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STATUTORY INSTRUMENTS

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**2017 No. 863**

**The Fire and Rescue Authority (Police and Crime Commissioner) (Application of Local Policing Provisions, Inspection, Powers to Trade and Consequential Amendments) Order 2017**

**PART 1**

**General**

**Citation, commencement and application**

1.—(1) This Order may be cited as the Fire and Rescue Authority (Police and Crime Commissioner) (Application of Local Policing Provisions, Inspection, Powers to Trade and Consequential Amendments) Order 2017 and comes into force on 1st October 2017.

(2) This Order applies to England only.

**Interpretation**

2. In this Order—

“the FRS Act 2004” means the Fire and Rescue Services Act 2004;

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

“chief fire officer” means the person with responsibility for managing the fire and rescue service;

“fire and rescue service” means the personnel, services and equipment secured by the Authority for the purposes of carrying out the Authority’s functions under—

- (a) section 6 of the FRS Act 2004 (fire safety);
- (b) section 7 of that Act (fire-fighting);
- (c) section 8 of that Act (road traffic accidents);
- (d) any order under section 9 of that Act (emergencies) which applies to the Authority;
- (e) section 2 of the Civil Contingencies Act 2004 (duty to assess, plan and advise)(1) and any subordinate legislation under that Act applying to the Authority;
- (f) any other provision of or made under an enactment which confers functions on a fire and rescue authority;

“relevant police and crime panel” in relation to an Authority means the police and crime panel for the police area—

- (a) which corresponds to the area of the Authority; or

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(1) 2004 c. 36. There are amendments to section 2 that are not relevant to this Order.

- (b) within which the area of the Authority falls.

## PART 2

### Appointment, Suspension and Dismissal of the Chief Fire Officer

#### CHAPTER 1

##### Appointment

###### **Appointment of the chief fire officer**

- 3. An Authority must comply with articles 4 to 14 in appointing a person to be chief fire officer<sup>(2)</sup>.

###### **No appointment until end of confirmation process**

4.—(1) An Authority must not appoint a person to be chief fire officer unless the end of the confirmation process has been reached.

- (2) The end of the confirmation process is reached in a case to which article 9 applies—
  - (a) where the relevant police and crime panel makes a recommendation in relation to the appointment, on the date on which the Authority notifies the panel of its decision whether or not to accept that recommendation under article 9(3); or
  - (b) where the relevant police and crime panel does not make a report in relation to the appointment, at the end of the period of three weeks starting with the day on which the panel receives the notification from the Authority of the proposed appointment.
- (3) The end of the confirmation process is reached in a case to which article 10 applies—
  - (a) where the relevant police and crime panel does not make a report in relation to the appointment, at the end of the period of three weeks starting with the day on which the police and crime panel receives the notification from the Authority of the proposed appointment; or
  - (b) where the relevant police and crime panel makes a recommendation in relation to the appointment under article 12, the date on which the Authority notifies the panel of its decision whether or not to accept that recommendation under article 13(b).

###### **Notification of proposed appointment**

5.—(1) An Authority must notify the relevant police and crime panel of each proposed appointment of a chief fire officer by the Authority.

(2) In such a case, the Authority must also notify the relevant police and crime panel of the following information—

- (a) the name of the person whom the Authority is proposing to appoint (“the candidate”);
- (b) the criteria used to assess the suitability of the candidate for the appointment;
- (c) why the candidate satisfies those criteria; and
- (d) the terms and conditions on which the candidate is to be appointed.

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(2) The provisions in Chapter 1 of Part 2 correspond to Part 1 of Schedule 8 to the Police Reform and Social Responsibility Act 2011 and Part 3 of [S.I. 2012/2271](#).

### **Panel to review and report on proposed appointment**

6.—(1) This paragraph applies if a relevant police and crime panel is notified under article 5 of a proposed appointment of a chief fire officer.

(2) The panel must review the proposed appointment.

(3) The panel must make a report to the Authority on the proposed appointment.

(4) Subject to article 7(2) the report must include a recommendation to the Authority as to whether or not the candidate should be appointed.

(5) The panel must comply with paragraphs (2) to (4) within the period of three weeks beginning with the day on which the panel receives the notification from the Authority of the proposed appointment.

(6) The panel must publish the report made to the Authority under this paragraph.

(7) In calculating the period of three weeks for the purpose of paragraph (5), any relevant post-election period is to be ignored.

(8) In this article and articles 12 and 22 “relevant post-election period” means the period that—

(a) begins with the day of the poll at an ordinary election of a police and crime commissioner under section 50 of the Police Reform and Social Responsibility Act 2011(3); and

(b) ends with the day on which the person elected as police and crime commissioner delivers a declaration of acceptance under section 70 of that Act.

