

AGENDA ITEM:

REPORT TO:	MERSEYSIDE FIRE & RESCUE AUTHORITY
DATE:	THURSDAY 19TH JANUARY 2012
REPORT NO.	CFO/007/12
REPORTING OFFICER:	CLERK TO THE AUTHORITY
CONTACT OFFICER:	JANET HENSHAW EX 4301
OFFICERS CONSULTED:	KIERAN TIMMINS, DEPUTY CHIEF EXECUTIVE; NICK MERNOCK, DIRECTOR OF PEOPLE AND ORGANISATIONAL DEVELOPMENT
SUBJECT:	THE LOCALISM ACT 2011: IMPLICATIONS FOR MERSEYSIDE FIRE AND RESCUE AUTHORITY

APPENDIX A	TITLE	DRAFT REVISED CODE OF CONDUCT
APPENDIX B	TITLE	EXISTING FORM FOR REGISTRATION OF INTERESTS

ATTACHED – HARD COPY

Purpose of Report

1. To inform Members of the implications of the Localism Act 2011 and request that Members consider the options open to them regarding the governance arrangements for Standards.

Recommendation

2. That Members;
 - a) Note the implications for Fire Authorities contained in the Localism Act
 - b) Approve the application of predetermination matter as laid out in Paragraph 15
 - c) Approve the adoption of a “pan Merseyside” Code of Conduct
 - d) Adopt the draft Code of Conduct at Appendix A subject to any amendments by other Authorities
 - e) Approve the retention of the current Register of Interests until such time as there may be Regulations published relating to pecuniary interests
 - f) Approve one of the options laid out in Paragraph 26 or any further option preferred by Members for the future governance arrangements for Standards and the Code of Conduct.

Executive Summary (if report 3 pages or more long)

The Localism Act 2011 was given Royal Assent on 15 November 2011 after going through its various stages in the Houses of Parliament and having been subject to numerous amendments during the process, the most recent of these taking place in the House of Lords on 7 November 2011.

This is the most significant piece of Local Government legislation for more than a decade.

The Act amends many provisions of previous Local Government legislation and in particular the Local Government Act 2000.

Many issues arise for Local Authorities operating Executive arrangements and for planning and housing and some parts of the Act do not apply to FRA's.

This paper outlines the implications for Merseyside Fire and Rescue Authority arising from the Act and in particular requests that Members consider the options open to the Authority in terms of both Council Tax and Standards issues.

Introduction & Background

3. The Localism Bill has spent some considerable time and has been subject to a great deal of amendment in both Houses of Parliament. Much of the amendment has been concerned with planning and housing issues and therefore has much more significance in these areas for Unitary, County and District Councils.
4. Councils will also have issues arising from options concerned with governance arrangements and regional strategies.
5. Fire and Rescue Authorities are not responsible for these above issue and therefore this paper identifies the implications of the Localism Act 2011, which was given Royal Assent on 15 November 2011, for Merseyside Fire and Rescue Authority.

POWERS

6. Under Sections 9 and 10 a Fire and Rescue Authority shall have the power to do anything it considers appropriate for the purposes of the carrying out of its functions and anything it considers appropriate to do which may be **incidental or even indirectly incidental** to the above.
7. In addition it will be able to do anything **connected with** its functions so long as this is lawful under any other legislation.

CHARGING

8. Under Section 10 there is a new power to charge for extinguishing fires or protecting **life and property in respect of fires at sea or under the sea**. This will not include charging for emergency medical assistance or rescue.
9. Charging powers cannot be exercised in respect of emergencies resulting from events of widespread significance; emergencies occurring as a direct result of severe weather or road traffic accidents.
10. Charging is not authorised for enforcement work under the Regulatory Reform (Fire Safety) Order 2005.
11. There is a specific power to charge in respect of false alarms made as a direct or indirect result of warning equipment having malfunctioned or being improperly installed in circumstances where there is a persistent problem with false reports of fire at the premises concerned as a consequence of malfunctioning alarms.
12. If an authority proposed to charge in those circumstances they must carry out a consultation with any persons they consider appropriate before making the decision.
13. Charges may be variable but when fixing charges for any particular service there is an obligation not to make a profit when balancing prospective income from charges against the expenditure incurred.

