

# **POLICE AND FIRE REFORM (SCOTLAND) ACT 2012**

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## **EXPLANATORY NOTES**

### **THE ACT – SECTION BY SECTION**

#### **Part 2 – Fire Reform**

##### ***Section 101 – the Scottish Fire and Rescue Service***

107. **Section 101** introduces a new section 1A into the Fire (Scotland) Act 2005 (the 2005 Act) to provide for the establishment of a new statutory body corporate, the Scottish Fire and Rescue Service (SFRS) or, in Gaelic, Seirbheis Smàlaidh agus Teasairginn na h-Alba to replace the current 2 unitary authorities and 6 joint fire and rescue boards which are abolished by Part 2 of schedule 8 to the Act. SFRS has the functions conferred on it by the 2005 Act, as amended by this Act and other legislation, and the functions conferred on it by any other enactment.
108. **Section 101** also inserts **schedule 1A** into the 2005 Act, which sets out the SFRS's governance and finance arrangements, general powers and accounting requirements. **Paragraph 1 of schedule 1A** provides that SFRS is independent from the Crown. **Paragraph 2** provides that SFRS will consist of a chairing member and between 10 and 14 other members, although the maximum and minimum number of members can be varied by the Scottish Ministers through secondary legislation subject to negative procedure in the Scottish Parliament. Members of SFRS will be appointed by the Scottish Ministers on the basis of relevant skills and expertise to govern the fire and rescue service. Members of SFRS may elect a member to act as Deputy Chair. The schedule sets out that members are appointed for a maximum period of 4 years on terms and conditions determined by the Scottish Ministers (**paragraph 4**); that Ministers can remove members in certain circumstances (**paragraph 5**); and provides a list of people disqualified from membership of SFRS (**paragraph 3**). The list of persons disqualified from membership may be modified by the Scottish Ministers through secondary legislation, subject to the negative procedure. **Paragraph 6** provides for the payment of remuneration, allowances and expenses to members as may be determined by the Scottish Ministers.
109. **Paragraph 7** requires SFRS to employ a Chief Officer and **paragraph 8** provides that SFRS may employ other staff. The first Chief Officer is to be appointed by the Scottish Ministers with subsequent appointments made by SFRS subject to the agreement of the Scottish Ministers.
110. **Paragraphs 9 – 10** set out the rules regarding the establishment of committees and procedure of SFRS.
111. **Paragraph 11** places a duty on the SFRS (including its committees and sub-committees) to meet in public and to publish agendas, papers and reports of its proceedings. Sub-paragraphs (2) and (4) give discretion to the SFRS to decide not to do

so, and sub-paragraph (5) obliges it to publish a statement setting out the circumstances in which it will exercise that discretion.

112. **Paragraph 12** imposes an obligation on SFRS members to try to act consistently with the principles of good governance and in an accountable and transparent manner, when acting in their capacity as members. **Paragraph 13** sets out SFRS's general powers and allows SFRS to do anything it considers appropriate for carrying out its functions. This includes specific power to: enter into contracts; borrow money; acquire and dispose of land and other property; accept gifts of money and gifts or loans of other property; form or promote companies; and compulsorily purchase land. The power to borrow money, form or promote companies and to purchase land compulsorily is subject to Ministerial consent, and in relation to borrowing money and forming or promoting companies the Scottish Ministers can set any conditions they consider appropriate, and their agreement can be given in relation to a particular case or class of case. **Paragraph 14** makes provision for the delegation of functions to the Chief Officer and other SFRS staff and any committees established by SFRS although the SFRS will still retain responsibility for the performance of those functions and remain able to perform them. **Paragraph 15** requires the Scottish Ministers' approval for the location of the administrative headquarters used by SFRS board members and the Chief Officer. **Paragraph 16** allows the Scottish Ministers to provide grants to SFRS. **Paragraph 17** makes provision for the preparation and submission of accounts and arrangements for audit. It places a duty on SFRS to keep proper accounts and records in relation to the accounts, and to prepare a statement of accounts for each financial year as soon as possible after the 31 March. The Scottish Ministers have a power to direct the form and content of that statement of accounts, as well as the accounting methods and principles to be applied. SFRS must send a copy of the statement of accounts to the Auditor General for auditing.