### **Power of panel to veto proposed appointment**

7.—(1) The relevant police and crime panel may, having reviewed the proposed appointment, veto the appointment of the candidate.

(2) If the panel vetoes the appointment of the candidate, the report made under article 6 must include a statement that the panel has vetoed it.

(3) References in this Part to a police and crime panel vetoing the appointment of a candidate are references to the panel making a decision, by the required majority, that the candidate should not be appointed as chief fire officer.

(4) For that purpose, the panel makes that decision by the required majority if at least two-thirds of the persons who are members of the panel at the time when the decision is made vote in favour of making that decision.

(5) The power conferred by this paragraph is exercisable in relation to a proposed appointment only during the period of three weeks mentioned in article 6(5).

### **Confirmation hearings**

8.—(1) A relevant police and crime panel must hold a confirmation hearing—

(a) before making a report under article 6 to the Authority in relation to a proposed appointment; and

(b) before making a recommendation under article 6 (where applicable) or vetoing an appointment under article 7 (where applicable).

(2) For the purposes of this article—

(a) “confirmation hearing” is a meeting of the panel, held in public, at which the candidate is requested to appear for the purpose of answering questions relating to the appointment.

(b) references to a person appearing at a meeting of the panel are references to the person—

- (i) attending the meeting in person; or
- (ii) not attending the meeting in person, but participating in the proceedings at the meeting by any means that enable the person to hear, and be heard in, those proceedings as they happen.

#### **Next steps if no veto**

**9.**—(1) This article applies if the relevant police and crime panel does not veto the appointment of a candidate.

(2) The Authority may accept or reject the panel’s recommendation as to whether or not the candidate should be appointed.

(3) The Authority must notify the panel of the decision whether to accept or reject the recommendation.

#### **Next steps if veto**

**10.**—(1) This article applies if the relevant police and crime panel vetoes the appointment of a candidate.

(2) The Authority must not appoint that candidate as the chief fire officer.

#### **Veto: proposal of reserve candidate**

**11.**—(1) Where the relevant police and crime panel exercises the power under article 7 the Authority shall propose another person for appointment as the chief fire officer (“a reserve candidate”).

(2) The Authority proposes a reserve candidate by notifying the panel of the following information—

- (a) the name of the reserve candidate;
- (b) the criteria used to assess the suitability of the reserve candidate for the appointment;
- (c) why the reserve candidate satisfies those criteria; and
- (d) the terms and conditions on which the reserve candidate is to be appointed.

#### **Panel’s consideration of reserve candidate**

**12.**—(1) Within the period of three weeks beginning with the day on which the relevant police and crime panel receives notification under article 11(2) the panel shall—

- (a) review the proposed appointment; and
- (b) make a report to the Authority on the proposed appointment.

(2) Before making a report under paragraph (1)(b), the panel must hold a confirmation hearing within the meaning of article 8(2)(a).

(3) The report made under paragraph (1)(b) must include a recommendation to the Authority as to whether or not the reserve candidate should be appointed.

(4) The panel must publish the report made under paragraph (1)(b).

(5) In calculating the period of three weeks for the purpose of paragraph (1), any relevant post-election period within the meaning of article 6(8) is to be ignored.

### **Authority's consideration of report**

13. On receiving a report under article 12(1)(b) the Authority shall—
- (a) have regard to the report (including the recommendation in the report); and
  - (b) notify the panel of its decision as to whether it accepts or rejects the recommendation.

### **Appointment of the chief fire officer**

- 14.—(1) After the Authority gives the notification mentioned in article 13(b) it may then—
- (a) appoint the reserve candidate as the chief fire officer; or
  - (b) propose another person for such appointment.
- (2) Where a proposal is made under paragraph (1)(b), articles 11 to 14 apply in relation to that person as if the proposal had been made under article 11(1) (and accordingly the person is treated for these purposes as a reserve candidate).

## CHAPTER 2

### Suspension

### **Suspension of the chief fire officer**

15. If an Authority suspends the chief fire officer the Authority must notify the relevant police and crime panel of the suspension(4).

## CHAPTER 3

### Dismissal

### **Dismissal of the chief fire officer**

16. An Authority must comply with articles 17 to 23 in relation to the dismissal of the chief fire officer(5).

### **No dismissal until the end of the scrutiny process**

- 17.—(1) An Authority must not dismiss the chief fire officer until the end of the scrutiny process has been reached.
- (2) The end of the scrutiny process is reached when the first of the following events occurs—
- (a) the period of six weeks mentioned in article 22(2) has ended without the relevant police and crime panel having given the Authority any recommendation as to whether or not the Authority should dismiss the chief fire officer;
  - (b) the Authority notifies the relevant police and crime panel under article 23(2) of the decision whether or not the Authority accepts the panel's recommendation in relation to the proposed dismissal.

