



NOTTINGHAMSHIRE
Fire & Rescue Service
Creating Safer Communities

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

CONSULTATION ON THE PROTOCOL ON GOVERNMENT INTERVENTION ACTION ON FIRE AND RESCUE AUTHORITIES IN ENGLAND

Report of the Chief Fire Officer

Agenda Item No:

Date: 02 November 2012

Purpose of Report:

To advise Policy and Strategy Committee on the current consultation to the Protocol on Government Intervention on Fire and Rescue Authorities in England, and agree a response on behalf of Nottinghamshire and City of Nottingham Fire Authority.

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1. BACKGROUND

- 1.1 Under Section 22 of the Fire and Rescue Services Act 2004, the Secretary of State retained powers to intervene where a Fire and Rescue Authority is failing, or is likely to fail, to act in accordance with the National Framework. To ensure that the Fire and Rescue Authority acts in accordance with the Framework, the Secretary of State may order or require the Authority:
- To do something;
 - To stop doing something; or
 - Not to do something.
- 1.2 The Secretary of State may also make an order, if he considers that making the order would provide:
- Public safety;
 - The economy, efficiency and effectiveness of the Fire and Rescue Authority; or
 - The economy, efficiency and effectiveness of the matter to which Fire and Rescue Authorities have functions.
- 1.3 In order to engage in any intervention, Section 23 of the Act requires the Secretary of State to prepare a protocol for which he must have regard when exercising such powers.
- 1.4 The paper relates to his duty to consult Fire and Rescue Authorities as part of the preparing of the protocol under Section 23(4) (1) of the Act.

2. REPORT

- 2.1 The consultation on the Protocol on Government Intervention Action on Fire and Rescue Authorities in England commenced in late September 2012. The protocol sets out the Government's expectations for the fire and rescue sector, indicates what circumstances may lead to intervention being considered, and what might happen in the event of statutory intervention.
- 2.2 To assist in the consultation, the document asks three key questions of consultees:
- Q1: 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?
- Q2: Is there anything you would change?
- Q3: Is there anything not included in the protocol that should be added?
- 2.3 The detail of the protocol (which is attached in full at Appendix A to this report) is contained within five key areas of focus:

- The role of the Local Government Association (LGA) in supporting Authorities at risk;
- Circumstances leading to statutory intervention;
- What happens upon statutory intervention;
- Exceptional or urgent cases;
- Publicity and media strategy.

2.4 These elements can be summarised as follows:

The role of the LGA in supporting authorities at risk

Government recognises the role of the LGA can play in early intervention to prevent any circumstances escalating to a stage where statutory intervention is required. Sector led improvement is already something that Government supports, and reference to the June 2012 publication “Sector Led Improvement in Local Government” is made.

The document does not go into detail as to how this will take place, although current processes such as the peer assessment process will be key.

Circumstances leading to statutory intervention

The guidance is clear in that only the most serious of failings, evidenced by accounts, performance or Ombudsman outcomes, would lead to intervention. Even in these cases, it is expected that a period of sustained and determined effort to resolve issues will have failed also.

The Secretary of State reserves his right to use additional powers under Section 10 of the Local Government Act 1999 if any Authority is unwilling to engage in improvement measures.

In respect of concerns regarding the performance of a Service operationally, Ministers may commission the Chief Fire and Rescue Advisor to investigate.

What happens upon statutory intervention

In the first instance the Secretary of State will consult with all parties involved. Notification as to the intervention and as to why it is taking place will be given. The Authority concerned will be given the opportunity to make representation.

The form of intervention will be determined on a case by case basis. It will take into account the views of all stakeholders and will depend on the seriousness of any failure.

Examples of what may be expected by a Fire Authority as part of any response to intervention are:

- Prepare a recovery plan;
- Ensure that particular functions are carried out to achieve specified objectives or priorities;
- Take consultancy advice;
- Appoint interim management;
- Enforce appropriate levels of delegation;
- Secure a function from a specified provider or put the function out to tender;
- Appoint a nominee to exercise certain specified functions on behalf of the Authority.
- Any other action that will secure the necessary improvements.

Exceptional or urgent cases

In such cases the Secretary of State retains the discretion to reduce or condense any intervention process. This will be as a result of persistent failure or the severity of risk.

Publicity and media strategy

This will be agreed on a case by case basis with those concerned.

- 2.5 A draft response to the consultation document is attached at Appendix B for approval and/or amendment as required by the Policy and Strategy Committee.

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

It is recommended that Members:

- 9.1 Note the current consultation on the intervention protocol; and
- 9.2 Approve or amend the attached response on behalf of the Nottinghamshire and City of Nottingham Fire 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

Consultation

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Ministerial foreword

The consultation on the (revised) *protocol on Government intervention action for fire and rescue authorities in England* recognises that the best way to deal with an authority that is performing poorly is take full advantage of the experience, professionalism, and expertise that already exists in the sector; to work with the relevant fire and rescue authorities, and their political and professional leadership, and make full use of the wide range of support processes that are in place.

