

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

EXPLANATORY NOTES

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

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]¹.
- (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]²; and
 - (b) the constitution for the administration of the combined fire brigade of a [joint board]³ 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]⁴ 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]⁵ in the administration of the combined fire brigade;

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

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

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

4 Ditto

5 Ditto.

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- (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—
- (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]⁶ of property, rights or liabilities;
 - (c) the appointment of officers by the [joint board]⁷ and the transfer to the [joint board⁶] of officers of any of the fire authorities;
 - (d) the settlement of differences between the fire authorities; and

⁶ Words substituted by the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#), Schedule 13, paragraph 27.

⁷ Ditto.

⁸ Ditto.

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- (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.⁹
- (6) ...¹⁰
- (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].¹¹
- (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;

⁹ Subsection (5A) was inserted by the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#), Schedule 13, paragraph 27(2)(f).

¹⁰ Subsection (6) was repealed by the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#), Schedule 13, paragraph 27(2)(g).

¹¹ 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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- (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.
- (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].¹²
- (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.¹³

¹² Subsections (8) and (8A) to (8C) were substituted by the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#), Schedule 13, paragraph 27(2)(i).

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