### **Sections 102-110 – Functions**

113. **Sections 102 – 110** amend Chapters 2 and 3 of Part 2 of the 2005 Act and Chapter 2 of Part 3 of that Act, replacing references in that Act to “relevant authority” (unitary authority or joint fire and rescue boards) with references to the Scottish Fire and Rescue Service. Functions and responsibilities in the amended sections which were previously with joint boards and unitary authorities will now rest with SFRS. This includes the following areas: promotion of fire safety; fire safety enforcement; responding to fires, road traffic accidents and other emergencies and eventualities; provision of other services; provision of centres for education and training; and charging. In relation to the promotion of fire safety, **section 102** will enable SFRS to run national publicity campaigns, which were previously done by the Scottish Ministers. **Section 103** also transfers responsibility for the enforcement of fire safety in certain Crown and other premises from the Chief Inspector of Fire and Rescue Authorities to SFRS and amends section 67 of the 2005 Act so that where the enforcing authority is SFRS a matter may be referred by either party for determination of a dispute by the Chief Inspector. **Section 106** allows additional functions in relation to other emergencies to be conferred on SFRS by order (for example prior to the Act there were additional functions placed on the unitary authorities and joint boards by the Fire (Additional Function) Scotland Order 2005).

### **Sections 111-120 – Further Amendments of 2005 Act**

114. **Sections 111 and 112** amend sections 35 and 36 of the 2005 Act - power to obtain assistance in carrying out functions and arrangements for carrying out of functions by others - replacing references in those sections to “relevant authority” (unitary authority or joint fire and rescue board) with SFRS. The amended sections now provide that functions can only be delegated and assistance provided in this way if the Chief Officer considers that the persons from whom assistance will be provided or to whom the functions will be delegated have the relevant knowledge, skills and experience to do so. In addition, under section 36, the function of extinguishing fires may only be delegated to fire-fighters.

115. **Section 113** inserts new sections 39 A – C into the 2005 Act to place a statutory duty on SFRS to make arrangements which secure best value. This replaces the current duty of best value imposed on fire and rescue authorities and joint boards by section 1 of the Local Government in Scotland Act 2003. Best value is defined as meaning a continuous improvement in the performance of SFRS's functions. In terms of new section 39B, in carrying out its duties in relation to best value, SFRS must have regard to: (a) any relevant guidance issued by the Scottish Ministers; and (b) anything regarded as proper arrangements for the purposes of securing best value. Relevant guidance is defined as meaning guidance on carrying out the duties imposed in new section 39A, including, in particular, guidance on how to make and what is to be included in the arrangements to secure best value, and guidance as to how to implement the duty to make such arrangements. Before issuing such guidance, the Scottish Ministers must consult SFRS and anyone else they consider appropriate. Where there is conflict between (a) and (b), SFRS must have regard only to (a).
116. In making arrangements to secure best value, new section 39A provides that SFRS is required to balance the quality of the performance of its functions, the cost of doing so, and the cost to persons of any service provided by SFRS on a wholly or partly chargeable basis. In maintaining that balance, SFRS must have regard to efficiency, effectiveness, economy and the need to meet equal opportunities requirements (within the meaning of Section L2 of Part 2 of Schedule 5 to the [Scotland Act 1998 \(c. 46\)](#)). SFRS is to discharge its duties in a way which contributes to the achievement of sustainable development. When measuring the improvement of the performance of SFRS's functions, regard should be taken of the extent to which the outcomes of that performance have improved. New section 39C confers a power on the Auditor General to examine the arrangements made by SFRS to secure best value.
117. **Section 114** amends the 2005 Act to insert new sections 41A, 41B and 41C which set out the arrangements for planning for SFRS. New section 41A places a duty on SFRS to prepare a strategic plan. The plan must set out how SFRS proposes to carry out its functions during a 3 year planning period, set out outcomes against which performance can be measured, and include such other information as SFRS considers appropriate (including information relating to other planning periods beyond the following 3 years).
118. Under section 41A SFRS must make arrangements to obtain views, on what the strategic plan should contain, from persons who are likely to be interested in how it carries out its functions. When preparing the plan, SFRS must have regard to the framework document (see section 40 of the 2005 Act), send the draft plan to persons specified in subsection(5), invite comments from these persons and have regard to any comments received. SFRS must submit the plan to Scottish Ministers for approval and use best endeavours to secure approval of the plan (with or without modifications) before the start of the planning period. The date for the start of the first planning period will be set by the Scottish Ministers by Order, subject to the negative procedure. Once the plan has been approved, it must be published and laid before the Scottish Parliament by SFRS. Section 41B provides for review of the strategic plan and that any new plan prepared following that review must follow the same process for obtaining views from others, approval and publication as the original. SFRS may review and prepare a new strategic plan at any time, but must prepare a new plan for each new planning period (i.e. to take effect on the expiry of the previous planning period) or if Ministers bring a new framework into effect (by virtue of s.40(4) of the 2005 Act). Therefore a review will happen at least once every 3 years. Each new plan must cover a 3 year period which, for plans prepared as a result of a review part way through the previous planning period, will commence 8 weeks after the plan is submitted to the Scottish Ministers for approval, and for plans prepared in anticipation of the expiry of the previous planning period will commence the day after that period expires. Where a strategic plan has been approved under section 41A or 41B, SFRS must have regard to that plan in carrying out its functions (by virtue of section 41C).

