



DEVON & SOMERSET FIRE & RESCUE AUTHORITY

REPORT REFERENCE NO.	DSFRA/11/31
MEETING	DEVON & SOMERSET FIRE & RESCUE AUTHORITY
DATE OF MEETING	16 DECEMBER 2011
SUBJECT OF REPORT	LOCALISM ACT 2011
LEAD OFFICER	Clerk to the Authority
RECOMMENDATIONS	<p>(a) <i>that a report setting out the Authority's proposed Pay Policy Statement for the 2012/13 financial year be submitted for consideration and approval at the Authority budget meeting to be held on Friday 17 February 2012;</i></p> <p>(b) <i>that the Clerk be asked to progress discussions with constituent authorities with a view to establishing appropriate "arrangements" for the Authority in relation to standards matters in the context of the Act and any subsequent Regulations;</i></p> <p>(c) <i>that further reports be submitted to future meetings of the Authority as and when further clarification on other provisions in the Act and the potential impact of these on the Authority becomes available;</i></p> <p>(d) <i>that, subject to (a) to (c) above, the report be noted.</i></p>
EXECUTIVE SUMMARY	<p>This report summarises the main implications for this Authority of the Localism Act which received the Royal Assent on 15 November 2011.</p> <p>While the provisions of the Act relating to Pay Policy Statements (PPSs) come into force on 15 January 2012 (which will require the Authority to consider and approve its first PPS before 31 March 2012, the remaining provisions are subject to commencement order(s) albeit that the Department for Communities and Local Government has indicated its intention that the Act should be fully in force by 1 April 2012.</p>
RESOURCE IMPLICATIONS	None in relation to this report. At present, any resource implications emanating from the Localism Act itself are difficult to determine.

EQUALITY IMPACT ASSESSMENT	Not applicable
APPENDICES	Nil.
LIST OF BACKGROUND PAPERS	<ul style="list-style-type: none"> A. Localism Act 2011 B. CLG Plain English Guide to the Localism Act

1. INTRODUCTION

- 1.1 The Localism Bill was enacted by Parliament on 15 November 2011. The Localism Act 2011 itself runs to some 240 pages, with the accompanying Schedules taking up a further 243 pages. At this indicates, the Act represents a considerable overhaul of the operation of local authorities in England and Wales. The Plain English Guide to the Localism Act issued by the Department for Communities and Local Government provides that the Act:
- “...sets out a series of measures with the potential to achieve a substantial and lasting shift in power away from central government and towards local people. They include: new freedoms and flexibilities for local government; new rights and powers for communities and individuals; reform to make the planning system more democratic and more effective, and reform to ensure that decisions about housing are taken locally.”
- 1.2 Not all of the Act’s provisions, however, relate to the operation of combined fire and rescue authorities such as the Devon & Somerset Fire & Rescue Authority. This report aims to identify, in summary, those provisions that do or may impact on the Authority.
- 1.3 Although enacted on 15 November, it should be noted that many of its provisions will only come into force once the relevant commencement orders have been made. The Act stipulates that these will be on such a date as the Secretary of State determines. Guidance from the Department for Communities and Local Government (CLG) indicates that this should be by 1 April 2012, but other than this there is no clear indication. Additionally, many of the provisions of the Act (e.g. the right to challenge; the right to designate assets of community value (also known as the right to buy)) are still subject further regulations that the Act empowers the Secretary of State to make.
- 1.4 Additionally, it is understood that the Chief Fire Officers’ Association is considering the procurement of legal advice on the contents and implications of the act from a fire and rescue service perspective. Any such advice obtained will, subject to this not being restricted, shared with this Authority.

2. PAY POLICY STATEMENTS

- 2.1 The provisions in the Act relating to Pay Policy Statements (PPSs) come into force on 15 January 2012. The Authority will be required to consider and approve its first PPS by 31 March 2012, and thereafter by 31 March in each subsequent year. The PPS must be approved by the full Authority (it cannot be delegated either to a committee or officer), must be debated in open session and must be published as a minimum on the Authority’s website. The Authority is obliged to abide by its PPS once approved but may amend it in-year.
- 2.2 The PPS must set out the Authority’s policies for the financial year relating to the level and elements (e.g. benefits in kind, bonuses, performance related pay) of remuneration for each chief officer; the remuneration of its lowest-paid employees; and the relationship (as a multiple) between the remuneration of its chief officers and other employees. For this Authority, chief officers will include all on the Senior Management Board. The Authority will also be required to define what it means by “lowest paid employee” and explain why it has adopted the definition so determined.
- 2.3 Pay Policy Statements may also include a range of other issues, for example the retirement and re-employment of officers and any associated policies relating to abatement of pension.

2.4 Draft guidance on Pay Policy Statements indicates that they are intended to give effect to recommendations contained in the Hutton report in relation to accountability, transparency and fairness in the setting of local pay. The guidance comments that:

“Each local authority is an individual employer in its own right and has the autonomy to make decisions on pay that are appropriate to local circumstances and which deliver value for money for local taxpayers. The provisions in the Act do not seek to change this or to determine what decisions on pay should be taken or what policies that individual employing authorities should have in place. Rather, they only require that authorities are more open about their own local policies and how their local decisions are made.”