### **Authority's duty to consult chief fire and rescue inspector for England**

18. If an Authority is proposing to dismiss the chief fire officer the Authority must—
- (a) obtain the views of the chief fire and rescue inspector for England(6) in writing; and

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(4) This provision corresponds to paragraph 11 of Schedule 8 to the Police Reform and Social Responsibility Act 2011.

(5) The provisions in Chapter 3 of Part 2 correspond or make similar provision to paragraphs 12 to 19 of Schedule 8 to the Police Reform and Social Responsibility Act 2011 and regulation 11A of S.I. 2003/527.

(6) See section 28(A2) of the Fire and Rescue Services Act 2004.

- (b) have regard to those written views.

### **Notification and explanation of proposal to dismiss**

**19.** If, having complied with article 18, the Authority proposes to dismiss the chief fire officer the Authority must —

- (a) give the chief fire officer—
  - (i) a written explanation of the reasons why the Authority is proposing dismissal; and
  - (ii) a copy of the written views of the chief fire and rescue inspector for England obtained by the Authority under article 18;
- (b) give the relevant police and crime panel—
  - (i) written notification that the Authority is proposing to dismiss the chief fire officer;
  - (ii) a copy of the reasons given to the chief fire officer in accordance with subparagraph (a)(i); and
  - (iii) a copy of the written views of the chief fire and rescue inspector for England obtained by the Authority under article 18.

### **Representations from the chief fire officer**

**20.—**(1) The Authority must give the chief fire officer the opportunity to make written representations in response to the Authority’s proposal to dismiss the chief fire officer.

- (2) The Authority must—
  - (a) consider any such written representations; and
  - (b) give the relevant police and crime panel a copy of any such representations as soon as practicable after the Authority is given them.

### **Authority’s response to representations**

**21.—**(1) An Authority must comply with this article if, after complying with article 20, the Authority is still proposing to dismiss the chief fire officer.

- (2) The Authority must notify —
  - (a) the chief fire officer; and
  - (b) the relevant police and crime panel

that it is still proposing to dismiss the chief fire officer.

(3) The Authority must at the time of giving the chief fire officer and the police and crime panel notification of the Authority’s intention under paragraph (2)—

- (a) give the chief fire officer and the panel a written explanation of the reasons why the Authority still proposes to dismiss the chief fire officer;
- (b) give the chief fire and rescue inspector for England a copy of the notification and explanation; and
- (c) unless the person who is for the time being designated as the head of the Authority’s paid service under section 4 of the Local Government and Housing Act 1989<sup>(7)</sup> is also the chief fire officer, give the head of the Authority’s paid service a copy of the notification, the explanation and the written views of the chief fire and rescue inspector for England obtained in accordance with article 18.

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(7) 1989 c. 42. Relevant amendments to section 4 were made by section 6 of, and paragraphs 60, 62(1) and (3) of Schedule 1 to, the Policing and Crime Act 2017.

### **Role of panel**

**22.**—(1) Where the Authority notifies the relevant police and crime panel under article 21 that it is still proposing to dismiss the chief fire officer the panel must make a recommendation to the Authority as to whether or not the Authority should dismiss the chief fire officer.

(2) The recommendation must be given to the Authority in writing before the end of the period of six weeks beginning on the day on which the panel receives the notification under article 21.

(3) In calculating the period of six weeks for the purposes of paragraph (2), any relevant post-election period is to be ignored.

(4) Before making the recommendation the panel—

(a) may consult the chief fire and rescue inspector for England; and

(b) must hold a scrutiny hearing.

(5) In this article “scrutiny hearing” means a meeting of the panel held in private which the Authority and the chief fire officer are both entitled to attend for the purpose of making representations relating to the Authority’s proposal to dismiss the chief fire officer.

(6) The reference in paragraph (5) to attending a meeting of the panel includes participating in the proceedings at the meeting by any means that enable the person to hear, and to be heard in, those proceedings as they happen.

(7) The panel must publish the recommendation made to the Authority under this article.

### **Authority’s response to panel’s recommendation**

**23.**—(1) The Authority must—

(a) consider the relevant police and crime panel’s recommendation under article 22; and

(b) having considered that recommendation may accept or reject it.

(2) The Authority must notify the panel of the decision whether or not to accept the recommendation.

## **PART 3**

### **Exercise of functions of Chief Fire Officer**

#### **Securing good value for money**

**24.**—(1) The chief fire officer must secure that good value for money is obtained in exercising the officer’s functions.

(2) The duty in paragraph (1) includes securing that the persons under the direction and control of the chief fire officer obtain good value for money in exercising their functions.

#### **Regard to the fire and rescue plan**

**25.**—(1) The chief fire officer must in exercising the officer’s functions have regard to the fire and rescue plan of the Authority in which the officer is employed.

