

**8 December 2010**

**The Statutory Powers and Duties of the Authority**

**Report of the Clerk**

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**1 Summary**

- 1.1 At its last meeting the Authority asked for a report outlining the statutory powers and duties of the Authority, so that this could be taken into account in making decisions as to future priorities for expenditure. This report sets out the main powers and duties of the Authority both in respect of fire and rescue services in particular, and as a public body generally. The report identifies where these are legal duties, which are mandatory, and powers, where discretion exists. Due to the great number of legislative provisions to which public bodies are subject, it cannot be an exhaustive list. However, the main areas of activity relevant to the Authority are detailed. Further information can be provided on any individual area if required. It is intended that this report will be a useful aide to the Authority in making decisions as to future service and budget planning.

**2 Recommendation**

That the report be noted and taken into account in making decisions as to future service and budget planning.

**3 Duties in respect of Fire and Rescue Services**

**3.1 Fire Safety**

There is a duty to make provision for the purpose of promoting fire safety in the Authority's area (S.6 Fire and Rescue Services Act 2004). In making such provision the Authority must in particular, to the extent that it considers it reasonable to do so, make arrangements for—

- (a) the provision of information, publicity and encouragement in respect of the steps to be taken to prevent fires and death or injury by fire; and
- (b) the giving of advice, on request, about—
  - (i) how to prevent fires and restrict their spread in buildings and other property;
  - (ii) the means of escape from buildings and other property in case of fire.

- 3.2 Fire safety in non-residential premises is governed by the Regulatory Reform (Fire Safety) Order 2005. This sets out the duties of responsible persons in control of premises for the maintenance of fire precautions on those premises. The Authority has a duty to enforce the provisions of the Order in respect of most types of non-residential premises in its area. This includes powers to issue alterations, enforcement and prohibitions notices where the Authority is satisfied

that the relevant grounds exist.

### 3.3 Fire- fighting

There is a duty to make provision for the purpose of (a) extinguishing fires in the Authority's area, and (b) protecting life and property in the event of fires in its area (S.7 Fire and Rescue Services Act 2004). In making such provision the Authority must in particular—

- (a) secure the provision of the personnel, services and equipment necessary efficiently to meet all normal requirements;
- (b) secure the provision of training for personnel;
- (c) make arrangements for dealing with calls for help and for summoning personnel;
- (d) make arrangements for obtaining information needed for the purpose of extinguishing fires and protecting life and property; and
- (e) make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from action taken for the purpose of extinguishing fires and protecting life and property.

### 3.4 Road Traffic Accidents

There is a duty to make provision for the purpose of (a) rescuing people in the event of road traffic accidents in the Authority's area, and (b) protecting people from serious harm, to the extent that the Authority considers it reasonable to do so, in the event of road traffic accidents in its area (S.8 Fire and Rescue Services Act 2004). In making such provision under the Authority must in particular—

- (a) secure the provision of the personnel, services and equipment necessary efficiently to meet all normal requirements;
- (b) secure the provision of training for personnel;
- (c) make arrangements for dealing with calls for help and for summoning personnel;
- (d) make arrangements for obtaining information needed; and
- (e) make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from action taken.

3.5 In practice the duty to protect persons from serious harm is normally interpreted as an objective in responding to particular incidents, rather than a general requirement to promote prevention activities.

### 3.6 Chemical, biological, radiological, or nuclear emergency

There is a duty to make provision in the Authority's area for the purpose of (a) removing chemical, biological, or radio-active contaminants from people in the event of an emergency involving the release or potential release of such contaminants; and (b) containing, for a reasonable period, any water used for this purpose (Article 2, Fire and Rescue Services (Emergencies) (England) Order 2007). In taking such action the Authority must make arrangements for ensuring that reasonable steps are taken to prevent or limit serious harm to the environment.

3.7 In making such provision, the Authority must

- (a) secure the provision of such personnel, services and training as may be necessary efficiently to meet all reasonable requirements;
- (b) make arrangements for dealing with calls for help;

- (c) make arrangements for obtaining necessary information; and
- (d) make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from action taken pursuant to such provision.

3.8 Where the Authority maintains specialist resources for this purpose, including any personnel who have received specialist training, there is a duty to use those resources in the area of another fire and rescue authority where that authority requests such assistance in dealing with an emergency (Article 5, Fire and Rescue Services (Emergencies) (England) Order 2007).