The protocol sets out the Government's expectations for the fire and rescue sector, indicates what circumstances could lead to intervention being considered, and what might happen in the event of statutory intervention. The Government would only use its intervention powers as a last resort.

I look forward to receiving comments to this consultation and to working with fire and rescue authorities and other organisations to help make our communities even more informed and safer.

A handwritten signature in black ink, appearing to read 'Brandon Lewis', written in a cursive style.

Brandon Lewis MP
Minister for the Fire and Rescue Service

Consultation questions

Consultees are invited to respond to the following 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?

Question 2

Is there anything you would change?

Question 3

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

Responses are required by **15 November 2012** and should be sent to:

fsed6@communities.gsi.gov.uk

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 State¹ to have a regard to it, in the exercise of his powers of intervention. Under section 22 of the 2004 Act, the Secretary of State has broad powers to secure that fire and rescue authorities are acting in accordance with the *Fire and Rescue National Framework for England* (the Framework). Intervention is by order, and subject to the negative Parliamentary procedure.
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 the relevant authority; or economy, efficiency and effectiveness in connection with the matters in relation to which fire and rescue authorities have functions.
3. To date there has been no formal intervention into the operations of a fire and rescue authority by the Secretary of State under section 22 of the 2004 Act. 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. For example, through peer-led improvement measures.
4. This *intervention protocol* sets out the arrangements between the Secretary of State, the Local Government Association, and fire and rescue authorities should formal intervention be considered necessary – for example, where the Secretary of State considers that a fire and rescue authority is failing, or is likely to fail, to act in accordance with the Framework which requires immediate government action to address². This protocol applies to all fire and rescue authorities in England.
5. This *intervention protocol* recognises the vital role of the Local Government Association in maintaining an overview of performance in the sector so that preventative improvement support can be provided and the need for intervention alleviated. This echoes arrangements in place for the wider local government sector.
6. The principal aim of any intervention action is the swift and satisfactory resumption of normal service. In practice, this means that the fire and rescue is providing services which adequately meet the needs of the community it serves and is acting in accordance with the Framework.

¹ Secretary of State for Communities and Local Government

² Section 22 of the Fire and Rescue Services Act 2004

Terms in use

7. 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 intervention protocol does not apply to them.

Role of Local Government Association in supporting authorities at risk

8. The Local Government Association will, as part of their challenge and intelligence role, work collaboratively with fire and rescue authorities, other sector-owned bodies, inspection bodies and government departments to identify at an early stage where serious risks to performance are developing and where there is a risk of the authority failing to act in accordance with the Framework. The Local Government Association will work with them to mitigate the escalation of those risks which could have a negative impact on the reputation of the sector, or could lead to serious service failure.
9. Information sharing arrangements are in place between the Local Government Association, government departments, and any other bodies to ensure that the Local Government Association has the best possible intelligence to focus support.
10. If there are specific concerns in respect of a fire and rescue authority's performance or evidence that indicates that a fire and rescue authority is at risk of failing its statutory duty, the Local Government Association will work with the authority to help them address the issues and improve.
11. This systematic approach to identifying authorities that could benefit from preventative support to achieve improvement, 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

12. 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. Such evidence may emerge from an audit, or from other reports of financial accounts or performance data, or from Ombudsman or other investigations, or judicial findings.

13. 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, under section 10 of the *Local Government Act 1999*, to ensure a robust evidence base.
14. If there are concerns regarding operational performance, ministers may ask the Chief Fire and Rescue Adviser, as an appointed Her Majesty's Inspector³, 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.
15. The Secretary of State has a wide range of powers with regard to, for example, requesting information regarding a fire and rescue authority's functions⁴; or conferring on a fire and rescue authority functions relating to emergencies⁵.

What happens upon statutory intervention?

16. 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 in the specific circumstances of the case, before exercising his powers of intervention under section 22.
17. In addition, in the event of a statutory intervention, the Secretary of State will formally notify both the authority concerned (and the Local Government Association) of the proposed order and the reasons for it. The relevant fire and rescue authority will be given the opportunity to make representations about the proposed order and to make the necessary improvements.⁶
18. 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, and the relevant fire and rescue authority, as much will depend on the nature and the seriousness of the failure under consideration.
19. Every effort will be made to reach agreement between the Department, the Local Government Association and the relevant fire and rescue authority as to what action should be taken.

