

TONBRIDGE & MALLING BOROUGH COUNCIL

CABINET

28 March 2012

Joint Report of the Director of Health and Housing and Director of Finance

Part 1- Public

Executive Non Key Decisions

1 CONSULTATION REPOSE TO THE PROPOSED POLICY STATEMENT FOR PART 2 OF THE LOCALISM ACT 2011

Summary

This report explains the background to this consultation and seeks approval for the responses in Annex 1.

1.1 Background

- 1.1.1 Part 2 of the Localism Act 2011 has introduced the concept of fines for the infraction of EU laws to be transferred to local authorities. The principal example for the potential for this to occur has been the transfer of an EU fine for the UK's failure to meet air quality objectives by 2015. There is concern that fines will be transferred to local authorities, who have a duty to monitor and assess local air quality, but do not have a statutory duty to improve traffic related pollution. However, there are a number of other areas in which EU laws place legal duties on local authorities e.g. procurement, waste and recycling and employment law.
- 1.1.2 The LGA, amongst other groups, has expressed deep concern about how this has the potential to impact on local authorities, in circumstances when their actions/inactions have not contributed to the infraction. As a consequence of their lobbying the proposed Policy Statement for the implementation of Part 2 of the Act has been produced. This includes a number of safeguards intended to protect the interests of local authorities, which include four key principles:
- Working in partnership with LAs – Government will consult local government ahead of new EU laws being passed and highlight local implications through explanatory memoranda. They will also consult with local government on the transposition of any EU laws and make clear any new legal obligations. When defending EU infraction cases, Government will involve relevant local authorities directly and at an early stage;
 - No surprises – early warning to LAs, that Parliament believe to be involved in any infraction, which may include the use of designation orders to notify

LAs of the specific infraction and measures required to remedy it and details of how their action/inaction lead to the infraction;

- Establishing a fair, reasonable and proportionate process, through the establishment of an independent advisory panel and that recovery of costs would be apportioned in a fair, reasonable and proportionate manner, with transparent evidence based decisions supporting the decisions; and
- Ability to pay – the financial means of a public authority to pay any apportioned fine will be considered by the Minister and the independent panel. Alternative approaches may be recommended to Government, which might include extending time period in which to settle or reduction of the fine.

1.2 Consultation response

- 1.2.1 The CLG consultation was issued in January and closes on the 22 April 2012. It is seeking views on the proposed policy statement, as summarised above.
- 1.2.2 Our draft response to the CLG consultation is contained in **[Annex 1]** of this report.

1.3 Legal Implications

- 1.3.1 Local authorities are affected by a wide range of EU legislation, with which they have a legal duty to comply. Failure to do so has the potential to result in fines for non-compliance.

1.4 Financial and Value for Money Considerations

- 1.4.1 The potential impacts for any public authority to be fined as a result of a breach or infraction of EU law are not known at present, but previous examples have resulted in Member States being fined in the order of tens of millions of Euros.

1.5 Risk Assessment

- 1.5.1 Following the Scrutiny and Overview Committee we have written to DEFRA expressing concern over the potential for EU fines in relation to Air Quality breaches to be transferred to local authorities given our lack of statutory ability to control pollution from road traffic.
- 1.5.2 Officers will seek to identify potential areas of concern and incorporate these into Services Risk Registers, along with appropriate control measures.

1.6 Equality Impact Assessment

- 1.6.1 See 'Screening for equality impacts' table at end of report.

1.7 Recommendations

- 1.8 It is **RECOMMENDED** that Cabinet **APPROVE** the response to the Consultation on Part 2 of the Localism Act 2011.

Background papers:

contact: Jane Heeley

Nil

John Batty
Director of Health and Housing

Sharon Shelton
Director of Finance

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	This is a response to a consultation.
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	N/A	
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.