3.9 Rescue and protection in case of certain emergencies

The Authority must make provision in its area for the purpose of rescuing people who may be trapped and protecting them from serious harm, to the extent that it considers it reasonable to do so, in the event of—

- (a) an emergency involving the collapse of a building or other structure; or
- (b) an emergency which involves a train, tram, or aircraft and which is likely to require a fire and rescue authority to use its resources beyond the scope of its day to day operations (except to the extent that it involves the collapse of a tunnel or mine) (Article 3, Fire and Rescue Services (Emergencies) (England) Order 2007).

An “emergency” means an event or situation that causes or is likely to cause death, serious injury, or serious harm to the environment (S.58 Fire and Rescue Services Act 2004).

3.10 In making such provision, the Authority must

- (a) secure the provision of such personnel, services and training as may be necessary efficiently to meet all reasonable requirements;
- (b) make arrangements for dealing with calls for help;
- (c) make arrangements for obtaining necessary information; and
- (d) make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from action taken pursuant to such provision.

3.11 Where the Authority maintains specialist resources for this purpose, including any personnel who have received specialist training, there is a duty to use those resources in the area of another fire and rescue authority where that authority requests such assistance in dealing with an emergency (Article 5, Fire and Rescue Services (Emergencies) (England) Order 2007).

3.12 Directions in relation to Particular Emergencies

The Secretary of State may direct a fire and rescue authority to take, or not to take, action specified in the direction in relation to a specified fire or other emergency in or outside the authority’s area. Where such direction is given there is then a duty to comply (S.10 Fire and Rescue Services Act 2004).

3.13 Power to respond to other Eventualities

The Authority has a power (not a duty) to take any action it considers appropriate in response to, or for the purpose of enabling action to be taken in response to, an event or situation which causes or is likely to cause -

- (a) one or more individuals to die, be injured or become ill; or
- (b) harm to the environment (including the life and health of plants and animals).

This includes power to secure the provision of equipment and may be exercised inside or outside of the Authority's area (S.11 Fire and Rescue Services Act 2004).

- 3.14 This power will enable action to be taken in response to serious flooding where this gives rise to risk to person or harm to the environment.
- 3.15 Other Services  
The Authority has a power (not a duty) to provide the services of any persons employed by it or any equipment maintained by it to any person for any purpose that appears to the authority to be appropriate. This power may be exercised inside or outside of the Authority's area (S.12 Fire and Rescue Services Act 2004).
- 3.16 Reinforcement Schemes  
The Authority must, so far as practicable, enter into a reinforcement scheme with other fire and rescue authorities. A reinforcement scheme is a scheme for securing mutual assistance as between fire and rescue authorities for the purpose of discharging functions under Section 7, 8 or 9 of the 2004 Act. A reinforcement scheme may contain provision for apportionment of costs and expense and must be notified to the Secretary of State. The Authority has a duty to put its reinforcement scheme into effect (S.13 Fire and Rescue Services Act 2004).
- 3.17 Arrangements with Other Employers of Fire-fighters  
The Authority has a power (not a duty) to enter into arrangements with a person who employs fire-fighters (but not another fire and rescue authority) for securing the provision by that person of assistance for the purpose of the discharge by the authority of its functions under Section 7, 8 or 9 of the 2004 Act (S.15 Fire and Rescue Services Act 2004).
- 3.18 Arrangements for Discharge of Functions by Others  
The Authority has a power (not a duty) to enter into arrangements with another fire and rescue authority or any other person for the discharge of any of its functions under Sections 6 -9 and 11 of the 2004 Act. Arrangements can only be made in relation to the function of extinguishing fires where the other person employs fire-fighters (S.16 Fire and Rescue Services Act 2004). The Secretary of State has power to direct fire and rescue authorities to enter into such arrangements where he considers it expedient to do so with a view to securing greater economy, efficiency and effectiveness. Any authority affected by any proposed direction would have an opportunity to make representations on the proposal (S.17 Fire and Rescue Services Act 2004).
- 3.19 These provisions could be used as a basis for shared services, whether by voluntary arrangement between authorities or as an enforced arrangement directed by the Secretary of State.
- 3.20 Training Centres  
The Authority has a power (not a duty) to establish and maintain one or more training centres for providing education and training in matters relevant to its functions (S.18 Fire and Rescue Services Act 2004).

