

**7 December 2011**

**Standards Committee**

**16 December, 2011**

**Localism Act 2011 – An Update**

**Report of the Clerk**

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## **1 Summary**

- 1.1 At its meetings on 9 February and 15 June this year, the Authority received reports summarising the main implications of the Localism Bill for fire and rescue authorities (FRAs). On 15 November 2011, the Localism Bill became an Act of Parliament and this report informs Members of the final form of the Act insofar as it relates to FRAs.

## **2 Recommendation**

- 2.1 It is recommended that:

(a) the implications of the provisions in the Localism Act 2011 affecting FRAs are noted; and

(b) further report/s on implementation be brought to the Authority for consideration and decision at appropriate stages.

## **3 Summary of Relevant Statutory Provisions**

### Wider FRA Powers

- 3.1 Members may recall that there was some debate at Bill stage as to whether FRAs should be given the “general power of competence” that was proposed for local authorities. The final position is that the Act does not extend that power to FRAs.
- 3.2 However, for stand alone FRAs, sections 9 and 10 of the Localism Act (“the Act”) do provide that the Authority has the power to do -

- (a) anything it considers appropriate for the purposes of carrying out any of its functions,
- (b) anything it considers appropriate for purposes incidental to its functions,
- (c) anything it considers appropriate for purposes “indirectly incidental” to its functions “through any number of removes”,
- (d) anything it considers to be connected with any of its functions, or anything it may do under paragraphs (a) - (c); and
- (e) for a commercial purpose anything connected with any of the above (although not in relation to a person if a statutory provision requires the FRA to do those things in relation to the person).

3.3 Therefore, although FRAs do not have the general power of competence that local authorities have been granted, these powers permit a FRA to do anything it considers appropriate for purposes directly or indirectly incidental to its functions and it can choose to do it on a commercial basis. What the FRA cannot do is undertake activities that are wholly unrelated to its core functions. In practice, the exclusion from the general power of competence is only of any real significance if an FRA wished to contemplate activities in areas that were not related to its core functions, for example setting up a residential care home. Other restrictions include –

- (a) there is no power to override existing legislation,
- (b) there is no power to raise taxes or borrow money – other than in line with existing arrangements,
- (c) commercial activities must be undertaken through a company or co-operative; and
- (d) there is provision to prevent FRAs from, or imposing conditions on FRAs in, using the general power in circumstances to be specified by the Secretary of State (a reserve power).

3.4 Some examples of possible uses of the new powers have been identified by the Government as being:

- (a) entering into commercial joint ventures for profit to redevelop redundant fire buildings with sale proceeds being ploughed back into new or updated buildings,
- (b) shared services arrangements with public sector agencies, private sector providers or not for profit organisations; and
- (c) making greater use of assets, premises and capacity to support the “Big Society” through more innovative working with partners and local citizens.

#### Powers to Charge

3.5 Section 10 of the Act provides for amendments to be made to the Fire and Rescue Services Act 2004 in relation to charging. It provides that a FRA may charge a person for any action taken by the authority in the

UK, at sea or under the sea in respect of its statutory functions subject to the various restrictions referred to below.

- 3.6 Charges may not be made for –
- extinguishing a fire (other than one at, or under, the sea),
  - rescuing individuals, or protecting them from serious harm, in an emergency,
  - providing emergency medical assistance,
  - responding to a report of a fire or explosion (other than one at, or under, the sea, or a report of a fire at non-domestic premises, where this turns out to be a false alarm as a result of malfunctioning or misinstallation of fire detection equipment and there is a persistent problem with false reports),
  - responding to an emergency resulting from events of “widespread significance”, severe weather or road traffic accidents,
  - enforcement activity under fire safety legislation; or
  - promoting fire safety in the FRA’s area other than for giving advice in relation to premises where a trade, business or other undertaking is carried on, whether for profit or not (it should be noted that this is something that FRAs have always sought more as a means of incentivising good housekeeping and maintenance of systems rather than for income generation). However, a charge may not be made for giving requested advice about how to prevent fires and restrict their spread in buildings and other property and about the means of escape from buildings and other property in case of fire.
- 3.7 Before a FRA begins to charge for taking specified action, it must consult any person it considers appropriate. The FRA sets the amount of the charge and may charge different amounts in different circumstances. The FRA must ensure that the authority’s income from charges does not exceed the cost of taking the action for which it is charging.

#### Member Conduct

- 3.8 The Act abolishes the current standards regime governing the conduct of Members. As a result, the Standards Board for England, the requirement for authorities to have Standards Committees and the national model code of conduct are abolished from a date to be appointed.
- 3.9 The Act provides that FRAs have a duty to promote and maintain high standards of conduct by Members and Co-opted Members of the

authority. FRAs must, in particular, adopt a code dealing with the conduct that is expected of Members and Co-opted Members of the authority when they are acting in that capacity which is consistent with the Seven Principles of Public Life enunciated by the Nolan Committee.

- 3.10 FRAs will need to have in place arrangements for investigating allegations under the code of conduct and for making decisions regarding the allegations. FRAs must also appoint an “independent person” who must be consulted before a decision is made on an allegation. There are provisions regarding who may qualify as an independent person.
- 3.11 The Register of Interests must remain and shall include the registration of pecuniary interests (to be defined further in regulations). The Register must be available for inspection and be published on the FRA’s website. The Act imposes a criminal offence for the non disclosure of a pecuniary interest, for participating in any discussion or vote on the matter in which the Member/co-opted member has a pecuniary interest or for taking any steps in relation to the matter to be considered, without reasonable excuse. The Act makes it a criminal offence to provide knowingly or recklessly false or misleading information in relation to the disclosure of a pecuniary interest.
- 3.12 FRAs must publicise the adoption, revision or replacement of a code of conduct.
- 3.13 It is intended that the options for compliance with the new conduct requirements be considered by the Authority’s Standards Committee in December, and Corporate Management Team in January, with a view to consideration and a decision by full Authority at a future meeting.

