the police authority in respect of that year. In the case of joint police boards, the circumstances in which the consent of the Scottish Ministers to a carry forward is required are, in terms of subsection (10E), where the amount of unspent requisitioned money and police grant to be carried forward, when added to existing accumulated reserves of unspent requisitioned money and police grant, would exceed the “maximum sum”. Subsection (10F)(b) defines the maximum sum as being 5 per cent of the requisitions and grants paid to joint boards in respect of that year. In the case of both police authorities and joint police boards, the 5 per cent figures can be varied by means of statutory instrument subject to negative resolution in terms of subsections (10G)(b) and (10H).
12. [Section 1\(2\)\(b\)](#) of this Act also inserts a new subsection (10J) into section 32 of the 1967 Act which makes equivalent provision in relation to police grant as is made in relation to local authority requisitions by new section 19(3F) of the 1967 Act (as inserted by section 1(1)(c) of this Act (see paragraph 9 above)).
13. Finally, section 1(2)(b) of this Act inserts a new subsection (10K) into section 32 of the 1967 Act. This provision sets out the relationship between the payment of police grant and the carry-forward of police grant. Under section 32(10) of the 1967 Act, an order can be made which re-determines the amount of police grant paid to a joint police board or unitary police authority so that it conforms to the actual expenditure. This usually happens after the end of the year in which the grant is paid because the Board’s final outturn is then known. The difference between police grant paid to the board or authority and the re-determined amount of grant is returned to the Scottish Ministers. The new subsection (10K) makes it clear that the amount of unspent police grant that is to be returned to the Scottish Executive is the balance of the unspent police grant less any amount of police grant that is being carried forward.

## **Section 2**

14. [Section 2](#) of this Act amends section 36 of the [Fire Services Act 1947 \(c.41\)](#) (the “1947 Act”) to make provision for the carry-forward of working balances by joint fire boards. The six existing joint fire boards – Central Scotland Fire Board, Grampian Fire Board, Highland and Islands Fire Board, Lothian and Borders Fire Board, Strathclyde Fire Board and Tayside Fire Board – were constituted by Administration Scheme Orders made under section 147 of the Local Government (Scotland) Act 1973 (as substituted by section 36 of the Local Government etc. (Scotland) Act 1994). Further provision in respect of administration schemes is made in subsections (3A) to (9) of section 36 of the 1947 Act. The fire authorities which are the constituent authorities of each joint fire board are specified in the administration scheme under which that board is constituted.
15. Like the joint police boards, the joint fire boards requisition funds from their constituent authorities on the basis of estimated revenue expenditure requirements in the year ahead. That is, however, their principal source of revenue funding: unlike police boards, fire boards do not receive grant direct from the Scottish Ministers.
16. Prior to this Act, paragraphs (d) and (e) of section 36(4) of the 1947 Act required an administration scheme to make provision with regard to the payment out of a fund constituted in accordance with the scheme of the expenses incurred by the joint board, and the payment into that fund of contributions by the constituent fire authorities.

Unlike the case of joint police boards, where section 19(2)(d) of the 1967 Act precluded the carry-forward of unspent requisitions because constituent authorities could make payments to joint police boards only in respect of expenses which had been incurred, paragraphs (d) and (e) of section 36(4) of the 1947 Act were drafted in slightly different terms. It was considered that the terms of paragraph (e) of that subsection could allow payment by constituent authorities to joint fire boards to cover estimated expenditure. However, the amendments made to section 36(4) by section 2(a) of this Act ensure that amalgamation orders must make provision for this. To this end, section 2(a) replaces paragraph (e) of section 36(4) with a new version which, when read with the new subsection (4A) (which is inserted by section 2(b) of this Act), makes it clear that the payment by fire authorities into the fund is in respect of estimated expenditure in the administration of the combined fire brigade.

17. Section 2 of this Act further amends section 36 of the 1947 Act so as to require administration schemes to make provision with regard to arrangements for the carry-forward of balances of unspent constituent authority requisitions from one year to the next. Again, such balances would represent the difference between a board's estimated expenditure and its actual expenditure, where the latter is less than the former. Section 2(a) inserts a new paragraph (f) in section 36(4) of the 1947 Act to achieve this.
18. Section 2(b) inserts new subsections (4B) to (4F) into section 36 of the 1947 Act, providing for the limitations on the carry-forward of balances. The limitations are similar to those described in paragraph 8 above in relation to joint police boards.
19. [Section 2\(b\)](#) also inserts a new subsection (4G) into section 36 of the 1947 Act. This is equivalent to the provision made in respect of the police by new section 19(3F) of the 1967 Act, inserted by section 1(1)(c) of this Act (see paragraph 9 above).
20. In section 36 of the 1947 Act, subsection (7) enables fire authorities to amend or revoke an administration scheme submitted by them and approved by the Scottish Ministers, subject to the like approval. Subsection (8) enables the Scottish Ministers to vary or revoke an administration scheme or to make a new administration scheme. Paragraphs (c) and (d) of section 2 of this Act amend subsections (7) and (8) of section 36 to provide that, in both cases, the powers to amend, revoke and replace schemes apply to the existing schemes made under section 147 of the Local Government (Scotland) Act 1973 as well as to any schemes made under section 36.

## **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);
  - (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—

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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.

<sup>3</sup> Ditto.

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

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- (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.
- (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) ... [<sup>6</sup>]
- (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—

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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).

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- (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 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.

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**11** Ditto.

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

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

**14** 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).

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

**16** Ditto.

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- (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.
- (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.

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

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

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

<sup>20</sup> Ditto

<sup>21</sup> Ditto.

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- (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—
- (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

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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.

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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.
- (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.

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<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).

<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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- (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.
- (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 sale and shall confer on such a board power to hold land and to borrow money.<sup>29</sup>

## PARLIAMENTARY HISTORY

The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings at that Stage took place, the references to the Official Report of those proceedings and the dates on which Committee Reports and other papers relating to the Bill were published and references to those Reports and other papers.

<i>Proceedings and Reports</i>	<i>Reference</i>
<b>Introduction</b>	
31 May 2001	SP Bill 29 (Session 1), subsequently <a href="#">2001 asp 15</a>
<b>Stage 1</b>	
<i>(a) Local Government Committee</i>	
20 <sup>th</sup> meeting 2001 (Session 1)	26 June 2001, col 2117 – 2126 & minutes
21 <sup>st</sup> meeting 2001 (Session 1)	4 September 2001, col 2127 – 2158 & minutes
<i>(b) Consideration by Parliament</i>	
27 September 2001	Col 2969 – 2994
<b>Stage 2</b>	
<i>(c) Committee of the Whole Parliament</i>	1 November 2001, Col 3632 – 3635 and 3636 - 3639
<b>Royal Assent – 5 December 2001</b>	

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

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