### 3.21 Fire and Rescue National Framework

The Secretary of State has a duty to prepare a Fire Service National Framework, setting out priorities and objectives for fire and rescue authorities, and containing guidance on the discharge of their functions. The Authority has a duty to have regard to the Framework in carrying out its functions. There are circumstances in which the Secretary of State may direct an authority to take or not to take certain action, including where s/he is of the opinion that the authority is failing to act in accordance with the National Framework (Part 3 Fire and Rescue Services Act 2004).

3.22 However, the Secretary of State is not minded now to enforce certain requirement around Regional Management Boards, workforce development or equality targets. Also the likely thrust is to abandon or significantly reduce the national framework arrangements when they are due for renewal next year.

### 3.23 Water Supply

There is a duty to take all reasonable measures for securing that an adequate water supply will be available for use in the event of fire. This duty is accompanied by a power to enter into agreements with water undertakers (Ss. 38 and 39 Fire and Rescue Services Act 2004).

### 3.24 Civil Contingencies

Responsibilities for ensuring civil protection in the event of an emergency threatening serious damage to human welfare, the environment or security in the UK, are set out in the Civil Contingencies Act 2004. The Authority has a duty to assess the risk of an emergency occurring and for maintaining plans for it's own business continuity. As a Category 1 responder (along with the Police, NHS bodies and local authorities for its area) the Authority is also subject to more detailed obligations as directed by the Secretary of State, in respect of the discharge of this function.

## 4 **Duties as a Public Body Generally**

### 4.1 Local Government Legislation

There are a great number of responsibilities placed upon the Authority by virtue of legislation applying generally to local government, and these cannot all be listed here. For example, a fire and rescue authority is a "principal council" for the purposes of the various provisions in the Local Government Act 1972 with regard to public access to meetings, agenda papers and minutes, and is therefore subject to these requirements.

### 4.2 Local Area Agreements

A fire and rescue authority is a "partner authority" and therefore has duty to co-operate with responsible authorities in the preparation of local area agreements for its area (Ss.104 and 106 Local Government and Public Involvement in Health Act 2007).

### 4.3 Equalities

The Authority is subject to various duties under equalities legislation. The range of grounds on which public authorities must not discriminate directly or indirectly by treating persons less favourably has recently been expanded by the Equality Act 2010. These grounds, known as "protected characteristics" now include age,

disability, sex or sexual orientation, gender reassignment, marriage and civil partnership, race, and religion or belief. Further, under the 2010 Act all public authorities must, in the exercise of their functions, have due regard to the need to eliminate discrimination and advance equality of opportunity in respect of those who share protected characteristics and those who do not. Guidance is awaited from the Government on the implementation of this.

#### 4.4 Human Rights

S.6 of the Human Rights Act 1998 provides that it is unlawful for a public authority (which includes the Authority) to act in a way which is incompatible with a right under the European Convention on Human Rights.

#### 4.5 Information Legislation

Along with other public bodies the Authority is subject to legal requirements in the Freedom of Information Act 2000 and Environment Information Regulations 2004 regarding the publication of information and the responding to individual requests. The Authority is also subject requirements to observe the provisions of the Data Protection Act 1998 in respect of personal information it holds.

### 5 **Comment**

5.1 The above indicates those functional areas where the Authority has an obligation to make arrangements for service provision, and those where it has discretion whether to do so. In general, where legislation makes the Authority subject to a legal duty to make arrangements for service provision, this is in terms which allow the Authority scope to determine locally the extent, and precise nature of the arrangements that should be made, in order to meet what the Authority (on receipt of advice from the Chief Fire Officer) assesses to be local need and risk.

5.2 It will be noted that discretion exists to enter into arrangements with others, including other fire and rescue authorities, for the discharge of functions, under S.16 Fire and Rescue Services Act 2004. This would provide a statutory basis for shared services.

### 6 **Equality Impact Assessment**

6.1 An impact assessment has been made on the proposals in the paper and shown that they are not discriminatory. They are considered compatible with the provisions of the European Convention on Human Rights, the Human Rights Act 1998 and the Equality Act 2010.

### 7 **Conclusion**

7.1 The report outlines the main statutory responsibilities of fire and rescue authorities and identified where these are legal duties, which are mandatory, and powers, where discretion exists. It is intended that this will be a useful aide to the Authority in making decisions as to future service and budget planning.

The following documents disclose the facts or matters on which this report, or an important part of it, is based and has been relied upon to a material extent in the preparation of this report.

N.B. The list excludes:

Published works.

Documents that disclose exempt or confidential information as defined in the Act.

TITLE

FILE