



**NOTTINGHAMSHIRE**  
**Fire & Rescue Service**  
*Creating Safer Communities*

Nottinghamshire and City of Nottingham  
Fire and Rescue Authority

# INTERVENTION PROTOCOL

Report of the Chief Fire Officer

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**Agenda Item No:**

**Date:** 28 June 2013

**Purpose of Report:**

To inform the Fire Authority of the recent publication of the Intervention Protocol by the Department for Communities and Local Government.

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## **1. BACKGROUND**

- 1.1 The publication of an intervention protocol in Fire and Rescue Authorities who do not comply with the National Framework is a requirement under Section 23 of the Fire and Rescue Services Act 2004.
- 1.2 Such an order can only be made if the Secretary of State considers it would promote public safety, the economy, efficiency and effectiveness of any relevant authority.
- 1.3 In September 2012 the Government released a revised protocol for consultation with a closing date of 15 November 2012. This set out a number of questions in relation to the revised protocol and invited responses.
- 1.4 At its meeting on 2 November 2012, the Policy and Strategy Committee considered the revised protocol and approved a consultation response drafted by the Chief Fire Officer.
- 1.5 On 14 May 2013 the Government released its revised protocol and simultaneously published the responses to the consultation and this protocol.

## **2. REPORT**

- 2.1 The revised protocol attached at Appendix A of this report details the relevant legislation that would apply to any future intervention and focuses on three key areas:
  - The role of the Local Government Association (LGA) in supporting authorities at risk.
  - Circumstances leading to statutory intervention.
  - What happens upon statutory intervention.
- 2.2 The key elements for note arising from these aspects are that before any statutory intervention would take place, the Secretary of State would have expected that efforts would have taken place between the Authority concerned and the LGA to rectify any emerging issues. There are various support frameworks in place to support failing authorities.
- 2.3 Only if there was considered to be clear evidence that an authority was failing to act in accordance with the Framework, and that the failure was so serious as to require intervention, would the Government act.
- 2.4 There are various options available to the Government including a corporate governance investigation, an inspection by the Chief Fire and Rescue

Adviser, or requests for information regarding a Fire Authority's functions should any intervention occur.

- 2.5 The extent or form of any investigation is determined on a case by case basis, and the Secretary of State may involve other parties depending on the severity of failure. The establishment of a recovery plan may be required.
- 2.6 Through its governance framework, the Nottinghamshire and City of Nottingham Fire and Rescue Authority have in place all the appropriate levels of scrutiny to ensure that the potential for government intervention is low, but the Fire Authority should note that actions available to the Secretary of State should it be required.
- 2.7 A copy of the consultation response from DCLG is also attached as Appendix B to this report.

### **3. FINANCIAL IMPLICATIONS**

There are no specific financial implications arising from this report.

### **4. HUMAN RESOURCES AND LEARNING AND DEVELOPMENT IMPLICATIONS**

There are no specific human resources or learning and development implications arising from this report.

### **5. EQUALITIES IMPLICATIONS**

There are no specific equalities implications arising from this report.

### **6. CRIME AND DISORDER IMPLICATIONS**

There are no crime and disorder implications arising from this report.

### **7. LEGAL IMPLICATIONS**

The preparation of an intervention protocol by the Secretary of State is a requirement under Section 23 of the Fire and Rescue Services Act 2004. Under the same Act, Fire and Rescue Authorities have a duty to comply with the National Framework.

### **8. RISK MANAGEMENT IMPLICATIONS**

The presence of an agreed and informed intervention protocol of this nature reduces the risk to the Fire Authority of any unstructured intervention on behalf of the government. It also ensures that Fire and Rescue Authorities are fully aware of their

responsibilities in complying with the Framework and what may happen if this does not occur.

## **9. RECOMMENDATIONS**

That Members note the introduction of the revised intervention protocol and the implications for the Nottinghamshire and City of Nottingham Fire and Rescue Authority.

## **10. BACKGROUND PAPERS FOR INSPECTION (OTHER THAN PUBLISHED DOCUMENTS)**

None.

