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STATUTORY INSTRUMENTS

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**2017 No. 864**

**FIRE AND RESCUE SERVICES, ENGLAND  
POLICE, ENGLAND**

The Police, Fire and Crime Commissioner for  
Essex (Fire and Rescue Authority) Order 2017

<i>Made</i>	- - - -	<i>6th September 2017</i>
<i>Laid before Parliament</i>		<i>8th September 2017</i>
<i>Coming into force</i>	- -	<i>1st October 2017</i>

The Secretary of State in exercise of the powers conferred by sections 4A(1), 4B(3)(c), 4D(10), (13) and (14), 4M(2)(b) and 60(2) of the Fire and Rescue Services Act 2004<sup>(1)</sup>, makes the following Order.

A proposal has been submitted to the Secretary of State in accordance with section 4A(4) of the Fire and Rescue Services Act 2004. It appears to the Secretary of State in accordance with section 4A(5) (a) of the Fire and Rescue Services Act 2004 that it is in the interests of economy, efficiency and effectiveness for the Order to be made and the Secretary of State does not think that the Order would have an adverse effect on public safety<sup>(2)</sup>.

**PART 1**

General

**Citation and commencement**

1. This Order may be cited as the Police, Fire and Crime Commissioner for Essex (Fire and Rescue Authority) Order 2017 and comes into force on 1st October 2017.

**Interpretation**

2. In this Order—

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- (1) 2004 c. 21. Sections 4A, 4B, 4D and 4M were inserted by section 6 of, and paragraphs 1 and 5 of Schedule 1 to, the Policing and Crime Act 2017 (c. 3).
- (2) The Secretary of State may not make an order on the grounds that it appears to be in the interests of economy, efficiency and effectiveness if the Secretary of State thinks that the order would have an adverse effect on public safety; see section 4A(6) of the Fire and Rescue Services Act 2004.

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

“Authority” means the fire and rescue authority created in accordance with article 3;

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

“DPCC” means the deputy police and crime commissioner for Essex;

“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)<sup>(3)</sup> and any subordinate legislation made 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;

“integrated risk management plan” means a plan which—

- (a) is prepared and published by the Authority in accordance with the requirements of the Fire and Rescue National Framework<sup>(4)</sup>; and
- (b) sets out for the period covered by the document—
  - (i) an assessment of all foreseeable fire and rescue related risks that could affect the area of the Authority; and
  - (ii) proposals, including about the allocation of resources, for the mitigation of those risks;

“member of staff of the Authority” means—

- (a) staff transferred to the Authority under a transfer scheme made under section 4C of the FRS Act 2004; and
- (b) staff appointed by the Authority under section 4D of the FRS Act 2004;

“member of staff of the PCC” means any of the following persons appointed by the PCC under paragraph 6 of Schedule 1 to the Police Reform and Social Responsibility Act 2011 (police and crime commissioners)<sup>(5)</sup>—

- (a) the commissioner’s chief executive;
- (b) the commissioner’s chief finance officer;
- (c) other staff;

“PCC” means the police and crime commissioner for Essex;

“Police, Fire and Crime Panel for Essex” means the police and crime panel established and maintained in accordance with Schedule 6 to the Police Reform and Social Responsibility Act 2011 (police and crime panels) for the Essex police area.

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(3) 2004 c. 36; there are amendments to section 2 and Schedule 1 which are not relevant to this Order.

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

(5) 2011 c. 13.

## PART 2

### Creation of Fire and Rescue Authority

#### Provision for PCC to be fire and rescue authority

3.—(1) A corporation sole is created as the fire and rescue authority for the area specified in paragraph (3).

(2) The person who is for the time being the PCC is for the time being to be that fire and rescue authority(6).

(3) The area specified in this paragraph is the areas of the councils of the boroughs of Southend-on-Sea and Thurrock and Essex County Council.

(4) The corporation sole created under paragraph (1) is to be known as the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority.

## PART 3

### Arrangements for the Exercise of Functions

#### Arrangements for the exercise of functions

4.—(1) Subject to articles 5, 6 and 8 the Authority may make such arrangements as it considers appropriate for the delegation of its functions to—

- (a) the DPCC;
- (b) a member of staff of the Authority; or
- (c) a member of staff of the PCC.

(2) Where the Authority delegates functions to the DPCC, the DPCC may be known as the Deputy Police, Fire and Crime Commissioner for Essex.

#### Functions to be exercised only by the Authority

5.—(1) The Authority may not make arrangements under article 4(1) for the delegation of the following functions—

- (a) the function of calculating a council tax requirement (see section 42A of the Local Government Finance Act 1992(7));
- (b) the function of approving the fire and rescue plan and the fire and rescue statement (within the meaning of Schedule A2 of the FRS Act 2004)(8);
- (c) the function of approving the integrated risk management plan;
- (d) the function of appointing, suspending or dismissing the chief fire officer;
- (e) the function of holding the chief fire officer to account in accordance with article 9;

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(6) This person will be known as the Police, Fire and Crime Commissioner for Essex; see section 1(3A) and (3B) of the Police Reform and Social Responsibility Act 2011 as inserted by section 6 of, and paragraphs 86, 87(1) and 87(3) of Schedule 1 to, the Policing and Crime Act 2017.

