



# Policing and Crime Act 2017

## 2017 CHAPTER 3

### PART 1

#### EMERGENCY SERVICES COLLABORATION

### CHAPTER 2

#### POLICE AND CRIME COMMISSIONERS ETC: FIRE AND RESCUE FUNCTIONS

#### **8 Combined authority mayors: exercise of fire and rescue functions**

- (1) The Local Democracy, Economic Development and Construction Act 2009 is amended in accordance with subsections (2) to (4).
- (2) After section 107E insert—

#### **“107EA Exercise of fire and rescue functions**

- (1) This section applies to a mayor for the area of a combined authority who—
  - (a) by virtue of section 107D(1), may exercise functions which are conferred on a fire and rescue authority in that name (“fire and rescue functions”), and
  - (b) by virtue of section 107F(1), may exercise functions of a police and crime commissioner.
- (2) The Secretary of State may by order make provision—
  - (a) authorising the mayor to arrange for the chief constable of the police force for the police area which corresponds to the area of the combined authority to exercise fire and rescue functions exercisable by the mayor;
  - (b) authorising that chief constable to arrange for a person within subsection (4) to exercise the chief constable's fire and rescue functions.

*Status: Point in time view as at 17/07/2017.*

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- (3) An order under subsection (2) may provide that arrangements made under the order—
- (a) may authorise the exercise of any functions mentioned in that subsection;
  - (b) may authorise the exercise of any functions mentioned in that subsection other than those specified or described in the order;
  - (c) may authorise the exercise of such of the functions mentioned in that subsection as are specified or described in the order.
- (4) The persons mentioned in subsection (2)(b) are—
- (a) members of the chief constable's police force;
  - (b) the civilian staff of that police force, as defined by section 102(4) of the Police Reform and Social Responsibility Act 2011;
  - (c) members of staff transferred to the chief constable under a scheme made by virtue of section 107EC(1);
  - (d) members of staff appointed by the chief constable under section 107EC(2).
- (5) Provision in an order under section 107D(1) for a function to be exercisable only by the mayor for the area of a combined authority is subject to provision made by virtue of subsection (2).
- (6) This section is subject to—
- (a) section 107EB (section 107EA orders: procedure), and
  - (b) section 37 of the Fire and Rescue Services Act 2004 (prohibition on employment of police in fire-fighting).
- (7) In this section “fire and rescue functions”, in relation to a chief constable, means—
- (a) functions which are exercisable by the chief constable by virtue of provision made under subsection (2)(a), and
  - (b) functions relating to fire and rescue services which are conferred on the chief constable by or by virtue of any enactment.

### **107EB Section 107EA orders: procedure**

- (1) An order under section 107EA(2) may be made in relation to the mayor for the area of a combined authority only if the mayor has requested the Secretary of State to make the order.
- (2) A request under subsection (1) must be accompanied by a report which contains—
- (a) an assessment of why—
    - (i) it is in the interests of economy, efficiency and effectiveness for the order to be made, or
    - (ii) it is in the interests of public safety for the order to be made,
  - (b) a description of any public consultation which the mayor has carried out on the proposal for the order to be made,
  - (c) a summary of the responses to any such consultation, and

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- (d) a summary of the representations (if any) which the mayor has received about that proposal from the constituent members of the combined authority.
- (3) Before making the request the mayor must publish, in such manner as the mayor thinks appropriate, the mayor's response to the representations made or views expressed in response to any consultations on the proposal.
- (4) Subsections (5) to (7) apply if—
- (a) the mayor for the area of a combined authority makes a request under subsection (1) for the Secretary of State to make an order under section 107EA(2), and
  - (b) at least two thirds of the constituent members of the combined authority have indicated that they disagree with the proposal for the order to be made.
- (5) The mayor must, in providing the report under subsection (2), provide the Secretary of State with—
- (a) copies of the representations (if any) made by the constituent members of the combined authority about that proposal, and
  - (b) the mayor's response to those representations and to the responses to any public consultation which the mayor has carried out on that proposal.
- (6) The Secretary of State must—
- (a) obtain an independent assessment of that proposal, and
  - (b) in deciding whether to make the order, have regard to that assessment and to the material provided under subsection (5) (as well as the material provided under subsection (2)).
- (7) The Secretary of State must publish the independent assessment—
- (a) as soon as is reasonably practicable after making a determination in response to the proposal, and
  - (b) in such manner as the Secretary of State thinks appropriate.
- (8) An order under section 107EA(2) may be made only if it appears to the Secretary of State that—
- (a) it is in the interests of economy, efficiency and effectiveness for the order to be made, or
  - (b) it is in the interests of public safety for the order to be made.
- (9) The Secretary of State may not make an order under section 107EA(2) in a case within subsection (8)(a) of this section if the Secretary of State thinks that the order would have an adverse effect on public safety.
- (10) The Secretary of State may, in making an order under section 107EA(2) in relation to the mayor for the area of a combined authority, give effect to the mayor's proposal for the order with such modifications as the Secretary of State thinks appropriate.
- (11) Before making an order which gives effect to such a proposal with modifications, the Secretary of State must consult the mayor and the combined authority on the modifications.

