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Localism Bill

Report of the Clerk

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1 Summary

- 1.1 The Localism Bill was introduced to Parliament on 13 December 2010. On 17 January 2011 the House of Commons debated the main principles of the Bill, and decided that it should be given its Second Reading. The Bill was then sent to a Public Bill Committee for scrutiny. It is anticipated that it will receive royal assent in the autumn of 2011 and come into force two months later.
- 1.2 In presenting the Bill, the Government has made clear its view that central government has become too big, too interfering, too controlling and too bureaucratic. It considers this has undermined local democracy and individual responsibility, and stifled innovation and enterprise within public services. The Government wants to see a radical shift in the balance of power and to decentralise power as far as possible, involving individuals, neighbourhoods, professionals and communities as well as local government and other institutions.
- 1.3 The Bill proposes changes and new initiatives to strengthen local democracy and empower communities, and changes in planning and social housing. In a wide range of provisions, the Bill also includes changes to the law affecting fire and rescue authorities (FRAs). This report focuses on those provisions in the Bill which affect the powers and duties of FRAs.

2 Recommendation

That the implications of the Localism Bill for the Authority and the future development of services be noted.

3 Summary of Proposed Changes

General Power of Competence v Wider FRA Powers

- 3.1 The Bill introduces a “general power of competence” for local authorities i.e. a power to do “anything that individuals generally may do”. The power is very broadly worded and includes the ability to act for, or otherwise than for, the benefit of the authority, its area or its residents, and to do so in the UK or elsewhere. The power is subject to certain restrictions and, for example, cannot be used to overcome specific limitations on an authority’s powers that are set out

in other legislation.

- 3.2 Although the general power of competence would apply to councils, it would not be extended to FRAs. FRAs would instead be granted wider powers to undertake activities in connection with their existing core functions.
- 3.3 Under current law, S.5 Fire and Rescue Services Act 2004 enables an FRA to do “anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions”. Case law has had the effect of limiting the range of activity that can be undertaken within this power. While it would cover, for example, activities incidental to the promotion of fire safety, it would not include activity that is itself incidental to those incidental activities. This can create uncertainty as to whether particular activities can be undertaken lawfully.
- 3.4 However, the new powers would address this by permitting an FRA to do anything it considers appropriate for the purposes of the carrying-out of any of its functions, including anything it considers appropriate for purposes directly or indirectly incidental to its functions “through any number of removes”.
- 3.5 The main difference between the proposed wider powers for FRAs and the general power of competence for councils is that, unlike councils, FRAs would not be given new powers to undertake activities that are wholly unrelated to existing core functions such as fire safety, fire-fighting and rescue from road traffic accidents. However, where the FRA wishes to continue its focus on core functions, it will have a wide range of powers to develop these.
- 3.6 The Chief Fire Officers’ Association has lobbied for FRAs to be included in the general power of competence. The significance to future business of being excluded from the general power will depend largely on whether the FRA would wish to venture into new unrelated areas of service provision, as opposed to concentrating on core functions.

Commercial Activities

- 3.7 The Bill’s provisions include an ability to set up a trading company to do “for a commercial purpose” anything which the FRA is otherwise empowered to do. For example, an FRA is already empowered to provide training for its own personnel. The Bill would enable such provision to be developed, with a training consultancy established through a company, marketing services to a wide range of customers not restricted to the public sector.
- 3.8 The availability of a power to trade for an FRA is not in itself wholly new, as the Local Government Act 2003 already enables the Secretary of State to authorise best value authorities (which include FRAs) to trade in function-related activities through a limited company. In keeping with the principles of localism, the Bill proposes to remove the need for Secretary of State involvement, enabling FRAs to determine for themselves whether and in what circumstances they should undertake trading activities.
- 3.9 The power to trade would not enable an FRA to begin charging for things which it has a basic statutory responsibility to do e.g. rescuing people from a road traffic accident. However, in incidental and discretionary areas of activity, the

power may be regarded as creating income generation opportunities that are worth exploring, particularly in the current financial climate.

Charging

- 3.10 Under current law, the Secretary of State may authorise FRAs to recover charges for certain prescribed services. Once again, in keeping with the principles of localism, the Bill proposes to remove the need for Secretary of State involvement – it would be for an FRA to decide as to the circumstances in which charges should be made for action taken.
- 3.11 The Bill is very clear that charges could not be made for any of the following:
- extinguishing a fire (other than one at sea),
 - rescuing individuals in an emergency
 - providing emergency medical assistance
 - responding to an emergency resulting from events of “widespread significance”, severe weather or road traffic accidents
 - enforcement activity under fire safety legislation
- 3.12 A charge could be recovered for responding to a call for assistance at non-domestic premises, where this turns out to be a false alarm as a result of persistent malfunctioning of fire detection equipment.
- 3.13 Subject to the above limitations, an FRA would be at liberty to introduce charges for its services. Any charging regime would be set by the FRA after public consultation. Income from charges must not exceed the cost of taking the action for which charges are imposed.

Member Conduct

- 3.14 The Bill contains provisions abolishing the current standards regime governing the conduct of members. A briefing note that was presented to the Authority’s Standards Committee in December, shortly after the publication of the Bill, is attached as an appendix.

Mutual Insurance

- 3.15 The Bill has no effect on the continuation of powers in the Local Democracy, Economic Development and Construction Act 2009 enabling FRAs and other public bodies from entering into mutual insurance arrangements. This is something in which the Authority has had an interest as a result of its past involvement with FRAML. It should be noted however that although these powers are on the statute book, they have not yet been brought into effect.

