

Proposed policy statement for Part 2 of the Localism Act 2011

Consultation questionnaire for responses

How to Reply

Responses to this consultation must be received by 5pm on 22 April 2012.

You can respond by email to part2policy@communities.gsi.gov.uk or write to:

Part 2 Policy Statement Consultation Team
Department for Communities and Local Government
6/J6 Eland House
Bressenden Place
London SW1E 5DU

Your information

Name: Jane Heeley

Title: Chief Environmental Health Officer

Contact details: jane.heeley@tmbc.gov.uk

Date of response:

Are you replying on behalf of an organisation or company?: Yes

If yes, please give the name of the organisation and, if relevant, a summary of the people and organisations you represent and who else you have consulted in reaching your conclusions:

Tonbridge & Malling Borough Council
Gibson Building
Gibson Drive
Kings Hill
West Malling
Kent
ME19 4LZ

Consulted with:

Scrutiny and Overview Committee – 10 January 2011

Cabinet – 28 March 2012

Director of Health and Housing

Director of Finance

Chief Solicitor and Monitoring Officer

Consultation questions

Question 1

Do you have comments on the context in Chapter 1?

We were surprised and concerned to see this addition to clauses 48 to 57 of the Localism Act. EU financial sanctions are a new departure for the UK administrations and it is essential that the safeguards proposed in the consultation are brought into effect to protect the interests of local authorities.

Question 2

Do you have comments on the purpose or relevance of this policy statement?

Paragraph 11, page 15 raises an important issue for local authorities, this refers to the provision of services through another party. This is likely to have a significant bearing on the way that future contracts will be written in order to incorporate the requirements of EU law and corresponding performance measures.

We would urge the CLG to provide detailed guidance relating to specific contract areas and relevant EU laws, to assist local authorities in the preparation of tenders, contracts and performance measures.

There is concern that, as a consequence of introducing these measures into contracts, contract fees will increase.

Question 3

Do you have comments on how the powers on non-devolved matters would be applied and the role of devolved administrations?

No comments.

Question 4

Do you have comments on the proposed approach in relation to local government?

Local authorities are affected by a wide range of legislation derived from the EU, including recycling and waste; energy efficiency of public buildings; procurement and working hours. The proposals in Part 2 of the Act, to involve local authorities in consultation on matters of EU legislation, represent a significant change in the future, which we welcome. If LAs are to bear any responsibility for infractions of EU law, it is essential that this process is carried out in a timely manner, with adequate information being provided to relevant local authorities.

Paragraph 30 states that compliance with EU obligations is more important

than ever, we agree with this but it does raise the question of how Government will tackle issues, such as vehicle related air quality problems, to ensure that we are able to comply with EU limits by 2015. This is a good example of where local authorities have specific statutory duties in UK law which do not relate directly to the EU requirement to meet the EU air quality objectives, which have been transposed into our National Air Quality Strategy. Local authorities responsible for monitoring air quality do not necessarily have the power or responsibilities to control the source of the air quality breaches. There has already been much debate around this issue, with the Environmental Audit Committee expressing deep concern about the transfer of EU fines to local authorities, based on breaches of air quality objectives, when they have no statutory duty to improve air quality caused by motor vehicles. This view has been strongly endorsed by elected Members.

We maintain that local authorities should not be:

- liable for fines on matters which do not accord with their duties or responsibilities; and
- able to be fined for infractions against EU laws already in existence, but be involved and able to influence debate on how to achieve compliance for future laws.

Question 5

Do you have comments on whether public authorities, which are not local authorities, would wish to see equivalent provisions for involvement? If so, please explain what these would be and how any capacity constraints, such as for smaller organisations, could be managed.

No comments.

Question 6

Do you have any comments on the principle and general application of working in partnership?

We welcome the Government's intention to work in partnership with LAs, but are of the view that the relevant processes will need to be clear in scope and sufficiently clearly defined for this to be effective.

Question 7

Do you have comments on the processes for designation and the time and opportunity given for corrective action?

We believe that the Transparency and "no surprises" section in Chapter 3 contains an important safeguard for local authorities – designation orders. It

is reassuring to read that a process of prior approval involving both Houses of Parliament has been established.
The LGA are seeking assurance that the designation order will include both EU and the equivalent UK legal obligations, which we strongly support.

Question 8

Do you have comments on the process for passing on fines?

We fully support the establishment of an independent advisory panel, but would seek assurance that members of the panel are selected on a case by case basis and appointed with relevant skills and experience in mind.

The consultation document states that the absolute minimum amount of time for a public authority to consider and make representations on the warning notice will be four weeks, for the most straight-forward of cases. We would seek that a review process is built into time periods for this stage, which is informed by the experience of LAs and Ministers .

Question 9

Do you have comments regarding the level of detail to cover in this policy statement on criteria to establish the authority's ability to pay the apportioned EU financial sanction? Or is that best left to be defined in individual circumstances?

No comments.

Question 10

Do you have comments regarding the membership of an independent advisory panel, including how panel members are selected?

No further comments, in addition to those made in response to question 8.

Question 11

Do you have comments on the broad terms of reference under Annex A?

No Comments.

Question 12

Do you have comments on the approach regarding achieving compliance and ending liability?

No comments.

Further comments

Please provide any further comments below.