Frank Swann  
**CHIEF FIRE OFFICER**



Department for  
Communities and  
Local Government

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

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# Contents

Introduction.....	4
Role of the Local Government Association in supporting authorities at risk .....	4
Circumstances leading to statutory intervention .....	5
What happens upon statutory intervention? .....	5

## 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 State<sup>1</sup> to have regard to it in the exercise of his power of intervention.
2. Intervention is by order, subject to the negative Parliamentary procedure, and can only be made if the Secretary of State considers it would promote public safety, the economy, efficiency and effectiveness of the relevant fire authority, or the services it provides. The Secretary of State's order-making powers under section 22 are to ensure that fire and rescue authorities act in accordance with the *Fire and Rescue Framework for England* (the Framework).
3. To date there has been no formal intervention in the operations of a fire and rescue authority by the Secretary of State. 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.
4. This intervention protocol (the protocol) broadly sets out the arrangements between the Secretary of State, the Local Government Association and fire and rescue authorities should formal intervention be considered necessary.
5. This protocol recognises the vital role of the Local Government Association, often in partnership with the relevant professional body, in maintaining an overview of performance in the sector and enabling preventative improvement. This echoes arrangements in place for the wider local government sector.
6. 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 protocol does not apply to an intervention under those powers.

## Role of the Local Government Association in supporting authorities at risk

7. The Local Government Association will, as part of their challenge and intelligence role, work collaboratively with key bodies<sup>2</sup> to identify at an early stage serious risks to performance or the requirement to act in accordance with the Framework. The Local Government Association will work with these bodies to prevent the escalation of those risks to avoid any negative impact on the reputation of the sector.
8. If there are specific concerns in respect of performance, or if there is evidence that indicates a fire and rescue authority is failing, or is at risk of failing, to act in

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<sup>1</sup> Secretary of State for Communities and Local Government

<sup>2</sup> This could refer to fire and rescue authorities, the relevant professional leadership, other sector-owned bodies, inspection bodies, and/or Government Departments



accordance with the Framework, the Local Government Association will work with the authority to help them address the issues and improve.

9. This systematic approach to identifying authorities that could benefit from support, 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

10. 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.
11. 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<sup>3</sup>, to ensure a robust evidence base.
12. If there are concerns regarding operational performance, ministers may ask the Chief Fire and Rescue Adviser, in his capacity as an appointed Her Majesty's Inspector,<sup>4</sup> 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.
13. The Secretary of State has a wide range of powers with regard to, for example, requesting information regarding a fire and rescue authority's functions;<sup>5</sup> or conferring on a fire and rescue authority functions relating to emergencies.<sup>6</sup>

## What happens upon statutory intervention?

14. 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, before exercising his powers of intervention under section 22.
15. 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, the relevant fire and rescue authority, and any other consultees depending on the nature and the severity of the failure under consideration.
16. 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 in which services and their delivery might be improved.

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<sup>3</sup> Section 10 of the Local Government Act 1999

<sup>4</sup> Section 28 of the 2004 Act

<sup>5</sup> Section 26 of the 2004 Act

<sup>6</sup> Section 9 of the 2004 Act



Department for  
Communities and  
Local Government

# Protocol on Government intervention action on fire and rescue authorities in England

Summary of responses

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## Introduction

The consultation paper on the '*Protocol on Government intervention action on fire and rescue authorities in England*' was published on 20 September 2012. It invited comments by 15 November 2012.

A total of thirty five consultation responses were received. The majority (80%) of these were from fire and rescue authorities, and the rest were from other local authorities, professional bodies, representative organisations and individuals.

This document provides a summary of the responses received, together with a Government response (included in italics). It is not the intention of the document to repeat the content of the draft protocol, although reference may be made, if necessary, in the context of a particular point.

## Overview of responses

The consultation paper invited comments on a range of areas within the draft protocol. The aim of the consultation was to seek views on:

- whether the protocol was sufficiently clear about the respective roles of the Government and fire and rescue authorities in the event of intervention by the Secretary of State
- whether there was anything that respondents would change
- whether there was anything not included in the protocol that should be added

Several authorities questioned the purpose of the protocol, with some noting the intervention arrangements set out in the Local Government Act 1999 and/or Local Government Accountability Statement. Conversely, others concluded that it was a practical and proportionate response which recognised the need for a more localist approach.