2.5 As indicated earlier, the Authority will be required to consider and approve its first Pay Policy Statement by 31 March 2012. To comply with this, it is proposed to bring the first such PPS to the Authority meeting on 17 February 2012.

3. OTHER PROVISIONS DIRECTLY IMPACTING ON THE AUTHORITY

3.1 As previously indicated, although the Act has received the Royal Assent many of its provisions are still subject to commencement order(s) which may be made on such a date/dates as the Secretary of State determines. This section of the report deals with provisions falling within this category and which directly relate to this Authority.

(a) “General Power”

3.1 The Act furnishes combined fire and rescue authorities with a new, additional “general power” to do anything it considers appropriate to carry out its functions (its “functional purposes), including anything it considers is directly or indirectly incidental to these functions. There are limitations to this new power, specifically:

- it cannot be used to borrow money;
- it cannot be used to overcome any existing, legislative prohibition on activity; and
- new legislation may prohibit or restrict the use of this power for any given functions/activities.

3.2 The Act also enables the Secretary of State, by regulations, either to further limit use of the power or to amend, repeal etc. any legislation which limits use of the power, subject to certain conditions (e.g. in the public interest) being met.

(b) Trading and Charging

3.3 The Act does little to change the position in relation to trading, which must still be undertaken through a separate company and (as with the general power) is restricted – either directly or indirectly- to functional purposes and to the limitations on charging as identified below.

3.4 In relation to charging, the Act introduces a new regime in essence based on exception rather than specifying (as per the Regulations under the old charging regime introduced by the Fire & Rescue Services Act 2004) activities/services which can be charged for.

3.5 Charging is limited to pure cost recovery and (as with trading) cannot be applied to:

- Actual action taken in extinguishing fires or protecting life and property in the event of fire (unless at sea or under the sea);
- Providing emergency medical assistance;

- Rescuing individuals, or protecting individuals from serious harm, in the event of an emergency which includes emergencies resulting from events of widespread significance; as a direct result of severe weather or resulting from road traffic collisions;
- Action taken in capacity as an enforcing authority under the Regulatory Reform (Fire Safety) Order 2005.

3.6 The Act also introduces a new provision for fire and rescue authorities to charge for repeated attendance at false alarms linked to automatic detection equipment subject to the following conditions:

- the charge can only be levied on non-domestic properties premises;
- the reports must be false;
- the reports must be as a direct OR indirect result of the warning equipment having malfunctioned or having been incorrectly installed;
- there must be persistent problem with such false reports

(c) Council Tax Referendums

3.7 The Act replaces the former system of “capping” with a new regime whereby the Secretary of State will each year draft, and parliament approve, “principles” for use by local authorities in determining whether or not any proposed increase in council tax is excessive. The principles must provide for a comparison between (a) the level of council tax charged in the current financial year and (b) that proposed for the forthcoming financial year and the Secretary of State may, by regulations, specify a “notional amount” for the purposes of the figure at (a).

3.8 Billing authorities will be required, in all cases where the level of council tax proposed by an authority is deemed “excessive” in relation to the “principles”, to undertake a referendum on the matter on behalf of the authority concerned. The referendum must be held on the first Thursday in May of the year to which the demand relates, or such other date as the Secretary of State may determine. In requiring the referendum to be held, the authority concerned must also notify the billing authority of its “substitute” calculations i.e. the level of council tax that it has deemed would not be excessive by reference to the “principles”. The substitute calculations apply in the event that the referendum result is a rejection of the proposed “excessive” council tax.

3.9 The Act also provides that a billing authority may recover expenses incurred by it, in connection with the referendum process, from the precepting authority. This may also extend to the cost of having to issue a revised council tax bill, should the billing authority choose to do so, following a referendum which rejects the “excessive” level of council tax.

3.10 While on the one hand the new provisions might seem to afford more clarity for authorities in setting council tax levels (given that, under the “capping” regime, the criteria for capping was often announced after the council tax level had been set), how effective this is in practice remains to be seen as the Act provides that the “principles” can be approved as late as the date by which the final local government finance settlement is approved by parliament. This can be up to the end of January immediately preceding the financial year to which the proposed new council tax relates.