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(12) In this section—

“constituent council”, in relation to a combined authority, means—

- (a) a county council the whole or any part of whose area is within the area of the combined authority, or
- (b) a district council whose area is within the area of the combined authority;

“constituent member”, in relation to a combined authority, means a member of the authority appointed by a constituent council (but does not include the mayor for the area of the combined authority).

### **107EC Section 107EA orders: further provision**

- (1) An order under section 107EA(2) may make provision for the making of a scheme to transfer property, rights and liabilities (including criminal liabilities)—
  - (a) from a fire and rescue authority or the combined authority to the chief constable, or
  - (b) from the chief constable to the combined authority,
 (including provision corresponding to any provision made by section 17(4) to (6) of the Localism Act 2011).
- (2) A chief constable to whom an order under section 107EA(2) applies may appoint staff for the purpose of the exercise of the chief constable's fire and rescue functions.
- (3) A chief constable to whom an order under section 107EA(2) applies may—
  - (a) pay remuneration, allowances and gratuities to members of the chief constable's fire and rescue staff;
  - (b) pay pensions to, or in respect of, persons who are or have been such members of staff;
  - (c) pay amounts for or towards the provision of pensions to, or in respect of, persons who are or have been such members of staff.
- (4) In subsection (3) “allowances”, in relation to a member of staff, means allowances in respect of expenses incurred by the member of staff in the course of employment as such a member of staff.
- (5) Subject to subsections (6) to (8), a person who is employed pursuant to a transfer by virtue of subsection (1) or an appointment under subsection (2) may not at the same time be employed pursuant to an appointment by a chief constable of the police force for a police area under Schedule 2 to the Police Reform and Social Responsibility Act 2011.
- (6) Where an order under section 107EA(2) is in force in relation to the chief constable of the police force for a police area, the person who is for the time being the police force's chief finance officer is to be responsible for the proper administration of financial affairs relating to the exercise of the chief constable's fire and rescue functions.
- (7) Subsection (5) does not prevent a person who is employed as a finance officer for fire functions from being at the same time employed as a finance officer for police functions.

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(8) In subsection (7)—

“finance officer for fire functions” means a member of a chief constable's fire and rescue staff who—

- (a) is not a chief finance officer of the kind mentioned in subsection (6), and
- (b) is employed to carry out duties relating to the proper administration of financial affairs relating to the exercise of the chief constable's fire and rescue functions;

“finance officer for police functions” means a member of a chief constable's civilian staff within the meaning of the Police Reform and Social Responsibility Act 2011 who—

- (a) is not a chief finance officer of the kind mentioned in subsection (6), and
- (b) is employed to carry out duties relating to the proper administration of a police force's financial affairs.

(9) Where an order under section 107EA(2) is in force, the combined authority to which the order applies must pay—

- (a) any damages or costs awarded against the chief constable to whom the order applies in any proceedings brought against the chief constable in respect of the acts or omissions of a member of the chief constable's fire and rescue staff;
- (b) any costs incurred by the chief constable in any such proceedings so far as not recovered by the chief constable in the proceedings;
- (c) any sum required in connection with the settlement of any claim made against the chief constable in respect of the acts or omissions of a member of the chief constable's fire and rescue staff, if the settlement is approved by the authority.

(10) Where an order under section 107EA(2) is in force, the combined authority to which the order applies may, in such cases and to such extent as appears to the authority to be appropriate, pay—

- (a) any damages or costs awarded against a member of the fire and rescue staff of the chief constable to whom the order applies in proceedings for any unlawful conduct of that member of staff;
- (b) costs incurred and not recovered by such a member of staff in such proceedings;
- (c) sums required in connection with the settlement of a claim that has or might have given rise to such proceedings.

(11) In this section—

“fire and rescue functions” has the same meaning as in section 107EA;

“fire and rescue staff”, in relation to a chief constable to whom an order under section 107EA(2) applies, means—

- (a) staff transferred to the chief constable under a scheme made by virtue of subsection (1);
- (b) staff appointed by the chief constable under subsection (2).

