

Fire and Rescue Services Act 2004

SECTIONS 13 AND 16 AGREEMENT

**COUNTY DURHAM AND DARLINGTON FIRE AND
RESCUE AUTHORITY**

and

CLEVELAND FIRE AUTHORITY



Protecting local
communities



County Durham and Darlington
Fire and Rescue Service

THIS AGREEMENT is made the FIRST day of NOVEMBER 2020

1. Parties

- 1.1 Durham and Darlington Fire and Rescue Authority, Service Headquarters, Belmont Business Park, Durham, DH1 1TW
- 1.2 Cleveland Fire Authority, Training and Administration Hub, Endeavour House, Queens Meadow Business Park, Hartlepool TS25 5TH.

2. Definitions and Interpretations

- 2.1 "Durham and Darlington" means Durham and Darlington Fire and Rescue Authority.
- 2.2 "Cleveland" Fire Authority.
- 2.3 "The Authorities" means the parties to this Agreement.
- 2.4 "The 2004 Act" means the Fire and Rescue Services Act 2004.
- 2.5 "The Assistor" means the party to this Agreement which under the provisions of this Agreement gives assistance to or discharges a function of another party to this Agreement.
- 2.6 "The Recipient" means the party to this Agreement which under the provisions of this Agreement receives assistance from or has a function discharged by another party to this Agreement.
- 2.7 "The Term" means the period of one year commencing on the date of this Agreement subject to any earlier termination in accordance with the provisions of clause 6.

- 2.8 "The Reinforcements" means such resources (including personnel, vehicles and other equipment) as the Chief Fire Officer for the time being employed by the Assistor considers to be available at that time to meet a request for assistance from the Recipient.
- 2.9 "Appliance" means any emergency appliance crewed by members of the Assistor Authority.
- 2.10 "The Expenses" means the expenses incurred by the Assistor in providing assistance or discharging functions during the Term for:
- 2.10.1 the cost of replacement of consumable stores such as petrol, oil or foam compound etc;
 - 2.10.2 the cost of repairing or replacing lost or damaged items of equipment; and
 - 2.10.3 the cost of additional labour costs i.e. overtime incurred by the Assistor in providing Reinforcements.
- 2.11 With the exception of arrangements relating to the Incident Command Unit, in the event that costs are recovered for mobilisations, the "charges" means, for each year, a yearly sum calculated by applying the formula:
- The Charges = the LGA Rate x the Total No. of Calls over the last 3 years divided by 3*
- "The LGA Rate" means the sum specified by the LGA from time to time as applicable to charges for arrangements under section 16 of the 2004 Act; and
- "The Total No. of Calls over the last 3 years" means the total number of calls attended by the Assistor in the Recipient's area pursuant to this Agreement in the three years prior to the year in which the charge is to apply.
- 2.12 "Emergency calls " means telephone and other calls requesting emergency assistance in respect of an incident that is within a fire and rescue authority's core functions under Sections 7 to 9 of the 2004 Act.

- 2.13 "Chief Fire Officer" or "Chief Executive" includes any other person duly authorised to act on his or her behalf and which may include the use of such resources other than those specified to be used in any provision of this Agreement where at the time of the provision of assistance the specified resources in that person's view cannot readily or safely be made available.

3. Recitals

- 3.1 Durham and Darlington is the Fire and Rescue Authority for the County of Durham and the Borough of Darlington.

- 3.2 Cleveland is the Fire Authority for the Cleveland Fire Area.

- 3.3 Durham and Darlington and Cleveland have agreed to enter into arrangements on the terms set out in this Agreement:-

3.3.1 for securing under Section 13 of the 2004 Act the rendering of mutual assistance in discharging their functions under Sections 7, 8 and 9 of the 2004 Act.

3.3.2 for securing under Section 16 of the 2004 Act the discharge of some of each other's functions under Sections 7, 8, 9 and 11 of the 2004 Act.

