

FIRE AND RESCUE SERVICES, ENGLAND

TRANSFER SCHEMES

The Policing and Crime Act 2017 Essex Fire Authority Staff Transfer Scheme 2017

The Secretary of State in exercise of the powers conferred by section 4C of the Fire and Rescue Services Act 2004(a), makes the following Transfer Scheme.

The Secretary of State has made an order under section 4A of the Fire and Rescue Services Act 2004(b).

Citation, commencement and application

1. (1) This Scheme may be cited as the Policing and Crime Act 2017 Essex Fire Authority Staff Transfer Scheme 2017 and comes into effect on 1st October 2017.

(2) This Scheme is made in connection with the abolition of the Essex Fire Authority (c).

Interpretation

2. In this Scheme—

(a) “the 1996 Act” means the Employment Rights Act 1996(d); and

(b) “the transfer date” means 1st October 2017.

Transfer of staff

3.—(1) This paragraph applies to any person who, immediately before the transfer date, was an employee of the Essex Fire Authority and—

(a) is identified in the Schedule; or

(b) has, on or after 1st September 2017 but before the transfer date been notified in writing by the Essex Fire Authority that they are to be transferred to the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority on the transfer date.

(2) Subject to sub-paragraph (5), any person to whom this paragraph applies is to be transferred on the transfer date to the employment of the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority.

(3) Subject to sub-paragraph (5), the contract of employment of a person to whom this paragraph applies—

(a) is not terminated by the transfer; and

(b) has effect on and after the transfer date as if originally made between that person and the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority.

(4) Without prejudice to sub-paragraph (3)—

(a) 2004 c. 21. Section 4C was inserted by section 6 to, and paragraphs 1 and 5 of Schedule 1 to, the Policing and Crime Act 2017 (c. 3).

(b) Section 4A was also inserted by section 6 to, and paragraphs 1 and 5 of Schedule 1 to, the Policing and Crime Act 2017. The relevant order is S.I. 2017/864.

(c) See article 17 of S.I. 2017/864.

(d) 1996.c.18.

- (c) all the rights, powers, duties and liabilities of the Essex Fire Authority under, or in connection with, a contract to which sub-paragraph (3) applies are to be transferred to the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority on the transfer date; and
- (d) any act or omission before the transfer date of, or in relation to, the Essex Fire Authority in respect of that contract of employment or a person to whom this paragraph applies, is, on or after the transfer date, deemed to have been an act or omission of, or in relation to the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority.

(5) Sub-paragraphs (2) to (4) do not transfer a person's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if that person has objected to becoming employed by the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority and has informed the Essex Fire Authority or the Essex Police and Crime Commissioner of that objection before the transfer date.

(6) Where a person has objected as mentioned in sub-paragraph (5), their contract of employment with the Essex Fire Authority shall be terminated immediately before the transfer date.

(7) Subject to sub-paragraph (8), a person whose contract of employment is terminated in accordance with sub-paragraph (6) shall not be treated, for any purpose, as having been dismissed from the Essex Fire Authority.

(8) Where the transfer involves, or would involve, a substantial change in the working conditions to the material detriment of a person whose contract of employment is, or would have, transferred under this paragraph, that person—

- (a) may treat the contract of employment as having been terminated; and
- (b) is to be treated as having been dismissed by their employer.

(9) No damages are to be payable by an employer as a result of a dismissal falling within sub-paragraph (8) in respect of any failure by that employer to pay wages to a person in respect of a notice period which that person has failed to work.

(10) Sub-paragraphs (2), (3) and (5) to (8) are without any prejudice to any right of a person arising apart from under this paragraph to terminate their contract of employment without notice in acceptance of a repudiatory breach of contract by their employer.

(11) Nothing in this Scheme will prevent or fetter the lawful right of Essex Police, Fire and Crime Commissioner Fire and Rescue Authority to negotiate by consent any change to contractual terms and conditions (including those incorporating a term or condition from a collective agreement) of employees transferring under this Scheme.

Dismissal of employee because of transfer

4.—(1) Where a person whose contract of employment is transferred by paragraph 3 is dismissed by the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority that person is to be treated for the purposes of Part 10 of the 1996 Act (unfair dismissal)(a), as having been unfairly dismissed if the sole or principal reason for the dismissal is the transfer.

(2) This sub-paragraph applies where the sole or principal reason for the dismissal is an economic, technical or organisational reason entailing changes in the workforce of the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority after the transfer.

(3) Where sub-paragraph (2) applies —

- (a) sub-paragraph (1) does not apply;

- (b) without prejudice to section 98(4) of the 1996 Act (test of unfair dismissal) the dismissal is, for the purposes of sections 98(1)(reason for dismissal) and 135 (the right to a redundancy payment) of that Act, to be regarded as having been for redundancy where section 98(2)(c) of that Act applies, or otherwise for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

(4) In sub-paragraph (2), the expression "changes in the workforce" includes a change to the place where employees are employed by the employer to carry on the business of the employer or to carry out work of a particular kind for the employer (and the reference to such a place has the same meaning as in section 139 of the 1996 Act).