(7) 1992 c. 14. Section 42A was inserted by section 75 of the Localism Act 2011 (c. 20).

(8) Schedule A2 of the Fire and Rescue Services Act 2004 was inserted by section 6 of, and paragraphs 1 and 13 of Schedule 1 to, the Policing and Crime Act 2017.

- (f) the function of approving a pay policy statement prepared for the purposes of section 38 of the Localism Act 2011 (pay policy statements)<sup>(9)</sup>;
  - (g) the function of approving arrangements to enter into a reinforcement scheme under section 13 of the FRS Act 2004 (reinforcement schemes);
  - (h) the function of approving arrangements with other employers of firefighters under section 15 of the FRS Act 2004 (arrangements with other employers of firefighters);
  - (i) the function of approving arrangements under section 16 of the FRS Act 2004 (arrangements for discharge of functions by others);
  - (j) 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 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;
  - (k) 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<sup>(10)</sup>; and
    - (ii) any duties under subordinate legislation made in exercise of powers under that Act.
- (2) In sub-paragraph (j) “emergency” has the meaning given in section 1 of the Civil Contingencies Act 2004 (meaning of emergency) for Part 1 of that Act.

### **Functions that the Authority may delegate only to the DPCC**

- 6.** The Authority may not make arrangements under article 4(1) for the delegation of the following functions of the Authority to any person other than the DPCC—
- (a) the function of determining the Authority’s priorities and objectives for the purposes of the fire and rescue plan and the fire and rescue statement;
  - (b) the function of attendance at a meeting of the Police, Fire and Crime Panel for Essex in compliance with a requirement by the Panel to do so (see section 29 of the Police Reform and Social Responsibility Act 2011 as applied with modifications by paragraph 9 of Schedule A2 to the FRS Act 2004);
  - (c) the function of appointing a local auditor under section 7 of the Local Audit and Accountability Act 2014 (appointment of local auditor)<sup>(11)</sup>;
  - (d) the function of deciding whether to enter into a liability limitation agreement under section 14 of the Local Audit and Accountability Act 2014 (limitation of local auditor’s liability).

### **Delegation of functions by the DPCC**

- 7.—(1)** Subject to paragraph (2) where the Authority delegates a function to the DPCC, the DPCC may delegate the function to—

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<sup>(9)</sup> 2011 c. 20.

<sup>(10)</sup> 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.

<sup>(11)</sup> 2014 c. 2.

- (a) a member of staff of the Authority; or
  - (b) a member of staff of the PCC.
- (2) The DPCC may not delegate a function that is specified in article 6 of this Order.

#### **Functions that the Authority may delegate only to the chief fire officer**

8. The Authority may not make arrangements under article 4(1) for the delegation of the function of preparing and publishing an integrated risk management plan to any person other than the chief fire officer.

#### **Relationship between the Authority and the chief fire officer**

9. The Authority must hold the chief fire officer to account for the exercise of—
- (a) the functions of the chief fire officer; and
  - (b) the functions of persons under the direction and control of the chief fire officer.

#### **Protection from personal liability**

10.—(1) A person who is the Authority has no personal liability for an act or omission done by the person in the exercise of the Authority's functions unless it is shown to have been done otherwise than in good faith.

(2) A person who is a member of staff of the Authority has no personal liability for an act or omission done by the person in the carrying out of duties as a member of staff unless it is shown to have been done otherwise than in good faith.

## **PART 4**

### **Transitional Provision**

#### **Transitional provision in relation to financial administration**

11. Articles 12 to 15 apply until the coming into force of amendments made under section 180 of the Policing and Crime Act 2017<sup>(12)</sup> which have the effect of applying Part 8 of the Local Government Finance Act 1988<sup>(13)</sup> to the Authority.

#### **Functions of chief finance officer as regards reports**

- 12.—(1) The chief finance officer of the Authority must make a report under this article if—
- (a) it appears to them that a person specified in paragraph (2)—
    - (i) has made or is about to make a decision which involves or would involve the Authority incurring expenditure which is unlawful;
    - (ii) has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the Authority; or
    - (iii) is about to enter an item of account the entry of which is unlawful;

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<sup>(12)</sup> 2017 c. 3.

<sup>(13)</sup> 1988 c. 41.