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### **107ED Section 107EA orders: exercise of fire and rescue functions**

- (1) This section applies if—
  - (a) an order under section 107EA(2) makes provision in relation to the area of a combined authority, and
  - (b) by virtue of the order, fire and rescue functions exercisable by the mayor for the area of the combined authority are exercisable by the chief constable of the police force for the police area which corresponds to that area.
- (2) The chief constable must secure that good value for money is obtained in exercising—
  - (a) functions which are exercisable by the chief constable by virtue of the order, and
  - (b) functions relating to fire and rescue services which are conferred on the chief constable by or by virtue of any enactment.
- (3) The chief constable must secure that other persons exercising functions by virtue of the order obtain good value for money in exercising those functions.
- (4) The mayor must—
  - (a) secure the exercise of the duties which are exercisable by the chief constable or another person by virtue of the order,
  - (b) secure the exercise of the duties relating to fire and rescue services which are imposed on the chief constable by or by virtue of any enactment,
  - (c) secure that functions which are exercisable by the chief constable or another person by virtue of the order are exercised efficiently and effectively, and
  - (d) secure that functions relating to fire and rescue services which are conferred or imposed on the chief constable by or by virtue of any enactment are exercised efficiently and effectively.
- (5) The mayor must hold the chief constable to account for the exercise of such functions.

### **107EE Section 107EA orders: complaints and conduct matters etc**

- (1) If an order is made under section 107EA(2) that enables arrangements to be made for the exercise of functions by members of a police force or the civilian staff of a police force, the Secretary of State may by order amend Part 2 of the Police Reform Act 2002 (persons serving with the police: complaints and conduct matters etc) in consequence of that provision.
- (2) If an order is made under section 107EA(2) that enables arrangements to be made for the exercise of functions by members of staff transferred to a chief constable under a scheme made by virtue of section 107EC(1) or appointed by a chief constable under section 107EC(2), the Secretary of State may by order make provision of the type described in subsection (3) in relation to those members of staff.
- (3) The provision referred to in subsection (2) is—

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- (a) provision corresponding or similar to any provision made by or under Part 2 of the Police Reform Act 2002;
  - (b) provision applying (with or without modifications) any provision made by or under Part 2 of that Act.
- (4) The Secretary of State may by order, in consequence of any provision made under subsection (2), amend Part 2 of the Police Reform Act 2002.
- (5) Before making an order under this section the Secretary of State must consult—
- (a) the Police Advisory Board for England and Wales,
  - (b) the Independent Police Complaints Commission,
  - (c) such persons as appear to the Secretary of State to represent the views of police and crime commissioners,
  - (d) such persons as appear to the Secretary of State to represent the views of fire and rescue authorities, and
  - (e) such other persons as the Secretary of State considers appropriate.

#### **107EF Section 107EA orders: application of fire and rescue provisions**

- (1) The Secretary of State may by order—
- (a) apply (with or without modifications) any provision of a fire and rescue enactment in relation to a person within subsection (2);
  - (b) make, in relation to a person within subsection (2), provision corresponding or similar to any provision of a fire and rescue enactment.
- (2) Those persons are—
- (a) a chief constable of a police force for a police area to whom an order under section 107EA(2) applies,
  - (b) a member of staff transferred to such a chief constable under a scheme made by virtue of section 107EC(1),
  - (c) a member of staff appointed by such a chief constable under section 107EC(2),
  - (d) a member of such a chief constable's police force by whom functions are exercisable by virtue of section 107EA(2)(b), and
  - (e) a member of the civilian staff of such a police force (as defined by section 102(4) of the Police Reform and Social Responsibility Act 2011) by whom functions are exercisable by virtue of section 107EA(2)(b).
- (3) The power conferred by subsection (1)(a) or (b) includes power to apply (with or without modifications) any provision made under a fire and rescue enactment or make provision corresponding or similar to any such provision.
- (4) The Secretary of State may by order amend, revoke or repeal a provision of or made under an enactment in consequence of provision made by virtue of subsection (1).
- (5) In this section “fire and rescue enactment” means an enactment relating to a fire and rescue authority (including, in particular, an enactment relating to an employee of such an authority or property of such an authority).

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- (6) References in this section to an enactment or to provision made under an enactment are to an enactment whenever passed or (as the case may be) to provision whenever the instrument containing it is made.