(5) Sub-paragraph (1) does not apply in relation to a dismissal of an employee if the application of section 94 of the 1996 Act (right not to be unfairly dismissed) to that dismissal is excluded by or under any provision of the 1996 Act, the Employment Tribunals Act 1996 or the Trade Union and Labour Relations (Consolidation) Act 1992(a).

Effect of relevant transfer on contracts of employment which incorporate provisions of collective agreements

5.—(1) Where a contract of employment, which is transferred by paragraph 3(3), incorporates provisions of collective agreements as may be agreed from time to time, paragraph 3(4) does not transfer any rights, powers, duties and liabilities in relation to any provision of a collective agreement if the following conditions are met—

- (a) the provision of the collective agreement is agreed after the date of the transfer; and
- (b) the transferee is not a participant in the collective bargaining for that provision.

(2) For the purposes of paragraph 3(3), the contract of employment has effect after the transfer as if it does not incorporate provisions of a collective agreement which meet the conditions in sub-paragraph (1).

Effect of relevant transfer on collective agreements

6. Where at the transfer date there exists a collective agreement made by or on behalf of the Essex Fire Authority with a trade union recognised by the Essex Fire Authority in respect of any employee whose contract of employment is preserved by sub-paragraphs 3(2) and 3(3) above, then—

- (a) without prejudice to sections 179 and 180 of the Trade Union and Labour Relations (Consolidation) Act 1992 Act (collective agreements presumed to be unenforceable in specified circumstances) that agreement, in its application in relation to the employee, shall, after the transfer, have effect as if made by or on behalf of the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority with that trade union, and accordingly anything done under or in connection with it, in its application in relation to the employee, by or in relation to the Essex Fire Authority before the transfer, shall, after the transfer, be deemed to have been done by or in relation to the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority; and
- (b) any order made in respect of that agreement, in its application in relation to the employee, shall, after the transfer, have effect as if the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority were a party to the agreement.

(a) 1992, c. 52.

Transfer of rights or liabilities under or in connection with other contracts of employment

7.—(1) This paragraph applies to the contract of employment of any person who, immediately before the transfer date, was an employee of the Essex Fire Authority and whose contract is not transferred under paragraph 3.

(2) Any right or liability under or in connection with a contract to which this paragraph applies, which was enforceable by or against the Essex Fire Authority immediately before the transfer date, is, on the transfer date, to transfer to the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority.

(3) Any act or omission before the transfer date of, or in relation to, the Essex Fire Authority in respect of that contract of employment or a person to whom this paragraph applies, is, on or after the transfer date, deemed to have been an act or omission of, or in relation to the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority.

(4) Anything (including the conduct of legal proceedings) which, when this Scheme takes effect, is in the process of being done by, or in relation to, the Essex Fire Authority in respect of any right or liability transferred under this paragraph is deemed to have effect as if done by, or in relation to, the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority.

(5) Any reference to the Essex Fire Authority in any contract or agreement (whether written or not), instrument or other document in respect of any right or liability transferred under this paragraph is to be treated as a reference to the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority.

(6) No right to terminate or vary a contract, agreement, arrangement, instrument or other document is to operate or become exercisable, and no provision of any contract, agreement, arrangement, instrument or other document is to operate or become exercisable or contravened, by reason of the transfer of any right or liability under this paragraph.

Transfer of records etc

8.—(1) This paragraph applies to any information, data, documents and records (including personnel and pensions records) created or held by the Essex Fire Authority immediately before the transfer date which relate to a person who was employed by, or on secondment to, the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority.

(2) The information, data and records referred to in sub-paragraph (1) include—

- (a) any original hard copy documents or records;
- (b) documents or records that are kept in electronic form by means of computer or other device;
- (c) all general correspondence.

(3) The property, rights and liabilities which the Essex Fire Authority has, immediately before the transfer date, in relation to the information, documents and records to which this paragraph applies is on the transfer date transferred to the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority.

Pensions

9.—(1) The Essex Police, Fire and Crime Commissioner Fire and Rescue Authority is a fire and rescue authority for the purposes of the Firefighters' Pension Scheme 1992(a), the Firefighters' Pension Scheme (England) 2006(b), the Firefighters' Pension Scheme (England) 2015(c) and the Firefighter's Compensation Scheme (England) 2006(d).

(a) Set out in S.I. 1992/129.
(b) Set out in S.I. 2006/3432.
(c) S.I. 2014/2848.
(d) Set out in S.I. 2006/1811.

(2) The Essex Police, Fire and Crime Commissioner Fire and Rescue Authority as a fire and rescue authority is a scheme employer for the purposes of the Local Government Pensions Scheme Regulations 2013(a) and is to participate as a scheme employer in accordance with the Local Government Pensions Scheme Regulations 2013.

(3) The appropriate administering authority in relation to the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority for the purposes of the Local Government Pensions Scheme Regulations 2013 is Essex County Council(b)”

Modification of Scheme

10—(1) This Scheme may be modified by agreement after it comes into effect in accordance with this paragraph.

(2) Any modification must be agreed by—

(a) the Secretary of State; and

(b) the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority.

(3) A modification may take effect from any date on or after the transfer date.

6/9/2017

Home Office



Minister of State

(a) S.I. 2013/2356.

(b) See paragraph 4 of Part 2 of Schedule 3 to S.I 2013/2356.