AGREEMENT

4. Reinforcements

- 4.1 Pursuant to Section 13 of the 2004 Act, and subject to clause 13 below, each Authority agrees to provide Reinforcements to the other Authority (or any of them) in the event of Emergency calls during the Term of this Agreement as soon as the Assistor considers is reasonably practicable in the prevailing circumstances.
- 4.2 Specific arrangements between Authorities are detailed in Appendices 1 – 3 inclusive. Authority resources, which form the basis of potential Section 13 / 16 operational collaboration between the Authorities are listed in Appendix 3. Operational policy agreements and/or Memorandum of Understandings may be in force for some or all of these areas.

5. Provision of Incident Command Unit

- 5.1 Cleveland Fire Authority will provide, their Incident Command Unit and a crew of 4 staff, to support Durham and Darlington Fire and Rescue Authority to deal with Emergency calls, on request.
- 5.2 Cleveland will mobilise a Flexible Duty Officer when their Incident Command Unit is requested by Durham and Darlington, in accordance with Section 10.1 of this agreement.
- 5.3 The arrangements set out in Section 10 of this agreement will apply to Cleveland crews mobilised to provide the Incident Command Unit to Emergency calls in Durham and Darlington.
- 5.4 Cleveland Fire Authority reserves the right to recall their Incident Command Unit from an Emergency call in Durham and Darlington, but will do so with a minimum of 3 hours notice.

- 5.5 The Charges for the provision of this function will be applied hourly for a Watch Manager plus 3 Firefighters, as set out in Appendix A of the NFCC Council Guidelines on FRS Charging for Mutual Assistance.

Charges will be calculated to the nearest half hour, rounded up, and will not be applied to any further attendance at incidents attended by Cleveland's Incident Command Unit in Durham and Darlington's area.

An annual administration cost recovery of 5% will be added, in accordance with the above Guidelines, alongside a Fuel cost recovery of £1.40 per litre based on 4 miles per litre.

Cleveland Fire Authority will produce a Table of Chargeable Incidents alongside an annual Invoice to Durham and Darlington Fire and Rescue Authority.

6. Financial Provisions

- 6.1 Reinforcements provided under Clause 4 above by the Assistor shall be provided at no cost to the Recipient save for clause 2.11 where reasonably incurred expenses may be recoverable.

7. Termination

- 7.1 This Agreement may be terminated at any time by any party giving to the others not less than twelve calendar months prior written notice to expire at any time or immediately by mutual agreement.
- 7.2 For the purposes of sub-clause 6.1 such notice shall be deemed to be validly served by one party if sent by Recorded Delivery Post addressed to the other parties at the address given, in clause 1 above, or by email to the Chief Fire Officer or Chief Executive at their current email address as the case may be.

8. Liability, Indemnity and Insurance

- 8.1 The Recipient shall not hold liable the Assistor in respect of any costs liabilities or damages whatsoever in respect of death or personal injury or loss of or damage to any property except where the same is caused by the negligence of the Assistor or its employees while acting under the provisions of this Agreement.
- 8.2 The Assistor shall indemnify the Recipient against all costs liabilities and damages whatsoever in respect of death or personal injury or loss of or damage to any property caused by the negligence of the Assistor or its employees while acting under the provisions of this Agreement.
- 8.3 Each party to this Agreement shall ensure that throughout the Term it maintains suitable insurance arrangements to cover any loss, claims, proceedings, actions, damages, legal costs, expenses or such other liabilities arising from the deployment of resources outside its area.

9. Welfare

- 9.1 The Recipient shall at all times ensure the health and safety and well-being of employees of the Assistor in the same satisfactory manner as those of the Recipient. As an example, employees are not to be placed in situations for which they are not properly trained and/or equipped.
- 9.2 The Recipient shall ensure that employees of the Assistor have their welfare needs met in the same satisfactory manner as those of the Recipient, for example by securing adequate provision of food drink and where necessary accommodation.

