

CHESHIRE FIRE AUTHORITY

MEETING OF: FIRE AUTHORITY
DATE: 13TH FEBRUARY 2019
REPORT OF: DIRECTOR OF GOVERNANCE AND COMMISSIONING
AUTHOR: ANDREW LEADBETTER

SUBJECT: DELEGATION OF POWERS TO THE CHIEF FIRE OFFICER AND CHIEF EXECUTIVE

Purpose of Report

1. To secure a fresh delegation to the Chief Fire Officer and Chief Executive to enable him to authorise officers to carry out their duties under legislation associated with the core activities of the fire and rescue service.

Recommended: That Members

Delegate the powers contained in Annex 1 to the Chief Fire Officer and Chief Executive.

Background

2. It is some time since some of the current authorisations and appointments were made – much of the legislation has been in place for many years. Officers have been reviewing the situation and believe that it would be beneficial to have a new set of delegations captured in one document. Officers are also considering issuing fresh authorisations and appointments.

Information

The Law

3. There are some key pieces of legislation that contain powers that are relied upon by officers in the discharge of their duties.

Fire and Rescue Services Act 2004

4. Section 44 of the Fire and Rescue Services Act 2004 (the Act) permits an employee, who is authorised in writing by the Authority, to take any action reasonably believed to be necessary in an emergency. This includes entering premises by force, moving or breaking into a vehicle, closing a highway, stopping traffic and restricting access of persons to premises or a place.

5. Section 45 of the Act permits an authorised officer to enter premises to obtain information needed to discharge the Authority's functions or if there has been a fire, to investigate the cause of the fire.
6. Section 46 of the Act contains supplemental powers to require any person present to provide an authorised officer with information and documents to assist with the fire investigation.
7. Officers must be authorised by the Authority to exercise these powers and produce evidence of the authorisation if challenged.

Fire Safety Legislation

8. The Fire Authority has the statutory duty to enforce the Regulatory Reform (Fire Safety) Order 2005 (RRO). The Authority may do so by appointing inspectors, (Fire Safety Inspectors), by virtue of Article 26 of the RRO.
9. Fire Safety Inspectors have a range of powers under Article 27 of the RRO including the power to enter any premises where it is necessary to inspect the whole or part of the premises, to require the production of documents and to take samples of any articles or substances and remove them from the premises.
10. Fire Safety Inspectors must be appointed by the Authority to exercise these powers and produce evidence of this authorisation if challenged.
11. When enforcing the provisions of the RRO, Fire Safety Inspectors will also act on behalf of the Authority in the enforcement of the following Regulations
 - Dangerous substances (Notification and Marking of Sites) Regulations 1990 – notification to the Authority where dangerous substances are kept on site
 - Health and Safety (Signs and Signals) Regulations 1996 – provision of fire safety signs
 - Construction Design and Management Regulations 2015 - fire protection measures on construction sites
12. Under the Licensing Act 2003 an officer of a Fire Authority has the power to enter and inspect premises and to take action where necessary prior to the issue of a licence or certificate.

Power to Delegate

13. It is impractical and unnecessary for the Fire Authority to grant the authorisations and appointments. Section 101 of the Local Government Act 1972 allows the Authority to delegate responsibility to an officer.

Scheme of Delegation

14. The Scheme of Delegation (the Scheme) already contains a range of powers exercisable by officers. Annex 1 to this report is intended to replace one of the existing powers of the Chief Fire Officer and Chief Executive that covers the Fire and Rescue Services Act 2004 only. It will be placed in the Scheme.

Financial Implications

15. There are no financial implications.

Legal Implications

16. This decision will ensure that a new delegation exists that will allow suitable authorisations and appointments to be made.

Equality and Diversity Implications

17. There are none.

Environmental Implications

18. There are none.

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BACKGROUND PAPERS: NONE

Annex 1

To be added to the Scheme of Delegation

POWERS DELEGATED TO THE CHIEF FIRE OFFICER AND CHIEF EXECUTIVE CONCERNED WITH AUTHORISATIONS AND APPOINTMENTS OF OFFICERS

Authorisations

To authorise officers to exercise the powers under the Fire and Rescue Services Act 2004 (Sections 44, 45 and 46)

Appointments

To appoint inspectors by virtue of Article 26(1) The Regulatory Reform (Fire Safety) Order 2005 (the Order) to exercise the powers contained in Article 27 of the Order and to authorise the inspectors to serve alterations notices (Articles 29 of the Order), enforcement notices (Article 30 of the Order) and prohibition notices (Article 31 of the Order)

Inspectors will also be appointed to exercise the powers under:

- Dangerous Substances (Notification and Marking of Sites) Regulations 1990 (Regulations 5, 6, 7 & 8)
- Health and Safety (Signs and Signals) Regulations 1996 (Section 7(b))
- Construction Design and Management Regulations 2015 (Regulations 30, 31, 32 & 36)
- Licensing Act 2003 (Sections 59, 96 and 179)