

Consultation on Proposed Policy Statement for Part 2 of the Localism Act 2011

Report of the Chief Fire Officer

For further information about this report please contact Chief Fire Officer Paul Raymond on 01743 260203.

1 Purpose of Report

The Department for Communities and Local Government (CLG) is consulting on a proposed policy statement for Part 2 of the Localism Act 2011. This report provides an executive summary of the statement and sets out the proposed response to the consultation for consideration by the Fire Authority.

2 Recommendations

The Fire Authority is recommended to:

- a) Note the contents of this report;
- b) Consider and amend / agree the proposed response to the consultation, set out at section 6 of the report; and
- c) Authorise officers to submit the agreed response on behalf of the Fire Authority.

3 Background

The Localism Act provides a substantial and lasting shift in power away from central government, giving public authorities more freedoms and powers. Part 2 of the Act is designed to incentivise public authorities to meet their European obligations and avoid any infraction related fines.

The Local Government Association and the Greater London Authority have been actively involved in drafting and agreeing a proposed policy statement, which, according to CLG, sets out a fair, proportionate and reasonable approach. It establishes key principles, such as 'no surprises', and it names local government as a key sector for involvement, when negotiating and transposing new and relevant European Union (EU) law.

The full consultation document is available on the CLG website via the following link:

<http://www.communities.gov.uk/documents/localgovernment/pdf/20750331.pdf>

4 Executive Summary of the Statement

Given below is the executive summary of the statement, provided by CLG in the consultation document.

Chapter 1: Context

Countries in the European Union must take appropriate measures to ensure fulfilment of their obligations arising out of the treaties or resulting from the acts of the institutions of the Union - all public authorities are subject to this duty. All parts of the UK administration take compliance with EU obligations seriously, which is why we have never been fined under the EU infractions procedure. Part 2 of the Localism Act 2011 reinforces these arrangements by ensuring that all parts of the administration face financial incentives to comply.

Purpose and applicability of the policy statement

The purpose of the statement is solely to comply with the Secretary of State's duty under section 49 of the Localism Act. It is relevant to the UK Government, devolved administrations of Scotland, Wales and Northern Ireland, any independent advisory panel set up under section 53 of the Localism Act, and public authorities (defined as the local authorities specified, or any other body or person which has non-devolved public functions).

Chapter 2: Devolved administrations and local government

In Scotland, Wales and Northern Ireland, the provisions would only be applied to non-devolved functions not funded from devolved administration devolved budgets. The Minister must not prejudice the performance of any devolved functions by use of these provisions, and would consult the devolved administration as and when is appropriate.

Local government

As a tier of democratic government in the UK, the Government recognises that local authorities have a particular role to play in delivery of EU obligations. Local authorities have wide ranging responsibilities locally. Where it is considered that a new EU legislative act (as described in Article 289(3) of the Treaty on the Functioning of the European Union) would result in legal obligations on local authorities which, if breached, could potentially lead to financial sanctions for non-compliance, the Government specifically names local government as a key sector for involvement. In such cases, the UK Government would involve local government – or a suitable representative body if appropriate – ahead of, and during negotiations on new EU laws (those negotiated after the Act has come into force) and ahead of transposition into domestic law.

When defending a potential infraction case, the UK Government would also liaise with any local authority directly involved in the case, including prior to any referral to court under Article 258 of the Treaty of the Functioning of the European Union.

Chapter 3: Key principles

- **Working in partnership**

The UK Government, as a matter of good practice, would seek to engage with affected parties when negotiating and transposing EU laws. This would help to ensure that expertise, knowledge and experience of external parties is drawn upon as the UK Government formulates its position and approach.

- **Transparency and no surprises**

Authorities would be given the time and opportunity to put things right before being asked to pay. The use of the provisions should never come as a surprise. The Minister would consult any public authority in good time before seeking to designate it by Order. Only actions, or inactions, by an authority which occur following designation will be taken into account when passing on a financial sanction.

- **A fair, reasonable and proportionate process**

The use of Part 2 provisions would be fair, reasonable and proportionate. There would be an independent advisory panel which would make recommendations to the Minister. Authorities would not be held responsible for breaches of EU law that were not within their power to avoid, and would only be fined if they have demonstrably caused or contributed to the infraction in relation to which the financial sanction was imposed. Authorities would have opportunities to make representations. Decisions would be evidence-based and transparent.