#### Pay Accountability

- 3.14 FRAs are included along with councils in the Act’s provisions promoting greater accountability for senior officer pay. FRAs will be required to write and publish annually a pay policy statement setting out the authority’s policies in relation to chief officer pay as well as to the remuneration of its lowest-paid employees (setting out the relationship between the remuneration of its chief officers and its employees who are not chief officers). The pay policy statement must also include the authority’s policies relating to –
  - (a) the level and elements of remuneration for each chief officer.
  - (b) remuneration of chief officers on recruitment,
  - (c) increases and additions to remuneration for each chief officer,
  - (d) the use of performance-related pay for chief officers,
  - (e) the use of bonuses for chief officers,
  - (f) the approach to the payment of chief officers on their ceasing to hold office under, or to be employed by, the authority; and

- (g) the publication of and access to information relating to remuneration of chief officers.
- 3.15 The pay policy statement must be confirmed by the Authority and published on the FRA's website. The first statement must be approved before the end of 31 March 2012. Draft guidance has been issued by the Government in relation to openness and accountability in local pay.
- 3.16 Pay decisions must comply with the pay policy statement.
- 3.17 The Authority agreed at its meeting on 15<sup>th</sup> June 2011 that the responsibility to oversee the production of the annual senior pay policy statement be delegated to the Human Resources (HR) Committee, which will then recommend its publication to the Authority. Consideration by the Authority will be at its February 2012 meeting along with other budget considerations.

#### Community Right to Challenge

- 3.18 The provisions of the Act provide that a voluntary body, community body, charity, parish council, group of employees or social enterprise have the right to express an interest in running a local service. The right applies to all "relevant services" provided by "relevant authorities" which include local councils and such other bodies as the Secretary of State may specify. It is anticipated that it will apply to FRAs. However, the Government has confirmed that the following activities are to be excluded from the Community Right to Challenge:
- (a) FRAs employ fire-fighters to put out fires and undertake rescues from fires; and
  - (b) FRAs respond to road accidents – fire-fighters undertake this role, jointly with fire fighting.
- 3.19 If the relevant authority accepts the expression of interest (regulations will specify circumstances in which the expression may be rejected) it must carry out a procurement exercise relating to the provision of the relevant service. An expression of interest may be submitted at any time. However, the relevant authority may specify periods during which expressions of interest may be submitted and, where it does so (and has published the relevant details), it may reject any expression of interest submitted outside of the specified period.

#### Assets of Community Value

- 3.20 The Act requires local authorities to maintain a "list of assets of community value" (comprising land of community value as defined in section 88) which have been nominated by the local community (as detailed in section 89). When listed assets come up for sale or change of ownership, the Act gives community groups the time to develop a bid

and raise the money to bid to buy the asset when it comes on the open market.

- 3.21 In the event that a request to list any of the Authority's assets e.g. a Fire Station, was accepted, then the Authority would be entitled to request a review of that decision should it wish. However, even if the asset remained on the list, this would not require the asset to be sold. The question of sale to a community group would only arise once the Authority had made a decision that it had no further use for the asset in question and wished to dispose of it.

#### Transfer of Functions

- 3.22 The Act enables Ministers to transfer local public functions to certain "permitted authorities" (County and District Councils, Economic Prosperity Boards and Combined Authorities established under the Local Democracy, Economic Development and Construction Act 2009) in order to improve local accountability or promote economic growth. Permitted Authorities are empowered to make proposals for such transfers to be made. The "public functions" which can be transferred are functions of public authorities that do not consist of powers to make regulations or other instruments of a legislative character. A "local public function", is one relating to the Permitted Authority's area or persons living, working or carrying on activities in that area.
- 3.23 In view of the wide definition of "public function", the functions of FRAs could conceivably form the basis of a proposal to the Secretary of State by a Permitted Authority. If such a proposal were made, the Secretary of State would be required to consult such persons as he/she considers appropriate before making an order to transfer the function to the Permitted Authority.

#### Council Tax

- 3.24 Previously, central government had the power to 'cap' council tax rises but now the Act gives local communities the power to approve or veto 'excessive' council tax rises. The Secretary of State will determine a limit for council tax increases, which limit must be approved by the House of Commons. If an authority proposes to raise taxes above this limit they will have to hold a referendum to obtain approval for this from local voters. This could indirectly affect FRAs.

### **4 Issues for Hampshire Fire and Rescue Authority**

- 4.1 There are a number of matters arising out of the Act which will require consideration and decision by the full Authority, in particular:
- a review of charging policy in light of the new charging provisions
  - the adoption of a Code of Conduct and the successor arrangements

for maintaining high ethical standards, including the handling of complaints

- approval of a pay policy statement

- whether to specify time periods for the receipt of expressions of interest under the community right to challenge

4.2 Further regulations and guidance yet to be issued will give greater clarification as to the action needed to be taken in compliance with the Act's provisions, and the timescale for this. It is proposed therefore that further report/s are brought to the Authority for consideration and decision at appropriate stages.

## **5 Equality Impact Assessment**

These proposals are not considered to give rise to any issues in the context of the provisions of the human rights and equalities legislation.

## **6 Conclusion**

The report outlines the main implications for the Authority of the provisions of the Localism Act. Further report/s on implementation will be brought to the Authority for consideration and decision at appropriate stages.

### 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

None.