



NOTTINGHAMSHIRE
Fire & Rescue Service
Creating Safer Communities

Nottinghamshire and City of Nottingham
Fire and Rescue Authority
Policy and Strategy Committee

LOCALISM BILL

Report of the Chief Fire Officer

Agenda Item No:

Date: 04 February 2011

Purpose of Report:

To bring to the attention of Members the Localism Bill and its associated implications for Nottinghamshire Fire and Rescue Service.

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1. BACKGROUND

- 1.1 Members will be aware that the Localism Bill has now been introduced to the House of Commons. The Bill is described as a Bill to:

“ . . . make provision about the functions and procedures of local and certain other authorities; to make provision about the functions of the Local Commission for Administration in England; to enable the recovery of financial sanctions imposed by the Court of Justice of the European Union or the United Kingdom from local and public authorities; to make provision about town and country planning, the community infrastructure levy and the authorisation of nationally significant infrastructure projects; to make provision about regeneration in London; and for connected purposes . . . ”

- 1.2 The part which specifically relates to Fire and Rescue Authorities is Chapter 2 and this deals with general powers of certain Fire and Rescue Authorities and Fire and Rescue Authorities charging.

2. REPORT

- 2.1 The Localism Bill was introduced to the House of Commons in December 2010. Within Chapter 2 of the Bill are specific elements which amend the provisions of the Fire and Rescue Services Act 2004. In particular the following sections are all introduced:

Section 5A	Powers of certain Fire and Rescue Authorities in England
Section 5B	Boundaries of power under Section 5A
Section 5C	Power to make provision supplemental to Section 5A
Section 18A	Charging by Authorities in England
Section 18B	Limits on charging under 18A
Section 18C	Cases where a charge may be made for responding to a report of fire etc.

- 2.2 The specific elements relating to the provisions within the Bill are attached as appendices to this report, however the following summarises the content.

2.3 Section 5A

- 2.3.1 This primarily extends the freedoms and flexibilities afforded to Fire and Rescue Authorities in line with those currently allocated to Services under County Council control. This gives Fire and Rescue Authorities an extended general power of competence which allows

Fire and Rescue Authorities to be able to use their resources to the benefit of the wider community, so long as they believe the activity is connected with their functions as a Fire and Rescue Authority. The activity does not have to be a direct one; it is sufficient if the activity is intended to be beneficial to the performance of their functions.

2.3.2 In exercising these powers, Fire and Rescue Authorities will have similar restrictions as those imposed on Local Authorities under the new general powers of competence in that:

- They will have no power to raise taxes or borrow money – other than in line with existing arrangements; and
- No power to override existing legislation.

2.4 Section 18A

Section 18A introduces a broader scope for them to charge for a wide range of services and functions not specifically excluded in the Bill provisions, subject to local consultation. The amount of any charge must be set by the Authority and this must ensure that the costs received do not exceed the costs incurred.

2/5 As these revised sections are still at the Bill stage there is no need at the present time for the Fire Authority to make any specific decisions. However, should the Bill become enacted, then the appropriate revisions to the Fire Services Act 2004 will be made.

3. FINANCIAL IMPLICATIONS

There are no specific financial implications arising from this report, although should the Localism Bill become enacted, then the Authority may decide to make decisions based around the financial status of the Authority.

4. HUMAN RESOURCES AND LEARNING AND DEVELOPMENT IMPLICATIONS

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

5. EQUALITY IMPACT ASSESSMENT

There are no specific implications for equalities arising from this report.

6. CRIME AND DISORDER IMPLICATIONS

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

7. LEGAL IMPLICATIONS

The Bill contains provisions which will amend and update the Fire and Rescue Services Act 2004 which is the primary legislation for Fire and Rescue Authorities.

8. RISK MANAGEMENT IMPLICATIONS

At present there are no direct or specific risk implications other than the need to be aware of the proposed changes to the Fire and Rescue Services Act 2004. Should the Bill become enacted, then the Fire Authority will need to make key decisions on when and how to respond to the revised provisions.

9. RECOMMENDATIONS

It is recommended that Members:

- 9.1 Note the Fire and Rescue Authority implications of the Localism Bill ; and
- 9.2 Agree to accept further reports from the Chief Fire Officer on the outcome and the implications for Nottinghamshire Fire and Rescue Service.

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

None.