(d) Standards Issues

- 3.11 The Act provides for abolition of the entire of the previous regime, including the Standards Board for England. Much of the detail of what might replace the former regime, though, is subject to further Regulations.
- 3.12 The Act provides that, in future, “relevant authorities” (which included combined fire and rescue authorities) will have a duty to promote and maintain high standards of conduct by its Members and Co-opted Members and in discharging this duty will be required to:
- adopt a code of conduct to be followed by its Members and Co-opted Members when acting in that capacity. The code must reflect the Nolan principles (selflessness; integrity; objectivity; accountability; openness; honesty; leadership) and contain provisions for the registration and disclosure of pecuniary and other interests;
 - put in place “arrangements” to investigate and determine allegations of breaches of the code. “Arrangements” need not include a Standards Committee as such but must feature an “independent person” who may not be a Member or officer of the Authority; may not have held such a position in the preceding five years; and (perhaps somewhat perversely) cannot – by virtue of the definitions provided in the Act – be one of the existing Independent Members of the Standards Committee.
- 3.13 The Act introduces a new criminal offence for failure to register or disclose “disclosable pecuniary interests”, but prosecutions for this offence may only be instituted by the Director of Public Prosecutions. Summary conviction for such an offence carries a fine not exceeding level 5 on the standard scale (currently £5,000). The Act does not provide for any sanctions in relation to other breaches of the code.
- 3.14 As previously indicated, much of the detail as to operation of the new Standards regime is subject to further Regulations. Other than as indicated above, however, there would seem to be considerable latitude for authorities in determining both codes of conduct and “arrangements” for dealing with breaches of these codes.
- 3.15 In light of this, officers have already begun discussions with constituent authorities with the aim of seeking to formulate “arrangements” for this Authority that are not overly bureaucratic and are proportionate to what is required.

4. OTHER PROVISIONS THAT MAY IMPACT ON THE AUTHORITY

- 4.1 As with the previous section of this report, the provisions outlined in this section are subject to commencement order(s) and further Regulations.

(a) Right to Challenge

- 4.2 The Act requires a “relevant authority” to consider applications in writing from “relevant bodies” expressing interest in providing or assisting to provide a “relevant service” on behalf of that authority. Should such an application be successful, then the relevant authority will be required to undertake a procurement exercise for delivery of the service, with the “relevant body” submitting the application being able to participate in this exercise.

- 4.3 At present, combined fire and rescue authorities are not defined as a “relevant authority” for the purposes of the right to challenge although, in consultation on proposed Regulations on these provisions when the Act was still in Bill form, the Department for Communities and Local Government indicated that it was minded to include such authorities but expressly exclude the right to challenge applying to front-line services (firefighting, rescues etc.).
- 4.4 As with many of the other provisions of the Localism Act, these provisions are subject to further Regulations by the Secretary of State on a range of associated issues (for example, timescales associated with both expressing an interest and undertaking a procurement exercise; criteria for rejecting an expression of interest).
- (b) Designation of Assets of Community Value (“Right to Buy”)**
- 4.5 District Councils will be required to maintain and publish a list of assets (land and/or buildings) in their area deemed to be of community value together with a list of assets nominated but which were not considered to be of community value. Inclusion on these lists will be subject to nomination by parish councils, voluntary or community body with local connections and will trigger restrictions on disposal of the asset – in effect, a moratorium on disposal to provide sufficient time for the nominating body to realise sufficient finance to purchase the asset.
- 4.6 The owner of the asset is immaterial for the purpose of inclusion on the list, although District Councils will be required to notify asset owners of nominations and owners will be able to request the District Council to review any decision it has made to include an asset on the list.
- 4.7 Again, these provisions of the Act are subject to further, clarifying Regulations on issues such as definition of assets of community value, definition of “voluntary or community body” and, perhaps most pertinently, the whole matter of compensation in relation to the operation of these provisions.
- (c) Predetermination**
- 4.8 Predetermination and bias are common law concepts – effectively, having a “closed mind” on matters subject to decision. Previously, a successfully-proven allegation of predetermination or bias could result in the decision on that matter being declared unlawful (if the majority of the people deciding the matter were found to be predetermined or biased).
- 4.9 The Localism Act, however, now provides an exemption for Members on a wide range of bodies – specifically, those exercising a planning function – whereby such a Member is not to be taken to have had a closed mind when making a decision just because they had previously done anything to indicate what view they took, or might take.
- 4.10 While the underlying rationale for this exemption related primarily to planning matters, to overcome issues where the appearance of predetermination or bias might otherwise prevent an elected Member from campaigning or indeed voting on a matter which may have formed the basis of their election platform, it is perhaps strange that the exemption is couched in terms that would seem to apply to all decisions (rather than solely on planning matters) but does not apply to all types of local authority. Specifically, it does not apply to combined fire and rescue authorities.

4.11 Consequently, this would seem to create a situation whereby the exemption from allegations of pre-determination and bias may be relied on when acting as constituent authority Councillors at meetings of those authorities but not when acting as a Member of the Devon & Somerset Fire & Rescue Authority making Authority-related decisions (whatever they may be).

5. CONCLUSION

5.1 This report aims to give a flavour for the contents of the Localism Act in so far as this impacts upon the Devon & Somerset Fire & Rescue Authority. As stressed in this report, however, many of the provisions require further clarity and understanding – which will probably only be forthcoming in regulations – to enable the impact to be fully assessed.

5.2 Consequently, it is intended that further reports be submitted to the Authority as necessary and as and when appropriate clarification becomes available.

MIKE PEARSON
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