119. **Section 115** amends the 2005 Act to insert new sections 41D to 41K which set out the arrangements for local fire and rescue services, including the new relationship between the SFRS and each local authority. New section 41D requires SFRS to ensure that adequate arrangements are in place for the provision of fire and rescue services within each local authority area and for the involvement of the local authority in determining priorities and objectives for SFRS locally. New section 41J requires the Chief Officer to designate a Local Senior Officer for each local authority area, to whom the functions set out in sections 41E to 41H and 41K are to be delegated. The Local Senior Officer must also undertake SFRS's duty to participate in community planning. One Local Senior Officer may cover more than one local authority area.
120. New section 41E requires SFRS to prepare a local fire and rescue plan for each local authority area. The plan must set out: the main priorities and objectives for SFRS in the local authority area along with the reasons for selecting these and outcomes against which these will be measured; how it will deliver those priorities and objectives and how they will help deliver any other relevant local outcomes identified through community planning. The local fire and rescue plan can also include any other matters linked to fire and rescue services in the local area that the SFRS thinks fit. When preparing the plan, SFRS must have regard to the fire framework (see section 40 of the 2005 Act) and SFRS's strategic plan and consult SFRS employee representatives, and others as appropriate. SFRS must submit the plan to the relevant local authority for approval and once it is agreed to, SFRS must publish it.
121. New section 41G requires SFRS to review the local fire and rescue plan every 3 years, where there has been significant revision to the fire framework, and where a new strategic plan is approved. The plan must be revised if there has been no revised plan published within the past 3 years, and may be revised following any other review. Under new section 41F the local plan may also be reviewed at any time. Any review and revision of the plan must follow the same procedure for preparation, approval and publication as the initial plan. New section 41H makes clear that SFRS must provide the local authority with any information or reports reasonably requested by the local authority about the carrying out of SFRS's functions in that local authority area. This includes providing reports relating to any local fire and rescue plan which is in force for the local authority area.
122. Under new section 41K a local authority can monitor and provide feedback to the SFRS on how it carries out its functions in the local authority's area. It may provide views and make recommendations for improvements in this respect, and feedback may refer to any local fire and rescue plan in force for its area.
123. **Section 116** amends the 2005 Act to insert new section 41L which requires SFRS to prepare and publish an annual report as soon as possible after the end of each reporting year. A copy of the report must be given to Scottish Ministers and laid before the Scottish Parliament. The report must contain an assessment of SFRS's performance during the reporting year in acting in accordance with the fire framework and in achieving the outcomes set out in the strategic plan, and any other information SFRS considers appropriate.
124. **Section 117** amends the 2005 Act to insert new section 41M, requiring SFRS to provide to the Scottish Ministers any reports, statistics and other information they request in relation to its functions. **Subsection (2)** makes clear that the information may include, for example, statistics relating to fire deaths and the outcome of other rescues. The information must be provided when and how specified by the Scottish Ministers.
125. **Section 118** amends the 2005 Act to insert new section 42A to allow the Scottish Ministers to give the SFRS a general or specific direction in relation to carrying out its functions. The Scottish Ministers must publish any directions and lay a copy before the Scottish Parliament. SFRS is required to comply with any such directions. A direction cannot be made in relation to adherence to the fire and rescue framework as the existing enforcement arrangements would apply in those circumstances.