Pay Accountability

- 3.16 FRAs are included along with councils in the Bill’s provisions promoting greater accountability for senior officer pay. A senior pay policy statement will need to be prepared annually by an FRA, commencing in 2012-13, setting out policy on the remuneration of its most senior officers. This must include level and elements of remuneration, increases, bonuses and performance-related pay, and policy on

terms and conditions. It must be approved by a resolution of the full authority before the start of the financial year in which it applies. Pay decisions in that financial year would then need to comply with the statement.

4 Comment

- 4.1 Members may have observed from the report on the statutory powers and duties of an FRA, considered at the December meeting, that FRA functional powers are already worded very broadly – typically requiring the FRA to “...make provision for the purpose of...” e.g. extinguishing fires. It is then for each FRA to decide what specific arrangements it puts in place to fulfil its statutory responsibility.
- 4.2 These broad functional powers are widened further by the Bill. However, they do not go so far as the general power of competence, which enables councils to undertake activities in new areas unrelated to core functions. The significance of this depends on the FRA’s future aspirations for the development of its business and the scope of its services to the community.

5 Equality Impact Assessment

- 5.1 An impact assessment has been made on the proposals in the paper and shown that they are not discriminatory. They are considered compatible with the provisions of the European Convention on Human Rights, the Human Rights Act 1998 and the Equality Act 2010.

6 Conclusion

- 6.1 The report outlines the main implications for the Authority of the provisions in the Localism Bill. The Bill is subject to change as it progresses through the parliamentary process. A further report will be brought to the Authority when the Bill becomes an Act.

APPENDIX ATTACHED:

Briefing Note to HFRA Standards Committee 18 December 2010

Section 100D – Local Government Act 1972 – background papers

The following documents disclose the facts or matters on which this report, or an important part of it, is based and has been relied upon to a material extent in the preparation of this report.

N.B. The list excludes:

Published works.

Documents that disclose exempt or confidential information as defined in the Act.

TITLE

FILE

HFRA Standards Committee

Localism Bill

Summary of Proposed Changes to Conduct Regime for Relevant Authorities in England

- The power to specify in regulations the principles which are to govern the conduct of members and co-opted members of relevant authorities, and to issue a model code of conduct, would be abolished
- The duty on authorities to adopt the model code of conduct would be abolished, as would a member's duty to comply with the code adopted by his/her authority
- The duty on authorities to establish a standards committee would be abolished. The Standards Board would be abolished
- Relevant authorities would acquire a new duty to promote and maintain high standards of conduct by members and co-opted members
- Relevant authorities would have a discretion to adopt a voluntary code of conduct for members and co-opted members. This would apply when members are acting in that capacity, rather than in any private capacity. A voluntary code could be an adaptation of the current code or a replacement. However, the existing code could simply be withdrawn by an authority and not replaced
- Where a written complaint is received that a member has failed to comply with the authority's voluntary code, the authority would be required to consider whether it should be investigated. If so, the investigation can be in such manner as the authority thinks fit. The requirement to establish assessment and/or review sub-committees would be abolished. The authority would have much more discretion over how it handled, investigated and determined the allegation
- Although the duty to establish a standards committee would be abolished, it would be open to an authority to establish a committee with e.g. terms of reference to promote and maintain high standards of conduct and to deal with any allegations of failure to comply with the authority's voluntary code
- Where an authority chooses to establish such a committee, it is not subject to the current standards committee requirement that 25% membership of the committee, including the Chair, are independent. Whether there is any independent membership would be entirely a matter for the authority
- Where an authority finds that a member has failed to comply with its voluntary code, it shall decide whether to take action and, if so, what. There would be no longer be any right of appeal to the First Tier Tribunal
- Sec of State may make regulations requiring the establishment of a register of members' interests. The regulations may require the register to be publicly available
- The regulations may specify the financial and other interests to be registered, and require a member with an interest of a kind specified to disclose that interest

before taking part in relevant business of the authority. The regulations may prevent or restrict the participation of a member in any business to which the interest relates. Dispensations can be granted by the authority in specified circumstances

- The regulations may include the sanctions that can be imposed by the authority for failure to comply with the regulations. However, these cannot include suspension or disqualification
- Failure to register a registerable interest without reasonable excuse would be an offence
- Failure to disclose a disclosable interest, before taking part in authority business relevant to that interest, without reasonable excuse, would be an offence
- Taking part in business to which an interest relates, contrary to any restriction or prohibition in the regulations, without reasonable excuse, would be an offence
- All offences would be punishable on conviction by a fine of up to £5,000 and disqualification for up to five years. A decision on whether an offence had been committed, and any sanction that should be imposed, would be made by a Court, therefore, and not by the authority. However, a member can only be prosecuted for any such offence by the Director of Public Prosecutions
- It is anticipated that the Localism Bill will receive royal assent in the autumn of 2011 and come into force two months later. The new arrangements are likely to come into force in around a year's time, therefore. Transitional arrangements will apply to any ongoing cases
- The provisions in the Bill are subject to modification as the Bill progresses through the parliamentary process

Some questions to consider:

- Should the Authority adopt a voluntary code of conduct? Bearing in mind that the Sec of State's regulations will set out provisions on declaration of interests, what should the voluntary code cover?
- How would any allegations of failure to comply with the voluntary code be handled?
- How should the Authority approach its duty to promote and maintain high standards of conduct? Should this approach include the retention of a committee with a focus on ethical standards?
- If so, should it differ from the current Standards Committee, with regard to terms of reference and membership? If so, in what way?