*The intervention protocol is produced because there is a requirement, under section 23 of the Fire and Rescue Services Act 2004, for the Secretary of State to prepare a protocol about the exercise of his power of intervention, and for the Secretary of State to have regard to that protocol before exercising his power.*

Further detail on the specific questions asked in the consultation is set out in the paragraphs below.

## Responses to consultation 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?**

Most of the respondents considered that the protocol was clear. There were some suggestions of areas where further clarification could be useful, such as definitions of: 'normal services'; 'statutory intervention'; 'risk'; 'urgent action'; 'sustained and determined attempt'; and 'functions'.

There were also queries on whether the actions that might trigger the need for intervention should be considered as sequential or not.

*Where appropriate, we have given further clarification to aid definition of certain terms. We have not sought to define which specific actions may trigger intervention, or whether such actions would be sequential, since decisions on intervention will be made on a case to case basis, with the input of the appropriate partners and taking into account any relevant information.*

Some respondents asked for uniformity of language and expectations between the protocol, the Fire and Rescue National Framework for England, the Fire and Rescue Services Act 2004 and the Local Government Act 1999. A couple of respondents suggested that the requirement for a protocol, as set out in sections 22 and 23 of the Fire and Rescue Services Act 2004, should be removed.

*The protocol text has been amended where relevant to ensure consistency with Fire and Rescue National Framework for England and the Fire and Rescue Services Act 2004, and any other relevant legislation.*

There was also some uncertainty among respondents on the role of the Chief Fire and Rescue Advisor.

*The role of the Chief Fire and Rescue Adviser, as an appointed Her Majesty's Inspector, is set out in section 28 of the Fire and Rescue Services Act 2004. We have stated that ministers may ask the Chief Fire and Rescue Adviser, as an appointed HM Inspector, to lead an investigation if there are concerns regarding operational performance. Ministers may also seek assurance from the Chief Fire and Rescue Adviser (or other advisers) in respect of specific issues that they may identify.*

## **Question 2**

### **Is there anything you would change?**

It was proposed by several respondents that the protocol should recognise the specific governance differences between the types of fire and rescue authorities – i.e. between combined fire authorities, metropolitan authorities and county fire authorities – and between the different issues which arise in each type of authority should intervention be deemed necessary.

*We acknowledge that there are significant governance differences between the various types of authority. We have revised the protocol so that differences in governance structures are better accommodated but, in order to retain consistency in the treatment of authorities, we have not sought to differentiate between them.*

There were a number of comments regarding the roles of key partners in the process. A few respondents asked for greater clarity on who would determine whether a fire and rescue authority was “unwilling or unable to engage with sector-led improvement measures” following attempts to resolve problems.

Also, a small number of respondents considered that there should be further detail on the role of the Local Government Association in working with authorities to help address issues and improve performance. Some respondents noted that the protocol did not reflect the role of the Chief Fire Officers Association in the process. Another respondent queried how the views of individuals could be taken into account.

*One of the main aims of the protocol is to set out those whom the Secretary of State would consult before exercising his power of intervention. The protocol has been amended to incorporate the valuable role played by the professional leadership. However, the broad objective of the protocol is to set out the strategic expectations and enable the authorities, relevant partners, and Government to adopt a bespoke approach as appropriate. In short, it does not describe every potential scenario nor set out the procedure to be followed for every case, as this will vary depending on individual circumstances.*

### **Question 3**

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

Some respondents suggested that the provision and management of resources in the event of an intervention by the Secretary of State should be referenced in the protocol.

A couple of respondents noted that there was an opportunity to make more explicit links and references to the statements of assurance.

*There is no link between the intervention protocol and the statements of assurance, as these documents address unrelated issues.*

#### **Other comments**

A few respondents noted that there was no reference to how measures/interventions could be applied to other Category 1 and 2 responders as set out in the Civil Contingencies Act 2004, where expectations of resilience could impact on performance of fire and rescue authorities.

*The protocol applies only to fire and rescue authorities in England.*

There was some reference to further detail on information sharing arrangements, with one respondent noting that there needed to be a central repository of performance information to help increase public and external partner’s wider confidence.

*We would encourage the sector or individual organisations to collaborate if they consider there is a need for central information sharing arrangements.*