

Consultation Exercise: Protocol on Government Intervention Action on Fire and Rescue Authorities in England

Report of Chief Fire Officer

For further information about this report please contact Paul Raymond, Chief Fire Officer, on 01743 260205 or Steve Worrall, Assistant Chief Fire Officer, on 01743 260204.

1 Purpose of Report

This report brings to Members' attention the recently issued consultation document regarding the *protocol on Government intervention action for fire and rescue authorities in England*. Comments are sought on the proposals set out within the consultation. This report also offers a response for the Committee's consideration (acting on behalf of the Fire Authority).

2 Recommendation

Members are requested to consider the proposed consultation responses (at Appendix B) and, if agreed, instruct officers to respond accordingly.

3 Background

The consultation document (provided at Appendix A) suggests that the best way to deal with an authority that is performing poorly is take full advantage of the experience, professionalism, and expertise that already exists in the sector; to work with the relevant fire and rescue authorities, and their political and professional leadership; and make full use of the wide range of support processes that are in place.

The protocol sets out the Government's expectations for the fire and rescue sector, indicates what circumstances could lead to intervention being considered, and what might happen in the event of statutory intervention. The Government states that it would only use its intervention powers as a last resort.

4 Consultation Questions

The Fire Authority is invited to respond to the following three questions:

- a) **Question 1**
Does the draft protocol clearly set out what is expected of the Government and fire and rescue authorities in their respective roles in the event of intervention by the Secretary of State?
- b) **Question 2**
Is there anything you would change?
- c) **Question 3**
Is there anything not included in the protocol that should be added?

Officers have reviewed the proposals and prepared a response for consideration by Members (see Appendix B). Responses are required by 15 November 2012.

5 Financial Implications

There are no direct financial implications arising from this report.

6 Legal Comment

It is a requirement under section 23 of The Fire and Rescue Services Act 2004 (The 2004 Act) that an intervention protocol be prepared, and for the Secretary of State to have a regard to it, in the exercise of his powers of intervention. Under section 22 of The 2004 Act, the Secretary of State has broad powers to secure that fire and rescue authorities are acting in accordance with the Fire and Rescue National Framework for England (the Framework). Intervention is by order, and subject to the negative Parliamentary procedure.

7 Equality Impact Assessment

Officers have considered the Service's Brigade Order on Equality Impact Assessments (Human resources 5 Part 2) and have determined that there are no discriminatory practices or differential impacts upon specific groups arising from this report. An initial Equality Impact Assessment has not, therefore, been completed.

8 Appendices

Appendix A

Protocol on Government Intervention Action on Fire and Rescue Authorities in England

Appendix B

Proposed response to consultation questions

9 Background Papers

There are no background papers associated with this report.



Department for
Communities and
Local Government

Appendix A to report 11 on
Consultation Exercise:
Protocol on Government Intervention Action
on Fire and Rescue Authorities in England
Shropshire and Wrekin Fire and Rescue Authority
Strategy and Resources Committee
15 November 2012

Protocol on government intervention action on fire and rescue authorities in England

Consultation

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Ministerial foreword

The consultation on the (revised) *protocol on Government intervention action for fire and rescue authorities in England* recognises that the best way to deal with an authority that is performing poorly is take full advantage of the experience, professionalism, and expertise that already exists in the sector; to work with the relevant fire and rescue authorities, and their political and professional leadership, and make full use of the wide range of support processes that are in place.

The protocol sets out the Government's expectations for the fire and rescue sector, indicates what circumstances could lead to intervention being considered, and what might happen in the event of statutory intervention. The Government would only use its intervention powers as a last resort.

I look forward to receiving comments to this consultation and to working with fire and rescue authorities and other organisations to help make our communities even more informed and safer.

A handwritten signature in black ink, appearing to read 'Brandon Lewis', written in a cursive style.

Brandon Lewis MP
Minister for the Fire and Rescue Service

Consultation questions

Consultees are invited to respond to the following questions:

Question 1

Does the draft protocol clearly set out what is expected of the Government and fire and rescue authorities in their respective roles in the event of intervention by the Secretary of State?

Question 2

Is there anything you would change?

Question 3

Is there anything not included in the protocol that should be added?