PREDETERMINATION

14. Section 25 provides that where an allegation of predetermination has been made, the member is not to be taken to have a closed mind when making a decision just because they may have directly or indirectly indicated what view they may take.
15. This section (strangely) does not apply to any type of Fire Authority. We have to assume either that the drafter of this legislation does not consider that Fire Authority members ever have any matters relating to predetermination OR that this was a drafting error. However as The Authority will have the powers described above, it is recommended that this is applied in MFRA.

STANDARDS

16. The Act gives a general duty to promote and maintain high standards of conduct by members and co opted members if the Authority.
17. It requires that, in discharging this duty the Authority must adopt a Code of Conduct which when viewed as a whole is consistent with the Nolan Principles of Public Life i.e:
 - Selflessness
 - Integrity

- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

and which includes a provision the Authority considers appropriate in respect of the registration and disclosure of pecuniary and other interests. It is expected that these provisions will be brought into force in May or June 2012.

18. Standards Board for England is to be abolished by an Order (yet to be issued) from the Secretary of State.
19. Authorities must have in place arrangements under which allegations can be investigated and arrangements under which decisions about such allegations can be made. These arrangements must include provision for the appointment of at least one independent Member whose views must be sought and taken into account before the Authority makes its decision about the matter under investigation. It should be noted that an “Independent Person” under the Localism Act cannot be an existing co opted Member, meaning that the present Independent Members cannot apply for these roles.
20. Sanctions for breaches of the Code are not contained within the Act but have been described in Government debate as constituting a letter, a motion of censure or removal of a Member from one or more meetings – which are sanctions available under Members’ existing powers.

Code of Conduct

21. At present there is a National Code of Conduct and national arrangements pursuant to the Local Government Act 2000 for allegations pursuant to this to be dealt with by the Standards Committee and its sub Committees.
22. The Standards Committee for Merseyside Fire and Rescue Authority and Members who have attended recent training events on the existing Code, have been of the view that there should be one Code of Conduct in place across the County of Merseyside which is used in the District Councils, Liverpool City Council, the Fire Authority, the Police Authority and Mersey Travel. This would be of benefit as Members from the District and City Councils are nominated for the other Authorities and would therefore be subject to the same Code.
23. This has been discussed at length in the Merseyside District Secretaries Group and a draft Code of Conduct which could apply across Merseyside is attached at Appendix A. This has been taken from a draft Code produced by the Association of Council Secretaries and Solicitors and it complies with the non prescriptive criteria required by Section 26 and 27 of the Localism Act. It is recommended that Members adopt this, subject to any amendments across Merseyside Authorities.

Standards Committee

24. At present, in compliance with the Local Government Act 2000, MFRA has a Standards Committee along with three sub committees. The Standards Committee has a forward work plan which enables it to monitor standards across the Authority and the three sub committees are only required to be convened if a complaint is received. Both the Standards Committee and its sub Committees are chaired by an Independent member and the Standards Committee also has two further independent members as required by the LGA 2000.
25. The Localism Act will give a duty to promote and maintain high standards and to make arrangements for the investigation of allegations regarding the Code of Conduct, with the involvement of at least one independent person.
26. Members may therefore
 - (a) Continue with the present system of having a Standards Committee meeting on a regular basis with perhaps a smaller number of sub committees to look into complaints allegations as and when required, or
 - (b) Merge the above role of promotion and maintenance of standards with another Committee's work, for example the Audit and Value for Money Committee, with sub committees to investigate complaints allegations.
 - (c) Establish a standards (or other) committee to be set up as required to look into complaints allegations and any other standards issues, possibly with Membership of the three party leaders.
27. It is suggested that in the first instance, the Monitoring Officer could provide a report about the initial consideration of the complaint to whichever Committee is established. The independent person would be invited to make their written comments and invited to attend the committee meeting where the complaint is discussed. If the Committee resolves to have the complaint further investigated, the Monitoring Officer will make suitable arrangements for this to be done and the Committee will be reconvened within 28 days whereupon it will make a decision. Both the complainant and the Member concerned would be informed of the Committee's decision and any sanctions it intended to impose or otherwise.
28. Members may also wish to consider whether they wish to appoint their own independent person at the point that any complaint is received. It has been suggested that it may be possible to have a "pool" of such people across Merseyside who could respond to any Authority's needs on this basis.
29. A further report will be provided outlining detailed arrangements once Members have resolved which options for Committees they wish to take.

