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This circular is	For guidance	No response required	
This circular is	Relevant to the National Framework		
Status	This Circular gives guidance on the action to take, following the repeal of the Fire Services (Discipline) Regulations 1985		

Abolition of the Fire Services (Discipline) Regulations 1985

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Addressed to:

The Chief Executive to the County Council
The Clerk to the Fire and Rescue Authority
The Clerk to the Fire and Civil Defence Authority
The Clerk to the Combined Fire and Rescue Authority
The Commissioner of London Fire and Emergency Planning Authority
The Chief Fire Officer

Please forward to:

HR and Training staff

Summary

This Circular gives information on the abolition of the Fire Services (Discipline) Regulations 1985 and guidance of actions to be taken once the Fire and Rescue Service Act 2004 comes into force.

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1.0 Abolition of Fire Services (Discipline) Regulations 1985

- 1.1 You will be aware that the Fire and Rescue Services Bill received Royal Assent on July 22nd. The Fire and Rescue Service Act 2004 will come into force on October 1st 2004. You will have seen Fire and Rescue Services Circular 38/04 which drew the attention of fire and rescue authorities to the provisions within the Act.
- 1.2 One effect of the commencement of the Fire and Rescue Act 2004 is the repeal of Section 17 of the Fire Services Act 1947, under which the Secretary of State is empowered to make regulations for the maintenance of discipline and for appeals against dismissal and other disciplinary action. This means that on October 1st 2004, the Fire Services (Discipline) Regulations 1985 will automatically be abolished.
- 1.3 The Fire Services Act 2004 does not set out specific transitional arrangements for those subject to the 1985 Discipline regulations, however Section 16 of the Interpretation Act 1978 provides that:
- “(1) ...where an Act repeals an enactment, the repeal does not, unless the contrary intention appears,-
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under that enactment;
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against that enactment;
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;
- and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.”
- 1.4 This means that the repeal of section 17 of the Fire Services Act 1947 does not affect any right [ie the right to be dealt with in accordance with the procedure set out in the regulations made under section 17] which has been acquired before the repeal. Therefore, any member of staff who is already subject to disciplinary action and has had charges laid against them prior to the commencement of the Fire and Rescue Services Act 2004, will continue to be subject to the provisions of the 1985 Discipline Regulations. This will include the right of appeal to the Secretary of State against awards of dismissal, requirement to resign and reduction in rank.
- 1.5 Any member of staff against whom formal charges are laid following the commencement of the Fire and Rescue Services Act 2004, will no longer have right of appeal to the Secretary of State. Fire and Rescue Authorities must ensure that staff are aware of their rights of appeal.
- 1.6 Section 5.22 of the National Framework makes it clear that Fire and Rescue Authorities should:

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- Introduce disciplinary procedures based on Advisory, Conciliation and Arbitration Services (ACAS) best practice guidance, and
 - Consider the costs, best practice and efficiency benefits of dealing with disciplinary issues through a regional Human Resource function.
- 1.7 To ensure all staff receive equality of treatment, it is recommended that, in introducing new disciplinary procedures consideration should be given to including all employees within the same procedure. The provisions of the disciplinary procedure would apply to both whole time and retained duty system personnel.
- 1.8 You will be aware that the National Joint Council for Local Authority Fire and Rescue Services (NJC) has developed disciplinary procedures, based on ACAS best practice guidelines, which are included in the new Grey Book. The NJC will in due course be issuing further guidance on the use of this new procedures.
- 1.9 Fire and Rescue Authorities should also be aware that from October 1st 2004 the Employment Act 2002 (Dispute Resolution) Regulations 2004 (issued by the Department of Trade and Industry) will require all employers, regardless of the size of their workforce, to have ACAS compliant disciplinary procedures.
- 1.10 For further information on the contents of this Circular, please contact either Ray Levitt on 020 7944 8156 or by e-mail at ray.levitt@odpm.gsi.gov.uk or Gill McManus by e-mail at gill.macmanus@odpm.gsi.gov.uk.

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