10. Command of Incidents

- 10.1 In cases where operational personnel from two or more of the Authorities are in attendance at an Incident, the principles and structure of the Incident Command

System (ICS) contained in current National Operational Guidance (NOG) shall be followed, in particular:

- The Incident Commander (IC) shall be the 'nominated competent person' who shall wherever possible be clearly identified by the wearing of an IC surcoat. For the avoidance of doubt, this role need not invariably be fulfilled by the most senior officer present, but the senior officer present does have a moral and organisational responsibility within the overall command structure that cannot be delegated.
- All visiting firefighters and officers mobilised by the Assistor will have received training in and be familiar with the principles of the ICS.
- Assistors may choose to send an officer, or officers, in a support/liaison role when appliances are requested to attend an incident. All visiting officers and crews must comply with the operational plans and instructions given by the Incident Commander.
- Officers from the Assistor Authority will be deemed competent to take command of an incident or perform any command (Sector Officer) role on the incident ground. However, under normal circumstances, specialist (Functional Command) roles on the incident ground (Hazmat Officer, Water Incident Manager) should be allocated to officers of the Recipient Authority. Exceptions to this may occur in relation to National / Regional Resilience Capabilities under NCAF arrangements (For example HAZMAT DIM, Urban Search and Rescue, Rope Rescue).
- Visiting crews provided by an Assistor to operate within their own standard operating guidance which should be derived from the national operational guidance programme and shall wear or otherwise be able to produce suitable officer identification through a common or recognised design and designation.

- Under normal circumstances the Recipient will be responsible for conducting the analytical risk assessment for the incident. Exceptions to this rule may occur where the Recipient is unable to attend.

10.2 The Recipient will take into account the appropriate Assistor's policies on the time crews will spend at an incident before being relieved. In normal circumstances the Recipient shall relieve crews as soon as practicable after consulting the appointed Welfare Officer. Relief crews being identified and used from the Recipient or other Assistor.

In exceptional circumstances where the fire cover in a Recipient service is depleted due to ongoing incidents, the Recipient service may request a 'standby appliance' to provide temporary cover. The provision of the 'standby appliance' is subject to the reasonable availability of such appliances; furthermore, the recipient service must endeavour to release the 'standby appliance' at the earliest available opportunity as per Appendix 1. In addition, the Recipient will keep the Assistor(s) regularly informed and updated (at least every 60 minutes) with regard to their resources at Emergencies.

10.3 Both authorities should endeavour to carry out large scale joint exercises to test a range of risks, including interoperability and such other factors that the parties believe will address the robustness of emergency responses.

10.4 Small local exercises involving crews mobilised as part of joint, cross border pre-determined attendances (PDAs) should also be encouraged where considered appropriate.

10.5 As far as is reasonably practicable systems should be in place to ensure that all appliances attending Emergencies in Authority areas other than their own have access to the appropriate risk information. The information shared will be reviewed on a periodic basis and disseminated between the parties where necessary.

- 10.6 Although the legal responsibility for investigating an accident or near miss lies with the Assistor if the accident/near miss involves one of their employees, the Assistor may request the establishment of a joint investigation with the recipient FRS. No reasonable request for assistance to facilitate the investigation will be refused by the Recipient.
- 10.7 Assistors should be invited to formal debriefs following any Emergency where assistance was provided by them, and wherever possible the Assistor should ensure an attendance by such recognised body as deemed appropriate to assist with discussions and the dissemination of good practice.
- 10.8 The Incident Commander will ensure all Assistor crews receive an Operational and Health and Safety briefing including an overview of the Analytical Risk Assessment and tactical mode before deployment on to the incident ground.
- 10.9 The Authority requesting assistance must be specific in their requests. For example it should be specified if a standard pumping appliance with crews trained in hazardous materials is required.
- 10.10 All requests for National Resilience assets should still be processed through the Fire and Rescue Service National Co-ordination Centre (National Resilience Fire Control – NRFC) using the National Co-ordination and Advisory Framework.

11. Breathing Apparatus Procedures

- 11.1 At all incidents consideration should be given as to whether or not breathing apparatus (BA) should be used from an Assistor or whether the personnel should be deployed in other activities. The incident type, availability of resources and numbers of wearers will be a factor in making this decision.
- 11.2 When BA wearers are committed into a risk area from more than one Authority the BA emergency procedures will be implemented in accordance with current

National Operational BA guidance or the Authority's own procedures where these differ from the guidance.