126. **Section 119** inserts sections 43A to 43G into the 2005 Act. It describes the role, powers and functions of the Inspectors of the Scottish Fire and Rescue Service. New section 43A allows Her Majesty to appoint a Chief Inspector of the Scottish Fire and Rescue Service, and such number of other Inspectors as determined by the Scottish Ministers. The Scottish Ministers may themselves appoint Assistant Inspectors. **Section 43A(5)** makes clear that the individual who is the Chief Inspector of Fire and Rescue Authorities on the date the provision comes into force is to be the first Chief Inspector of the SFRS. The same applies to any Inspectors or Assistant Inspectors in post on that date. It is for the Scottish Ministers to set levels of pay for all such office holders. In addition, Ministers have a power to authorise an Inspector to carry out functions of the Chief Inspector in the event of a temporary vacancy in that office, or if the Chief Inspector is temporarily unable to carry out those functions.
127. Under new section 43B an Inspector has powers to inquire into the state and efficiency of SFRS, the manner in which SFRS is carrying out its functions and whether, in doing so, it is complying with its duty to make arrangements which secure best value. The Inspectors may independently initiate such inquiries, and must do so if so directed by the Scottish Ministers. SFRS must cooperate with the Inspectors' inquiries and, in particular, must provide any information or documents relating to its functions that the Inspector may require, and must grant them access to SFRS premises or equipment as required. The power of entry is not available in relation to private dwellings, and Inspectors do not have the power to enter premises by force.
128. Under new sections 43C and 43D, the Chief Inspector is required to produce a report of any inquiry completed under section 43B and must in all cases give the report to SFRS. If the inquiry is under section 43B(1) the Chief Inspector must give the Scottish Ministers such information in relation to the inquiry as they may request, and, where it relates to the state and efficiency of SFRS or its compliance with its duties in relation to best value, the Chief Inspector must give the report of the inquiry to the Scottish Ministers and lay it before the Scottish Parliament. If the inquiry relates to SFRS's carrying out of its functions, the Chief Inspector has discretion to provide a copy of the report to the Scottish Ministers. If the inquiry has been directed by the Scottish Ministers under s.43B(2), the Chief Inspector must give them a report of the inquiry and any other information relating to the inquiry that the Scottish Ministers request. The Chief Inspector must also then give a copy to SFRS. The Scottish Ministers must lay a copy of the report before the Scottish Parliament. New section 43E makes clear that SFRS must have regard to any reports it receives from the Chief Inspector when carrying out its functions, and must take such measures as it considers appropriate following receipt of the report, e.g. to implement any recommendations made by the Chief Inspector.
129. New section 43F puts in place a requirement for the Chief Inspector of the Scottish Fire and Rescue Service to prepare a plan setting out priority areas for inquiry by the Inspectors and how such inquiries will be carried out. He or she is required to keep the plan under review and may revise it periodically. The Chief Inspector is required to consult on, and publish, the plan and any revised plan. New section 43G requires the Inspectors and the Auditor General to co-operate and co-ordinate activity in relation to their functions relating to SFRS.
130. **Section 120** amends section 51 of the 2005 Act, to allow SFRS to employ special constables (who have been appointed under **section 9 in Part 1 of this Act**).