Responses are required by **15 November 2012** and should be sent to:

fsed6@communities.gsi.gov.uk

Introduction

1. It is a requirement under section 23 of the *Fire and Rescue Services Act 2004* (the 2004 Act) that an intervention protocol be prepared, and for the Secretary of State¹ to have a regard to it, in the exercise of his powers of intervention. Under section 22 of the 2004 Act, the Secretary of State has broad powers to secure that fire and rescue authorities are acting in accordance with the *Fire and Rescue National Framework for England* (the Framework). Intervention is by order, and subject to the negative Parliamentary procedure.
2. Such an order can only be made if the Secretary of State considers it would promote public safety; the economy, efficiency and effectiveness of the relevant authority; or economy, efficiency and effectiveness in connection with the matters in relation to which fire and rescue authorities have functions.
3. To date there has been no formal intervention into the operations of a fire and rescue authority by the Secretary of State under section 22 of the 2004 Act. Use of this power is seen as a last resort; the expectation is that the political and professional leadership will put in place processes to ensure that sector-led support is provided to any fire and rescue authority that needs it. For example, through peer-led improvement measures.
4. This *intervention protocol* sets out the arrangements between the Secretary of State, the Local Government Association, and fire and rescue authorities should formal intervention be considered necessary – for example, where the Secretary of State considers that a fire and rescue authority is failing, or is likely to fail, to act in accordance with the Framework which requires immediate government action to address². This protocol applies to all fire and rescue authorities in England.
5. This *intervention protocol* recognises the vital role of the Local Government Association in maintaining an overview of performance in the sector so that preventative improvement support can be provided and the need for intervention alleviated. This echoes arrangements in place for the wider local government sector.
6. The principal aim of any intervention action is the swift and satisfactory resumption of normal service. In practice, this means that the fire and rescue is providing services which adequately meet the needs of the community it serves and is acting in accordance with the Framework.

¹ Secretary of State for Communities and Local Government

² Section 22 of the Fire and Rescue Services Act 2004

Terms in use

7. In this protocol the term 'intervention' is used to refer to action by the Secretary of State in exercise of his powers under section 22 of the 2004 Act. Although the Secretary of State also has other powers of intervention (for example, under section 15 of the *Local Government Act 1999*) this intervention protocol does not apply to them.

Role of Local Government Association in supporting authorities at risk

8. The Local Government Association will, as part of their challenge and intelligence role, work collaboratively with fire and rescue authorities, other sector-owned bodies, inspection bodies and government departments to identify at an early stage where serious risks to performance are developing and where there is a risk of the authority failing to act in accordance with the Framework. The Local Government Association will work with them to mitigate the escalation of those risks which could have a negative impact on the reputation of the sector, or could lead to serious service failure.
9. Information sharing arrangements are in place between the Local Government Association, government departments, and any other bodies to ensure that the Local Government Association has the best possible intelligence to focus support.
10. If there are specific concerns in respect of a fire and rescue authority's performance or evidence that indicates that a fire and rescue authority is at risk of failing its statutory duty, the Local Government Association will work with the authority to help them address the issues and improve.
11. This systematic approach to identifying authorities that could benefit from preventative support to achieve improvement, based on data and informal conversations with the sector, is set out in *Sector led Improvement in Local Government*, published in June 2012.

Circumstances leading to statutory intervention

12. No intervention would be considered unless there was clear evidence that an authority was failing to act in accordance with the Framework; and that the failure was so serious as to require government intervention. Such evidence may emerge from an audit, or from other reports of financial accounts or performance data, or from Ombudsman or other investigations, or judicial findings.

13. If, following a sustained and determined attempt to resolve problems through sector led improvement, an issue cannot be resolved, or if a fire and rescue authority is unwilling or unable to engage with sector-led improvement measures, the Secretary of State can commission a corporate governance investigation, under section 10 of the *Local Government Act 1999*, to ensure a robust evidence base.
14. If there are concerns regarding operational performance, ministers may ask the Chief Fire and Rescue Adviser, as an appointed Her Majesty's Inspector³, to lead an investigation. Ministers may also seek assurance from the Chief Fire and Rescue Adviser (or other advisers) in respect of specific issues that they may identify.
15. The Secretary of State has a wide range of powers with regard to, for example, requesting information regarding a fire and rescue authority's functions⁴; or conferring on a fire and rescue authority functions relating to emergencies⁵.

What happens upon statutory intervention?

16. In the event that statutory intervention is considered necessary, the Secretary of State will consult both the authority concerned and the Local Government Association, and any other body or authority which he considers necessary in the specific circumstances of the case, before exercising his powers of intervention under section 22.
17. In addition, in the event of a statutory intervention, the Secretary of State will formally notify both the authority concerned (and the Local Government Association) of the proposed order and the reasons for it. The relevant fire and rescue authority will be given the opportunity to make representations about the proposed order and to make the necessary improvements.⁶
18. The form or extent of any formal intervention will be a matter for determination on a case by case basis, taking into account the views of the Local Government Association, and the relevant fire and rescue authority, as much will depend on the nature and the seriousness of the failure under consideration.
19. Every effort will be made to reach agreement between the Department, the Local Government Association and the relevant fire and rescue authority as to what action should be taken.