- **Ability to pay**

Once the fair and reasonable apportionment of responsibility for the payment of the financial sanction has been decided, the authorities involved would have a further opportunity to make representations, this time on their ability to pay. If the Minister accepts that an authority could not pay its full share of the costs, then the Minister may decide that a lower amount would be appropriate or that the payment could be made over a longer period. The UK Government would cover the cost of any shortfall, and there would not be any re-apportionment to other organisations involved. The provisions in the Act are not about the recovery of every last pound of any financial sanction imposed on the UK Government but are about consistency in financial and legal responsibility.

5 Comments on the Statement

Under previous provisions, if the UK infringed EU law, then the UK Government would be liable for the fine, regardless of whether, for example, the infringement was down to an individual authority failing to implement measures. Under the new provisions, if an authority fails to comply and as a result the EU imposes a fine on the UK Government, the UK Government can seek to pass on all or part of that fine to the breaching authority. In effect, it allows the UK Government to “join in” a breaching authority.

The UK Government has never been fined for non-compliance in the past. This would indicate that the likelihood of the Fire Authority being liable for a fine is minimal. The provisions also allow for an authority to “put things right” before they would be liable for any fine. So, even if the Fire Authority were found to be in breach, it would have chance to take corrective action before the UK Government could seek to pass on any fine. It is unlikely, therefore, that this would impact on the Authority, as presumably it would comply, rather than be fined. There is provision that compliance does not have to be at any cost and a “reasonableness” element is present.

It should be noted that any decision to pass on part of the fine will be made following recommendations of an independent panel. The method of appointing the Panel perhaps has room for improvement. The proposal is that the Minister appoints the Chair. It is suggested that the Chair should be elected by the Panel itself to provide greater independence and transparency. The proposals also provide for the Minister to be able to have unlimited rights of veto in respect of nominees to the Panel; this should be a restricted right of veto.

6 Consultation Questions and Proposed Response

Attached at the appendix to this report are the questions raised in the consultation document.

Your officers propose the following responses, which must be submitted by 22 April 2012.

General Comment

The Fire Authority, whilst not welcoming the proposals, accepts that Part 2 of the Localism Act 2011 is now statute and a policy statement is, therefore, necessary. The Fire Authority is pleased to see that a “no surprises” approach has been adopted and is satisfied that this is the appropriate approach in these circumstances.

In respect of the specific consultation questions, the Fire Authority wishes to make the following submissions:

Question 10

Do you have comments regarding the membership of an independent advisory panel, including how panel members are selected?

The Fire Authority does not agree with the proposal that the Chair of the Panel should be appointed by the Minister. In order to ensure greater independence and transparency, the Fire Authority would submit that the Chair should be elected by the Panel, once constituted.

The Fire Authority does not agree with the proposal that the Minister should have an unlimited right to reject nominations to the Panel. This gives too much power to the Minister and does not provide a sufficient degree of independence. The Minister may be given a limited right of veto, perhaps having the ability to reject nominations, where there is a clear conflict or some other objective reason for the rejection, and a limited number of vetos.

7 Financial Implications

The **likely** impact on the Authority of the proposals is negligible, although it should be noted that the **potential** impact is significant (minimum lump sum fine of €8.992 million).

8 Legal Comment

Legal comment on the proposed statement is contained within the body of this report.

9 Equality Impact Assessment

Officers have considered the Service's Brigade Order on Equality Impact Assessments (Personnel 5 Part 2) and have decided 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.

10 Appendix

Consultation Questions

11 Background Papers

Department for Communities and Local Government
Consultation on Proposed Policy Statement for Part 2 of the
Localism Act 2012

Consultation Questions

Question 1

Do you have comments on the context in Chapter 1?

Question 2

Do you have comments on the purpose or relevance of this policy statement?

Question 3

Do you have comments on how the powers on non-devolved matters would be applied and the role of devolved administrations?

Question 4

Do you have comments on the proposed approach in relation to local government?

Question 5

Do you have comments on whether public authorities, which are not local authorities, would wish to see equivalent provisions for involvement? If so, please explain what these would be and how any capacity constraints, such as for smaller organisations, could be managed.

Question 6

Do you have any comments on the principle and general application of working in partnership?

Question 7

Do you have comments on the processes for designation and the time and opportunity given for corrective action?

Question 8

Do you have comments on the process for passing on fines?

Question 9

Do you have comments regarding the level of detail to cover in this policy statement on criteria to establish the authority's ability to pay the apportioned EU financial sanction? Or is that best left to be defined in individual circumstances?

Question 10

Do you have comments regarding the membership of an independent advisory panel, including how panel members are selected?

Question 11

Do you have comments on the broad terms of reference under Annex A?

Question 12

Do you have comments on the approach regarding achieving compliance and ending liability?

Further comments

Please provide any further comments below.