Frank Swann
CHIEF FIRE OFFICER

CHAPTER 2

FIRE AND RESCUE AUTHORITIES

8 General powers of certain fire and rescue authorities

- (1) In Part 1 of the Fire and Rescue Services Act 2004 (fire and rescue authorities) after section 5 insert— 40

“5A Powers of certain fire and rescue authorities in England

- (1) A relevant fire and rescue authority may do—

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- (a) anything it considers appropriate for the purposes of the carrying-out of any of its functions (its “functional purposes”),
- (b) anything it considers appropriate for purposes incidental to its functional purposes,
- (c) anything it considers appropriate for purposes indirectly 5 incidental to its functional purposes through any number of removes,
- (d) anything it considers to be connected with—
- (i) any of its functions, or
- (ii) anything it may do under paragraph (a), (b) or 10 (c), and
- (e) for a commercial purpose anything which it may do under any of paragraphs (a) to (d) otherwise than for a commercial purpose.
- (2) A relevant fire and rescue authority’s power under subsection (1) is in addition to, and is not limited by, the other powers of the 15

authority.

- (3) In this section “relevant fire and rescue authority” means a fire and

rescue authority in England that is—

- (a) a metropolitan county fire and rescue authority,
- (b) the London Fire and Emergency Planning Authority,
- (c) constituted by a scheme under section 2, or 20
- (d) constituted by a scheme to which section 4 applies.

5B Boundaries of power under section 5A

- (1) Section 5A(1) does not enable a relevant fire and rescue authority to do—

- (a) anything which the authority is unable to do by virtue of a pre-commencement limitation, or 25
- (b) anything which the authority is unable to do by virtue of a post-commencement limitation which is expressed to apply—
 - (i) to its power under section 5A(1),
 - (ii) to all of the authority’s powers, or 30
 - (iii) to all of the authority’s powers but with exceptions that do not include its power under section 5A(1).

- (2) If exercise of a pre-commencement power of a relevant fire and rescue authority is subject to restrictions, those restrictions apply also to exercise of the power conferred on the authority by section 5A(1) so far 35 as it is overlapped by the pre-commencement power.

- (3) Where under section 5A(1) a relevant fire and rescue authority does

things for a commercial purpose, it must do them through—

- (a) a company within the meaning given by section 1(1) of the Companies Act 2006, or 40
- (b) a society registered or deemed to be registered under the Co-operative and Community Benefit Societies and Credit Unions

Act 1965 or the Industrial and Provident Societies Act
(Northern
Ireland) 1969.

- (4) Section 5A(1) does not authorise a relevant fire and rescue authority to do things for a commercial purpose in relation to a person if a statutory provision requires the authority to do those things in relation to the person. 45

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- (5) Section 5A(1) does not authorise a relevant fire and rescue authority to borrow money.
- (6) Section 5A(1)(a) to (d) do not authorise a relevant fire and rescue authority to charge a person for any action taken by the authority (but see section 18A). 5
- (7) Section 18B(1) to (6) apply in relation to charging for things done for a commercial purpose in exercise of power conferred by section 5A(1)(e) as they apply in relation to charging under section 18A(1).

- (8) In this section—

restriction “post-commencement limitation” means a prohibition, 10

or other limitation imposed by a statutory provision that—

- (a) is contained in an Act passed after the end of the Session in which the Localism Act 2011 is passed, or
- (b) is contained in an instrument made under an Act and comes into force on or after the commencement of 15

	section 8(1) of that Act;	
restriction	“pre-commencement limitation” means a prohibition, or other limitation imposed by a statutory provision that—	
	(a) is contained in an Act passed no later than the end of the Session in which the Localism Act 2011 is passed, or	20
	(b) is contained in an instrument made under an Act and comes into force before the commencement of section 8(1) of that Act;	
	“pre-commencement power” means power conferred by a statutory provision that—	25
	(a) is contained in an Act passed no later than the end of the Session in which the Localism Act 2011 is passed, or	
	(b) is contained in an instrument made under an Act and comes into force before the commencement of section 8(1) of that Act;	30
section	“relevant fire and rescue authority” has meaning given by 5A(3);	
	“statutory provision” means a provision of an Act or of an instrument made under an Act.	
5C	Power to make provision supplemental to section 5A	35
(1)	If the Secretary of State thinks that a statutory provision (whenever passed or made) prevents or restricts relevant fire and rescue authorities from exercising power conferred by section 5A(1), the Secretary of State may by order amend, repeal, revoke or disapply that provision.	40
(2)	If the Secretary of State thinks that the power conferred by section 5A(1)	

is overlapped (to any extent) by another power then, for the purpose of removing or reducing that overlap, the Secretary of State may by order amend, repeal, revoke or disapply any statutory provision (whenever passed or made).

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- (3) The Secretary of State may by order make provision preventing relevant fire and rescue authorities from doing under section 5A(1) anything which is specified, or is of a description specified, in the order.

9 Fire and rescue authorities: charging

(1) The Fire and Rescue Services Act 2004 is amended as follows.