3 Section 28 of the 2004 Act: determines the arrangements for appointing inspectors of the Fire and Rescue Service.

4 Section 26 of the 2004 Act

5 Section 9 of the 2004 Act

6 Section 22(4) of the 2004 Act specifies that before making an order under subsection (2), the Secretary of State must give the authority an opportunity to make representations about the order proposed

20. Following such deliberations, the Secretary of State may ask the relevant fire and rescue authority to draw up a recovery plan and they may be encouraged to seek help in the development of their plan. The recovery plan will need to consider alternative ways by which services might be improved and delivered.
21. The Secretary of State has wider order-making powers to ensure that fire and rescue authorities act in accordance with the Framework. The Secretary of State will have regard to this protocol, or any agreed memorandum of understanding, in making any such orders. For example, the Secretary of State may require the fire and rescue authority to:
- prepare or amend a recovery plan
 - ensure that particular functions are carried out to achieve specified objectives or priorities
 - take consultancy advice
 - appoint interim management
 - enforce appropriate levels of delegation
 - secure a function from a specified provider or put the function out to tender
 - appoint a nominee to exercise certain specified functions on behalf of the authority
 - any other action that will secure the necessary improvements
22. The fire and rescue authority will normally be supported to make the necessary improvements itself. However, in exceptional cases of serious corporate or service failure, when there is a serious risk of harm or financial loss, paragraphs 23-24 will apply.

Exceptional or urgent cases

23. In urgent or exceptional cases, where there is a persistence of failure, or where the severity or the risk of harm or financial loss show that urgent action is necessary, and a fire and rescue authority has failed to take adequate action to address it, the Secretary of State retains the discretion to reduce or condense the procedures outlined.
24. When exercising the powers in this way, the Secretary of State will notify the authority and the Local Government Association as soon as practicable of the intervention, the reasons for it, and the reasons for curtailing the procedures.

Publicity and media strategy

25. It will be decided, on a case by case basis, whether a publicity or media strategy is required. If so, it will be shared with the fire and rescue authority concerned and the Local Government Association, as necessary.

Protocol on Government Intervention Action on Fire and Rescue Authorities in England

Shropshire and Wrekin Fire and Rescue Authority (SWFRA) Proposed Response

Question 1

Does the draft protocol clearly set out what is expected of the Government and fire and rescue authorities in their respective roles in the event of intervention by the Secretary of State?

SWFRA Response

SWFRA fully supports the principle of intervention within the public sector. It is noted, however, that the existing intervention arrangements have not been exercised since the introduction of the Fire and Rescue Services Act 2004. As such, it could be argued that the protocol is not required, given that intervention powers are already incorporated within the Local Government Act 1999 (Section 15).

The consultation document does not provide a clear and unambiguous indication as to how the protocol would be activated. With the removal of Audit Commission and previous Inspectorate-led inspections / audits there is no benchmark or trigger point, at which intervention could be expected to occur. The mechanism proposed is subjective in nature and, therefore, could, if applied, be exercised in a haphazard fashion, potentially allowing some poor performing authorities to go undetected.

Whilst arrangements for sector-led performance and improvement exist within such organisations as the Local Government Association (LGA) and the Chief Fire Officers Association (CFOA), neither of these two organisations have the statutory power of audit or inspection. The only approach used by both the LGA and CFOA to assess performance is the Operational Performance Assessment (OpA) process, which is a voluntary, un-scored, peer review, a review which was never intended or structured to trigger Government intervention.

The protocol proposes a range of evidence, which may lead to intervention. With the absence of national performance standards / indicators, targets and benchmarking it is not clear that a robust and fair evidence base could be established to support intervention.

Question 2

Is there anything you would change?

SWFRA Response

As stated in the response to Question 1, SWFRA fully supports the principle of intervention, but firmly believes that the responsibility to initiate such intervention should reside with a Crown-appointed inspector / inspectorate, forming judgements against clearly defined criteria.

In this context, the role of the Chief Fire and Rescue Advisor (CFRA) should be reviewed, as this role is arguably impartial and well-placed to act as Her Majesty's Inspector (HMI) and offer unbiased professional advice. There may be a conflict of interest in both the LGA and CFOA advising on intervention, as they are, to some extent, responsible for the policies and procedures adopted by many fire and rescue authorities.

Question 3

Is there anything not included in the protocol that should be added?

SWFRA Response

In addition to the responses provided above and, in conclusion, SWFRA believe, that:

- a) The role of the CFRA, acting in the capacity of HMI, is essential to the provision of unbiased professional advice to the Secretary of State regarding the activation of intervention protocols.
- b) The advice / judgements provided by the CFRA should be against a robust evidence base (utilising national performance standards / indicators, targets and benchmarking etc).
- c) The Secretary of State's existing powers of intervention, as laid out within the Local Government Act 1999, would appear sufficient to safeguard public interests. The proposals made in support of the Fire and Rescue Services Act (Section 22) are not required.