3 Section 28 of the 2004 Act: determines the arrangements for appointing inspectors of the Fire and Rescue Service.

4 Section 26 of the 2004 Act

5 Section 9 of the 2004 Act

6 Section 22(4) of the 2004 Act specifies that before making an order under subsection (2), the Secretary of State must give the authority an opportunity to make representations about the order proposed

20. 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 by which services might be improved and delivered.
21. The Secretary of State has wider order-making powers to ensure that fire and rescue authorities act in accordance with the Framework. The Secretary of State will have regard to this protocol, or any agreed memorandum of understanding, in making any such orders. For example, the Secretary of State may require the fire and rescue authority to:
- prepare or amend a recovery plan
 - ensure that particular functions are carried out to achieve specified objectives or priorities
 - take consultancy advice
 - appoint interim management
 - enforce appropriate levels of delegation
 - secure a function from a specified provider or put the function out to tender
 - appoint a nominee to exercise certain specified functions on behalf of the authority
 - any other action that will secure the necessary improvements
22. The fire and rescue authority will normally be supported to make the necessary improvements itself. However, in exceptional cases of serious corporate or service failure, when there is a serious risk of harm or financial loss, paragraphs 23-24 will apply.

Exceptional or urgent cases

23. In urgent or exceptional cases, where there is a persistence of failure, or where the severity or the risk of harm or financial loss show that urgent action is necessary, and a fire and rescue authority has failed to take adequate action to address it, the Secretary of State retains the discretion to reduce or condense the procedures outlined.
24. When exercising the powers in this way, the Secretary of State will notify the authority and the Local Government Association as soon as practicable of the intervention, the reasons for it, and the reasons for curtailing the procedures.

Publicity and media strategy

25. It will be decided, on a case by case basis, whether a publicity or media strategy is required. If so, it will be shared with the fire and rescue authority concerned and the Local Government Association, as necessary.



NOTTINGHAMSHIRE
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GOVERNMENT INTERVENTION ACTION ON FIRE & RESCUE AUTHORITIES IN ENGLAND

Consultation Response
on behalf of
**Nottinghamshire and City of Nottingham
Fire and Rescue Authority**

INTRODUCTION

Nottinghamshire and City of Nottingham Fire and Rescue Authority welcome the opportunity to respond to Government proposals to amend the current intervention protocol. The original protocol was drafted at a time when the performance and framework for local authorities was substantially different, encompassing a comprehensive performance assessment by the Audit Commission.

Following the publication of the new Framework for Fire and Rescue Services in England, Nottinghamshire and City of Nottingham Fire and Rescue Authority believe it is appropriate and timely to revise the existing arrangements.

We respond specifically to the questions raised below.

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

The Fire and Rescue Services Act 2004 clearly allows for the Minister to intervene when or where a Fire and Rescue Authority is failing or is likely to fail to act in accordance with the National Framework.

The draft intervention protocol sets out the circumstances leading to statutory intervention, what happens on intervention and how exceptional and urgent cases will be dealt with.

Nottinghamshire and City of Nottingham Fire and Rescue Authority would like to draw DCLG's attention to the already existing framework for intervention, that applies across the whole of the local government sector. The local government accountability system statement already exists and as the LGA is integral to the government's proposals, surely it would be more efficient to have in place a single approach. This would also ensure that those tasked with intervention will develop greater expertise to assist in helping those facing such measures.

The proposed protocol also contains a caveat that the Minister has reference to the Local Government Ombudsman which supports a more generalistic approach.

We would also raise greater clarity on what will be the role of the Chief Fire and Rescue Advisor. The protocol in its current guise draws towards concerns regarding 'operational performance' and then refers to CFRA being an appointed HMI. If CFRA is to retain the powers of HMI, and if Ministers are to seek assurance from that body, then surely this should be the correct body for leading an intervention.

The protocol is therefore contradictory in its approach. Is it to be a sector led by the LGA, if so existing arrangements should suffice, or is it to be DCLG led, in which case the HMI, with statutory powers, should be the correct approach.

DCLG need to be clearer, if the draft is to be proposed as is, where these two elements differ and where the different levels of responsibility lie.

In respect of the process of intervention, this responsibility clearly lies with the Secretary of State. We welcome the fact that the protocol identified consultation with the affected Authority, and the LGA, on any proposed order but note the absence of any reference to CFRA.

If CFRA has been tasked and has reported on any issues, surely then CFRA should be pivotal in any discussion over the intervention process. As the Government's only senior professional advisor, this would be key if any failings are of an operational nature.

With regard to the aspect of exceptional or urgent cases, we believe that DCLG will need to be clearer about what constitutes such an intervention and how the Minister will be advised. Clearly with any persistence of failure, we would assume that intervention is already taking place. However, how and under what circumstances would 'risk' be identified? Again is this a CFRA issue or would DCLG commission a peer assessment via the LGA?

We welcome the liaison over press and media implications.

Question 2

Is there anything you would change?

The main concerns in relation to the proposals are the conflicts between the role of an appointed potential HMI and that of sector led improvement. We would ask that DCLG provide greater clarity as outlined in our response to Question 1 above.

Question 3

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

As detailed in our responses above, greater clarity on where the role of HMI within CFRA, and the LGA's own sector led improvement are set.

Councillor Darrell Pulk
**Chair of Nottinghamshire and City of Nottingham
Fire and Rescue Authority**

02 November 2012