### **Sections 121-123– General**

131. **Section 121** introduces **schedule 6**, which makes provision about the transfer of staff, property, rights, liabilities and obligations to SFRS and to local authorities where appropriate. **Paragraph 1** of **schedule 6** defines terms used in the schedule, including defining the “appointed day” as the day the Scottish Ministers may appoint by order. There is no parliamentary procedure attached to such an order.



132. **Paragraphs 2-4** cover the arrangements for the transfer of staff and others. **Paragraph 2** covers the transfer of joint board staff. It provides that a joint board employee's contract of employment has effect on and after the appointed day as if originally made between the employee and the SFRS. **Sub-paragraph (4)** provides that an employee may advise they do not wish to become an employee of SFRS in advance of the appointed day, in which case their contract is terminated on the appointed day. A transferring employee is not to be treated as dismissed by virtue of the operation of any of these provisions. **Sub-paragraph (6)** provides that the right of any employee to terminate their contract of employment because of a substantial detrimental change in their working conditions is not affected. **Sub-paragraph (7)** provides that no such right arises simply because of a change in the identify of the employer.
133. **Paragraph 3** gives the Scottish Ministers power to make a staff transfer scheme to transfer staff employed in the unitary fire and rescue authorities or who are members of staff of the Scottish Ministers to SFRS. **Sub-paragraph (4)** provides that such a transfer scheme may only be made in relation to persons whose employment relates to the functions of SFRS. This is because only those employees who are carrying out fire and rescue functions should transfer to the SFRS. It is necessary therefore to identify those employees who are to transfer in a transfer scheme. **Paragraph 4** makes further provisions in relation to transfers under **paragraph 3**. It provides that the contract of employment for the person who is transferring has effect on or after the transfer day as if originally made between the employee and the SFRS. **Sub-paragraph (5)** provides that if an employee advises that they do not wish to become an employee of SFRS in advance of the transfer day, their contract is terminated on the day before the intended transfer day. A person is not to be treated as dismissed by virtue of the operation of any of these provisions. **Sub-paragraph (7)** provides that the right of any employee to terminate their contract of employment because of a substantial detrimental change in their working conditions is not affected. **Sub-paragraph (8)** provides that no such right arises simply because of a change in the identify of the employer. **Sub-paragraph (9)** places on obligation on the Scottish Ministers before making a staff transfer scheme to consult any local authority or other person who is affected by the making of that scheme.
134. **Paragraphs 5 – 7** cover property transfers. **Paragraph 5** allows the Scottish Ministers to make an SFRS property transfer scheme. This is a scheme making provision for the transfer to the SFRS of property, rights, liabilities and obligations of Ministers, a local authority or a joint fire and rescue board. **Paragraph 6** allows the Scottish Ministers to make a local authority transfer scheme to make provision for the transfer to a local authority of property, rights, liabilities and obligations of a joint board. Scottish Ministers must be provided with such information or assistance by local authorities and joint fire and rescue boards, as may reasonably be required in relation to transfer schemes under **paragraphs 5** and **6**. **Paragraph 7** makes general provisions in relation to schemes made under **paragraphs 5** and **6**, and **paragraph 8** makes general provision in relation to both staff and property transfer schemes.
135. **Section 122** is a transitory provision, requiring the current fire and rescue authorities and joint boards to provide information and assistance to the SFRS. There is a reasonable requirement test in relation to such information and assistance. It also allows for membership of the SFRS until the coming into force of **section 101(1)** in relation to new section 1A(2) of the 2005 Act. i.e. when SFRS has substantive functions conferred on it.
136. **Section 123** defines the meaning of “the 2005 Act” as the Fire (Scotland) Act 2005.