- (b) it appears to them that the expenditure of the Authority incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet that expenditure.
- (2) The persons specified for the purposes of paragraph (1) are—
  - (a) the Authority;
  - (b) a member of staff of the Authority;
  - (c) a committee or sub-committee of the Authority;
  - (d) the DPCC;
  - (e) a member of staff of the PCC who is exercising functions of the Authority.
- (3) The chief finance officer must, so far as is practicable, consult in preparing a report under paragraph (1)(a) with—
  - (a) 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(14); and
  - (b) the person who is for the time being responsible for performing the duties of the Authority's monitoring officer under section 5 of that Act(15).
- (4) The chief finance officer must send a report made under this article to—
  - (a) the person who at the time the report is made has the duty to audit the Authority's accounts;
  - (b) the Authority; and
  - (c) each member of the Police, Fire and Crime Panel for Essex.

#### **Personal responsibility of the chief finance officer**

- 13.**—(1) Subject to paragraph (2) the chief finance officer must discharge the duty in article 12(1) personally.
- (2) If the chief finance officer is unable to act due to illness or absence his duties under article 12(1) must be discharged—
- (a) by such other member of the Authority's staff as is a member of one or more of the bodies mentioned in section 113(3) of the Local Government Finance Act 1988 and is for the time being nominated by the chief finance officer for the purposes of this article; or
  - (b) if no other member of the Authority's staff is a member of one or more of those bodies, by such member of the Authority's staff as is for the time being nominated by the chief finance officer for the purposes of this article.

#### **Authority's duties as regards reports**

- 14.**—(1) Paragraphs (2) to (5) apply where the chief finance officer has sent a report to the Authority under article 12.
- (2) The Authority must consider the report and decide whether the Authority agrees or disagrees with the views contained in the report and what action (if any) the Authority proposes to take in consequence of it.
- (3) The consideration and decision-making must be concluded not later than the end of the period of 21 days beginning with the day on which copies of the report are sent.

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(14) 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.

(15) Relevant amendments were made to section 5 by section 6 of, and paragraphs 60 and 63(1) and (4)(b) of, the Policing and Crime Act 2017.

(4) As soon as practicable after the Authority has concluded that consideration the Authority must prepare a report which specifies—

- (a) what action (if any) the Authority has taken in response to the report;
- (b) what action (if any) the Authority proposes to take in response to the report; and
- (c) the reasons for taking the action specified in the report or, as the case may be, for taking no action.

(5) As soon as practicable after the Authority has prepared a report under paragraph (4), the Authority must arrange for a copy of the report to be sent to—

- (a) the chief finance officer;
- (b) the person who at the time the report is made has the duty to audit the Authority's accounts; and
- (c) each member of the Police, Fire and Crime panel for Essex.

#### **Information about consideration of reports**

**15.** The chief finance officer must notify the Authority's auditor of any decisions taken by the Authority in accordance with article 14.

## **PART 5**

### **Modification, Abolition, and Revocation**

#### **Modification of the Local Government Pension Scheme Regulations 2013**

**16.—**(1) The Local Government Pension Scheme Regulations 2013(**16**) are modified as follows.

(2) Regulation 64 is to be read as if after paragraph (8) there were inserted—

“(8A) Paragraph (8B) applies where the exiting employer is the Essex Fire Authority and the liabilities of the fund in respect of benefits due to the Essex Fire Authority's current and former employees (or those of any predecessor authority) have been or are to be transferred to the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority under a transfer scheme made under section 4C of the Fire and Rescue Service Act 2004.

(8B) Where this paragraph applies, no exit payment is due under paragraph (1) and paragraph (2) does not apply.”.

#### **Abolition of Essex Fire Authority**

**17.** The Essex Fire Authority (**17**) is abolished.

#### **Revocation**

**18.** The Essex Fire Services (Combination Scheme) Order 1997 is revoked.

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**(16)** *S.I. 2013/2356*; regulation 64(1) is substituted by regulation 22 of *S.I. 2015/755*.

**(17)** The Essex Fire Authority was established by the Essex Fire Services (Combination Scheme) Order 1997 *S.I. 1997/2699*.

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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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6th September 2017

*Nick Hurd*  
Minister of State  
Home Office



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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes provision for the creation of a fire and rescue authority under section 4A of the Fire and Rescue Services Act 2004 (c. 21) for the areas of the councils of the boroughs of Southend-on-Sea and Thurrock and Essex County Council. The person who is for the time being the police and crime commissioner for Essex is to be for the time being the Authority (see article 3) and will be known as the Police, Fire and Crime Commissioner for Essex. The Authority will be known as the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority (“the Authority”). The Essex Fire Authority is abolished (see article 17).

Articles 4 to 9 of the Order set out the framework for how the Authority may exercise its functions. In particular article 5 sets out the functions that must be retained by the Authority and articles 6 and 8 set out functions that the Authority may delegate only to the deputy police and crime commissioner or the chief fire officer.

Articles 11 to 15 make transitional provision in relation to the duties of the chief finance officer of the Authority until Part 8 of the Local Government Finance Act 1988 (c. 41) is amended to apply to fire and rescue authorities created under section 4A of the Fire and Rescue Services Act 2004.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.