### **107EG Section 107EA orders: application of local policing provisions**

- (1) The Secretary of State may by order—
- (a) apply (with or without modifications) any provision of a local policing enactment in relation to a person within subsection (2);
  - (b) make, in relation to such a person, provision corresponding or similar to any provision of a local policing enactment.
- (2) Those persons are—
- (a) a mayor for the area of a combined authority to whom an order under section 107EA(2) applies,
  - (b) a chief constable to whom such an order applies, and
  - (c) a panel established by virtue of an order under paragraph 4 of Schedule 5C for such an area.
- (3) The power conferred by subsection (1)(a) or (b) includes power to apply (with or without modifications) any provision made by or under a local policing enactment or make provision corresponding or similar to any such provision.
- (4) The Secretary of State may by order amend, revoke or repeal a provision of or made under an enactment in consequence of provision made by virtue of subsection (1).
- (5) In this section “local policing enactment” means an enactment relating to a police and crime commissioner.
- (6) References in this section to an enactment or to provision made under an enactment are to an enactment whenever passed or (as the case may be) to provision whenever the instrument containing it is made.”
- (3) In section 107D(6)(b) (general functions exercisable by the mayor for the area of a combined authority) after “section 107E” insert “ or 107EA ”.
- (4) In section 120 (interpretation) after the definition of “EPB” insert—
- ““fire and rescue authority” means a fire and rescue authority under the Fire and Rescue Services Act 2004;”.
- (5) In section 26 of the Fire Services Act 1947 (firefighters' pension scheme) (as continued in force by order under section 36 of the Fire and Rescue Services Act 2004) in subsection (5A) (as inserted by paragraph 14 of Schedule 1)—
- (a) omit the “or” at the end of paragraph (a), and
  - (b) after paragraph (b) insert—
    - “(c) a transfer to the chief constable under a scheme made by virtue of section 107EC(1) of the Local Democracy, Economic Development and Construction Act 2009, or
    - (d) an appointment by the chief constable under section 107EC(2) of that Act.”



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- (6) In section 63 of the Police Act 1996 (Police Advisory Board for England and Wales) in subsection (4) (as inserted by paragraph 76 of Schedule 1) for “also imposes a requirement” substitute “ and section 107EE of the Local Democracy, Economic Development and Construction Act 2009 also impose requirements ”.
- (7) In section 38 of the Police Reform Act 2002 (police powers for civilian staff) in subsection (11A) (as inserted by paragraph 82 of Schedule 1) after paragraph (b) insert—
- “(c) any member of staff transferred to that chief constable under a scheme made by virtue of section 107EC(1) of the Local Democracy, Economic Development and Construction Act 2009 (transfer of property, rights and liabilities to chief constable to whom fire functions of combined authority may be delegated);
- (d) any member of staff appointed by that chief constable under section 107EC(2) of that Act (appointment of staff by chief constable to whom fire functions of combined authority may be delegated).”
- (8) In section 34 of the Fire and Rescue Services Act 2004 (pensions etc) in subsection (11) (as inserted by paragraph 11 of Schedule 1)—
- (a) omit the “or” at the end of paragraph (a), and
- (b) after paragraph (b) insert—
- “(c) transferred to the chief constable under a scheme made by virtue of section 107EC(1) of the Local Democracy, Economic Development and Construction Act 2009, or
- (d) appointed by the chief constable under section 107EC(2) of that Act.”
- (9) In section 37 of the Fire and Rescue Services Act 2004 (prohibition on employment of police in fire-fighting) (as substituted by paragraph 12 of Schedule 1) in subsection (3) —
- (a) after “whom” insert “ —(a) ”, and
- (b) after paragraph (a) insert “, or
- (b) functions of a fire and rescue authority which are exercisable by the mayor of a combined authority have been delegated under an order under section 107EA(2) of the Local Democracy, Economic Development and Construction Act 2009.”
- (10) In Schedule 8 to the Police Reform and Social Responsibility Act 2011 (appointment, suspension and removal of senior police officers) in paragraph 2 (no appointment until end of confirmation process) in sub-paragraph (1AA) (as inserted by paragraph 93 of Schedule 1) after “section 4H of the Fire and Rescue Services Act 2004” insert “ or section 107EA(2) of the Local Democracy, Economic Development and Construction Act 2009 ”.
- (11) In Schedule 1 to the Public Service Pensions Act 2013 (persons in public service: definitions) in paragraph 6 (fire and rescue workers) in paragraph (aa) (as inserted by paragraph 95 of Schedule 1)—
- (a) omit the “or” at the end of sub-paragraph (i), and
- (b) for the “or” at the end of sub-paragraph (ii) substitute—
- “(iii) transferred to the chief constable under a scheme made by virtue of section 107EC(1) of the

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Local Democracy, Economic Development and  
Construction Act 2009, or  
(iv) appointed by the chief constable under  
section 107EC(2) of that Act, or”.

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**Commencement Information**

- I1** S. 8 in force for specified purposes at Royal Assent, see. s, 183  
**I2** S. 8 in force at 17.7.2017 in so far as not already in force by [S.I. 2017/726](#), **reg. 2(a)**

**Status:**

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