- 11.3 Where Assistor personnel are utilised as BA wearers, each Assistor shall provide an emergency crew to support its own wearers subject to the availability of equipment and personnel.
- 11.4 Due to the variation of BA equipment in use, and procedures used, the necessary equipment and supervision required to support each Authority's own wearers for the task being undertaken should be provided by that Authority.
- 11.5 County Durham & Darlington FRS use Drager FPS 7000 BA sets with 300 bar cylinders. Cleveland Fire Brigade currently use InterSpiro SpiroGuide II sets with 300 bar cylinders

12. Variation

- 12.1 This Agreement may be varied at any time by mutual agreement between the parties, such variation to be recorded by written memorandum signed and dated by all parties and attached to this Agreement.

13. Records

- 13.1 Each party shall keep accurate and complete written or electronic records of all emergency calls or incidents to which it has responded under the provisions of this Agreement and submit copies of such records to the other party, or parties, on request.,

14. High Incident Volumes or Business Continuity Events

- 14.1 The obligations of a party under this Agreement may be suspended following agreement between the parties in the event of high incident volumes or business continuity events beyond its reasonable control e.g. industrial action, which prevent that party from fulfilling its obligations under this Agreement for

the duration of such demands on individual Services. Where this is the case command and control rooms must be notified of any reduced provision.

15. Data Protection and Confidentiality

- 15.1 In the circumstances where information has been shared for the purposes stated within this Agreement and that information contains personal or sensitive personal data, both parties shall comply with all applicable requirements under Data Protection law in the UK including the EU General Data Protection Regulation (GDPR) and the Data Protection Act 2018.
- 15.2 Each party shall treat all sensitive personal data belonging to the other party as confidential and safeguard it accordingly and in accordance with the data protection principles.
- 15.3 Each party shall not disclose any information deemed confidential belonging to the other party to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the purposes of this Agreement.

Headings

The headings to clauses in this Agreement shall not affect their interpretation

16. Review

- 16.1 This Agreement will be subject to an annual review by the Authorities or such earlier review contingent upon a major change in any of the areas that are the subject of this Agreement.

17. Miscellaneous

- 17.1 This Agreement, constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 17.2 Each Party shall pay its own costs incurred in connection with the negotiation, preparation, and completion of this Agreement and any documents referred to in it.
- 17.3 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.
- 17.4 Each party confirms it is acting on its own behalf and not for the benefit of any other person
- 17.5 This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 17.6 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 17.7 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

SIGNED BY:

Print.....S. WELLS.....Signed.....

Position.....DCFO.....

For and on behalf of the Durham and Darlington Fire and Rescue Authority.

SIGNED BY:

Print.....IAN HAYTON.....Signed.....

Position.....CFO.....

For and on behalf of Cleveland Fire Authority

Appendix 1

1. Specialist Response and Support Appliances

- 1.1 Pursuant to Section 13 of the 2004 Act and without prejudice to the provisions of Clause 4 above, CDDFRS agrees that upon receipt of a request from Cleveland Fire Brigade (or vice versa) it will supply a relevant special/support appliance/team to any emergency incident when required.
- 1.2 The provision of such an appliance by CDDFRS (or vice versa) is subject to the reasonable availability of such an appliance and the reasonable availability of staff with the necessary skills
- 1.3 The provision of such skills and appliances by CDDFRS (or vice versa) is subject to the reasonable availability of trained personnel and equipment.
- 1.4 In respect of 1.1 above CDDFRS or Cleveland Fire Brigade may consider the recovery of reasonable costs as outlined in clause 2.11, with the exception of the provision of Cleveland's Incident Command Unit, where the charges set out in Section 5 of this agreement will be levied.

2 Special arrangements – Standby Arrangements

- 2.1 In exceptional circumstances where the fire cover in a Recipient service is depleted due to ongoing incidents. The Recipient service may request a 'standby appliance' to provide temporary cover. The provision of the 'standby appliance' is subject to the reasonable availability of such appliances; furthermore, the recipient service must endeavour to release the 'standby appliance' at the earliest available opportunity.