(2) In this article “fire and rescue plan” has the meaning given in Schedule A2 to the FRS Act 2004.

## PART 4

### Inspection

#### Functions to be excluded from inspection

**26.**—(1) The following are excluded functions for the purposes of section 28(A6) of the FRS Act 2004**(8)**—

- (a) the function of approving the integrated risk management plan;
  - (b) the function of appointing, suspending or dismissing the chief fire officer;
  - (c) the function of holding the chief fire officer to account for the exercise of—
    - (i) the functions which are delegated to the chief fire officer in accordance with an order made under section 4A of the FRS Act 2004; and
    - (ii) the functions of persons under the direction and control of the chief fire officer;
  - (d) the function of approving a pay policy statement prepared for the purposes of section 38 of the Localism Act 2011**(9)**;
  - (e) the function of approving arrangements to enter into a reinforcement scheme under section 13 of the FRS Act 2004 (reinforcement schemes);
  - (f) the function of approving arrangements with other employers of firefighters under section 15 of the FRS Act 2004 (arrangements with other employers of firefighters);
  - (g) the function of approving arrangements under section 16 of the FRS Act 2004 (arrangements for discharge of functions by others);
  - (h) the function of approving plans, modifications to plans and additions to plans for the purpose of ensuring that—
    - (i) so far as is reasonably practicable, the Authority is able to continue to perform its fire and rescue functions if an emergency occurs; and
    - (ii) the Authority is able to perform its functions so far as necessary or desirable for the purpose of preventing an emergency, or reducing, controlling or mitigating the effects of an emergency, or taking other action in connection with it;
  - (i) the function of approving any arrangements for the co-operation of the Authority in relation to its fire and rescue functions with other general Category 1 responders and general Category 2 responders in respect of—
    - (i) the performance of the Authority’s duty as a fire and rescue authority under section 2 of the Civil Contingencies Act 2004**(10)**; and
    - (ii) any duties under subordinate legislation made in exercise of powers under that Act.
- (2) In this article —
- (a) in paragraph (1)(a) “integrated risk management plan” means a plan which is —
    - (i) prepared and published by the Authority in accordance with the requirements of the Fire and Rescue National Framework**(11)**; and
    - (ii) sets out for the period covered by the document—

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**(8)** See also section 28(A7)(a) to (d) of the Fire and Rescue Services Act 2004.

**(9)** 2011 c. 20.

**(10)** Category 1 responders general are listed in Part 1, and Category 2 responders general are listed in Part 3 of Schedule 1 to the Civil Contingencies Act 2004. There are amendments to Schedule 1 which are not relevant to this Order.

**(11)** The Fire and Rescue National Framework is prepared by the Secretary of State under section 21 of the Fire and Rescue Services Act 2004.



- (aa) an assessment of all foreseeable fire and rescue related risks that could affect the area of the Authority; and
  - (bb) proposals, including about the allocation of resources, for the mitigation of those risks;
- (b) in paragraph (1)(h) “emergency” has the meaning given in section 1 of the Civil Contingencies Act 2004 for Part 1 of that Act.

## PART 5

### Power to Trade

#### Power to trade in function-related activities

**27.**—(1) Subject to paragraphs (2) and (3), an Authority is authorised to do for a commercial purpose anything which it is authorised to do for the purpose of carrying on any of its ordinary functions.

(2) Before exercising the power conferred by paragraph (1), the Authority shall—

- (a) prepare a business case in support of the proposed exercise of that power; and
- (b) approve that business case.

(3) An Authority shall recover the costs of any accommodation, goods, services, staff or any other thing that it supplies to a company in pursuance of any agreement or arrangement to facilitate the exercise of the power conferred by paragraph (1).

(4) In this article, “business case” means a comprehensive statement as to—

- (a) the objectives of the business,
- (b) the investment and other resources required to achieve those objectives,
- (c) any risks the business might face and how significant these risks are, and
- (d) the expected financial results of the business, together with any other relevant outcomes that the business is expected to achieve.

## PART 6

### Application with Modifications of Local Policing Enactments

**28.** The following local policing enactments apply to an Authority with the modifications set out in Schedule 1—

- (a) the Elected Local Policing Bodies (Specified Information) Order 2011(**12**);
- (b) the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012(**13**); and
- (c) the Police and Crime Panels (Precepts and Chief Constable Appointments) Regulations 2012(**14**).

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(12) S.I. 2011/3050 amended by S.I. 2012/2479 and S.I. 2013/1816.

(13) S.I. 2012/62.

(14) S.I. 2012/2271.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## PART 7

### Consequential Amendments

**29.** The enactments set out in Schedule 2 are amended as set out in that Schedule.

6th September 2017

*Nick Hurd*  
Minister of State  
Home Office