(2) After section 18 insert—

“18A Charging by authorities in England

- (1) A fire and rescue authority in England may charge a person for 5
any
action taken by the authority—
 - (a) in the United Kingdom or at sea or under the sea, and
 - (b) otherwise than for a commercial purpose,but this is subject to the provisions of this section and section 18B.
- (2) Subsection (1) authorises a charge to be imposed on, or 10
recovered from,
a person other than the person in respect of whom action is taken
by the
authority.
- (3) Before a fire and rescue authority begins to charge under
subsection (1)
or section 5A(1)(e) for taking action of a particular description,
the
authority must consult any persons the authority considers 15
appropriate.
- (4) If a fire and rescue authority decides to charge under subsection
(1) for
taking action of a particular description—
 - (a) the amount of the charge is to be set by the authority;
 - (b) the authority may charge different amounts in different 20
circumstances (and may charge nothing).
- (5) In setting the amount of a charge under subsection (1), a fire and
rescue
authority must secure that, taking one financial year with
another, the
authority’s income from charges does not exceed the cost to the
authority of taking the action for which the charges are imposed. 25
- (6) The duty under subsection (5) applies separately in relation to
each
kind of action.
- (7) The references in subsections (1) and (2) to “sea” are not

restricted to the territorial sea of the United Kingdom.

- (8) In subsection (5) “financial year” means 12 months ending with 31 March. 30

18B Limits on charging under section 18A(1)

- (1) Section 18A(1) authorises charging for extinguishing fires, or protecting life and property in the event of fires, only in respect of fires which are at sea or under the sea. 35
- (2) Section 18A(1) does not authorise charging for emergency medical assistance.
- (3) Section 18A(1) authorises charging for action taken in response to a report of a fire or explosion only if section 18C applies to the report.
- (4) Section 18A(1) does not authorise charging for rescuing 40 individuals, or protecting individuals from serious harm, in the event of an emergency.

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- (5) Section 18A(1) does not authorise charging for action taken in response to—
- (a) emergencies resulting from events of widespread significance,
 - (b) emergencies which have occurred as a direct result of severe weather, or 5
 - (c) emergencies resulting from road traffic accidents.
- (6) Section 18A(1) does not authorise charging for action taken by a fire

and rescue authority in its capacity as an enforcing authority for the purposes of the Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541).

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(7) Nothing in subsections (1) to (6)—

- (a) applies to charges for providing under section 12 the services of any persons or any equipment,
- (b) affects the operation of section 13(3) or 16(3), or
- (c) affects any provision for payments to a fire and rescue authority in England contained in arrangements for co-operation made between that authority and—
 - (i) a public authority that is not a fire and rescue authority, or
 - (ii) any person, other than a public authority, who exercises public functions.

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(8) The Secretary of State may by order disapply subsection 18A(1) in relation to actions of a particular kind.

(9) The power under subsection (8) includes power to disapply for a particular period.

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18C Cases where a charge may be made for responding to report of fire etc

(1) This section applies for the purposes of section 18B(3).

(2) This section applies to a report of fire, or explosion, at sea or under the sea.

(3) This section applies to a report of fire if—

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- (a) the report is of fire at premises that are not domestic premises,
- (b) the report is false,
- (c) the report is made as a direct or indirect result of warning equipment having malfunctioned or been misinstalled,

- and
- (d) there is a persistent problem with false reports of fire at 35
the
premises that are made as a direct or indirect result of
warning
equipment under common control having malfunctioned
or
been misinstalled.
- (4) This section applies to a report of fire if—
- (a) the report is of fire at domestic premises, 40
- (b) the report is false,
- (c) the report is made as a direct or indirect result of
warning
equipment having malfunctioned or been misinstalled,
- (d) the report is made without human intervention or, where
the
report is relayed through one or more intermediaries, the 45
report
is initially made without human intervention, and

- (e) there is a persistent problem with false reports of fire at
the
premises that are made as mentioned in paragraphs (c)
and (d).
- (5) The references in subsection (2) to “sea” are not restricted to the
territorial sea of the United Kingdom.
- (6) In this section— 5
- “domestic premises” means premises occupied as a private
dwelling (including any garden, yard, garage, outhouse
or
other appurtenance of such premises which is not used in
common by the occupants of more than one such
dwelling);
- “warning equipment” means equipment installed for the 10

of—

- (a) detecting fire, or
- (b) raising the alarm, or enabling the alarm to be raised, in the event of fire.”

(3) In section 19 (charging)—

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- (a) in subsection (1) (power to authorise authorities to charge) after “fire and rescue authority” insert “in Wales”, and
- (b) in the heading after “Charging” insert “by authorities in Wales”.

(4) Where immediately before the coming into force of subsections (1) to (3) an

order under section 19(1) of the Fire and Rescue Services Act 2004 20
authorises a

fire and rescue authority in England to charge for action of a specified description taken by the authority, section 18A(3) of that Act does not apply in relation to action of that description.