Appendix 2

Special arrangements between Durham and Darlington Fire and Rescue Authority and Cleveland Fire Authority

1. Wildfire arrangements

- 1.1 Pursuant to Section 13 of the 2004 Act and without prejudice to the provisions of Clause 4 above Durham and Darlington Fire and Rescue Authority agrees that upon receipt of a request from the Cleveland Fire Brigade (vice versa) it will supply specialist wildfire officers to assist with any wildfire emergency incident when required.
- 1.2 The provision of such skills and appliances by Durham and Darlington Fire and Rescue Authority is subject to the reasonable availability of trained personnel and equipment. In respect of 1.1 above Durham and Darlington Fire and Rescue Authority may consider the recovery of reasonable costs.

2. Provision of a Fire Investigation Officer c/w Hydro Carbon Detection Dog

- 2.1 Pursuant to section 13 of the Act and without prejudice to the provisions of clause 4 above, Durham and Darlington Fire and Rescue Authority agrees that upon receipt of a request from Cleveland Fire Brigade, it will supply the a Fire Investigation Officer c/w Hydro Carbon Detection Dog to deal with any fire fatality or suspected arson incident that requires a detailed fire investigation to be conducted when required.
- 2.2 The provision of such resources and personnel from Durham and Darlington Authority is subject to availability. In respect of 2.1 above Durham and Darlington Authority may consider the recovery of reasonable costs.

Appendix 3

CDDFRS and Cleveland Fire Brigade Operational Capabilities

Chart with each authority's resources that form part of this agreement

Cleveland Fire Brigade
21 x Frontline Appliances – 13 Wholetime (WT), 8 Retained (RD) Included in retained number above-1 x Combined Aerial Rescue Platforms (CARP's) – S Saltburn - RD Swift Water Rescue Level 3 MOD 3 - Thornaby WT Line Rescue - Coulby Newham WT Command Support Unit - Hartlepool – On Request (OR) Wildfire/Off Road Unimog - Grangetown OR Foam Units – Redcar OR & Bulk Foam stocks at Billingham OR Fire Investigation - Level 2 - Flexi Duty Officers (FDO's) Water Incident Managers x 2 (FDO's)
<u>National Resilience Assets – requested through the NRCC</u> 1 x MDU and 1 x MDSU WT
TAC Advisors:-
Flood Response x 1 Airwave x 4 CBRN(e) x 2 NILO's –Various FDO's
1 x Incident Support Unit - (OR) 1 x Hazardous Material Environmental Protection Unit (HMEPU) trailer OR 1 x Welfare Unit OR 2 x MD4 – Firefighter Decontamination WT CBRN(e) Capability: 1 x DIM Vehicle and Advisors OR

Durham & Darlington Fire & Rescue Service
26 front line appliances – 9 WT Response, 2 Day Crewing, 15 On Call response ALP's (Durham & Darlington 32 metre, Unit Crewed WT Response) Swift Water Rescue (Bishop Auckland - Level 4 WT Response) Level 3 Line Rescue (Newton Aycliffe & Seaham – Day Crewing Response) Bulk Water Carrier (14,000 litres) (Spennymoor – On Call Response) HMEPU – Hazardous Materials Environmental Protection Unit (Durham WT Response) MD4 – Firefighter Decontamination ICSU Incident Command Support Vehicle (Newton Aycliffe – On Call Response) Foam – IBC's carried on Demountable Sled (Wheatley Hill – On Call Response) Level 3 Fire Investigation FI + HC Dog Wildfire Crews/ Officers – On Request WIM Officers - FDO's Various TRV (plus wildfire support) National Resilience Assets – requested through the NRCC High Volume Pump (Peterlee – WT Response) Mass Decontamination Unit (Darlington – WT/On Call Response) HVP National Tac' Advisors HDIM Officers - FDO's Various no specific DIM vehicle NILO – FDO's Various MTFA (On Request)