Employment of Members of Police Forces by Fire and Rescue Authorities

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Addressed to: Please forward to:
The Chair of the Fire and Rescue Authority Heads of Human Resources
The Chief Executive of the County Council Heads of Recruitment
The Clerk to the Fire and Rescue Authority
London Fire Commissioner
The Chief Fire Officer

Summary

Fire and Rescue Services have sought clarification on whether Special Constables and Police Community Support Officers can be employed as Retained Duty System Firefighters. This Circular provides advice.

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1.0 Introduction

1.1 Communities and Local Government has recently been asked by Fire and Rescue Services to provide advice on whether Special Constables and Police Community Support Officers can be employed as Retained Duty System (RDS) firefighters, and vice versa.

1.2 Section 37 of the Fire and Rescue Services Act 2004 prohibits the employment by a Fire and Rescue Authority of a member of a Police Force. The Act states "No member of a police force may be employed by a fire and rescue authority for the purpose of discharging any of the authority's functions under this Act."

1.3 A "member of a police force" is not defined in the Fire and Rescue Services Act, although in effect it relates to members of a police force employed as Police Constables. The term is, however, defined in Section 101(1) of the Police Act 1996 as meaning a member of "a force maintained by a police authority". The definition in the Police Act 1996 applies to Section 37 of the Fire and Rescue Services 2004 Act, by virtue of Section 5 and Schedule 1 of the Interpretation Act 1978.

2.0 Special Constables Employed as Firefighters

2.1 Guidance previously issued by the Office of the Deputy Prime Minister (Fire and Rescue Service Circular 38/2004, page 12) stated “Section 37 of the [Fire and Rescue Services] Act maintains the longstanding prohibition on the employment by a Fire and Rescue Authority of a member of the police force. However, this prohibition applies only to warranted officers (e.g. Constables) and therefore does not extend to special constables, community support officers or other support staff.”

2.2 However, Communities and Local Government has received advice from the National Policing Improvement Agency (which leads on policy for Special Constables) that Special Constables are deemed to be warranted and attested officers. As such, they possess full policing powers, including the power of arrest, which can be exercised in any police force in England and Wales. But Special Constables are not deemed to be members of the ‘police force’, and are not covered by the definition in Section 101 of the Police Act 1996.

2.3 Therefore, provided there is local agreement between the Chief Fire Officer and the Chief Constable of the Police Force, a Special Constable can be permitted to serve as a Retained or Wholetime Duty System Firefighter.

3.0 Firefighters Employed as Special Constables

3.1 There is no restriction in the Police Act 1996 which prohibits firefighters from becoming Special Constables. Firefighters employed on either the Retained or Wholetime Duty Systems who seek to also work as Special Constables are eligible to do so, provided there is local agreement between the Chief Fire Officer and the Chief Constable.
3.2 This eligibility is affirmed by the National Policing Improvement Agency in their Special Eligibility Guidance which states:

“Section 37 of the Fire and Rescue Services Act 2004 prohibits the employment of members of a police force by a fire and rescue authority for the purpose of discharging any of the authority’s functions under the Act.” This is because off duty police constables are expected to assume police duties in the event of witnessing the commission of a crime or a threat to public order and, therefore, there always remains a risk of conflict between the two roles of police constable and retained firefighters being appointed as special constables.

“If Chief Officers are satisfied that employees of fire and rescue authorities could make a positive contribution despite their obligations to the fire and rescue service, there is no reason why either regular (whole or part-time) or retained firefighters should not join the Special Constabulary. This is a matter, which needs to be agreed locally between the Chief Constable and the Chief Fire Officer. Fire and Rescue Service personnel are eligible to be appointed as special constables.”

3.3 A copy of the NPIA circular “Special Constables: Eligibility for Recruitment” is attached.

4.0 Police Community Support Officers

4.1 Police Community Support Officers are police authority support staff (they are not defined as regular members of a ‘police force’) and their terms and conditions are set locally by each police authority. There is nothing to prohibit a Community Support Officer from joining the Retained Duty System, or vice versa, provided there is local agreement between the Chief Fire Officer and the Chief Constable.

5.0 Enquiries

5.1 If you have any queries about this Circular please contact either Mona Shah on 0303 44 42950 or John Dackombe on 0303 44 42945.