REGISTER OF INTERESTS

30. Sections 29 to 34 provide that the Monitoring Officer must ensure that a register of interests is maintained however it is for the Authority to decide what should be entered into this. The Register must be published on the Authority's website and made available for public inspection.
31. Members must continue to declare interests upon taking office and at meetings. However the Secretary of State is to provide Regulations as to what constitutes a pecuniary interest and this is all subject to a decision to be made by the Monitoring Officer that a Member's interest may be "sensitive".
32. A sensitive issue is one where disclosure of an interest could lead to a Member or someone connected with them, being subject to violence or intimidation
33. The existing form for registration of interests is attached as Appendix B It is recommended that registration of interests continues in the same manner subject to any Regulations further defining what is considered to a pecuniary interest and that Members are advised to approach the Monitoring personally if they consider an interest to be sensitive.
34. Dispensations from interests have been dealt with under the Local Government Act 2000 by Standards Committees however these will now need to be sent to the "proper officer" and approved by the Authority.
35. The same arrangements as were available previously in terms of how to deal with dispensations are replicated in Section 33.
36. It will be an offence if, without reasonable excuse, a Member fails to declare or register an interest or participates in a discussion or debate without so doing or notifying such, or provides information by way of a declaration or registration which that Members knows to be false or misleading or is reckless as to this. A conviction can lead to a fine and/or disqualification.

PAY ACCOUNTABILITY

37. Sections 38 to 43 provide that a Pay Policy Statement detailing the pay, including remuneration, performance related pay, bonuses and any other allowances, of Chief Officer and the "lowest paid employees" must be in place having regard to any Guidance issued by the Secretary of State. Bob Neill MP has now issued guidance that this should be in place by April 2012.
38. Chief Officers are defined as The Head of Paid Service (CFO); The Chief Finance Officer (Deputy Chief Executive); The Monitoring Officer (Director of Legal Services); Deputy Chief Officer and any other person who reports directly to the Head of Paid service.
39. Lowest paid employees must be defined and the definition arrived at must be given with reasons, by the Authority.

40. A separate report is on this Agenda dealing with the matter of a Pay Policy for MFRA.

COUNCIL TAX

41. Pursuant to Sections 72 to 80, Authorities (including Major Precepting Authorities such as this Fire and Rescue Authority) must calculate council tax along the criteria laid out by the Secretary of State. If the calculation of the precept is an “excessive” increase, as to be determined under principles issued by the Secretary of State, then the Authority must notify the Billing Authority (i.e. the District Councils) and that Billing Authority is then required to hold a referendum. The Billing Authority will be able to recover the costs of holding such a referendum, from the Precepting Authority.
42. The Secretary of State may give a direction for the referendum provisions not to apply if it appears to him/her that the Authority will be unable to discharge its functions in an effective manner or will be unable to meet its financial obligations without the excessive tax being applied.

COMMUNITY RIGHT TO CHALLENGE

43. The provisions in Sections 81 to 86 relating to requirements to consider expressions of interest (in providing or assisting in provision of service provided by an Authority) do not apply to Fire and Rescue Authorities. However there is provision for the Secretary of State to apply this to other bodies “that exercise functions of a public nature” at any time. If the Secretary of State chose to do this it would have to be by new Regulations coming into force and this could include the FRA at any point the Secretary of State chose to do so.

LAND OF COMMUNITY VALUE

44. Sections 87 to 108 require Local Authorities to maintain a list of assets that are of “Community Value” – however it does not apply to Fire and Rescue Authorities (although the Secretary of State may change the definition of “Local Authority” for the purposes of these sections, by Regulation (which could of course potentially bring FRA’s into the definition in the future). Nevertheless if the Authority owns land which could be described as having community value, then this could be listed and the Authority constrained if it wishes to sell such land.

Equality & Diversity Implications

45. An Equality Impact Assessment has not been completed as the main implications of the Localism Act for Fire Authorities have no direct Equality and Diversity implications. There may however be such implications for other Local Authorities in terms of some of the housing and other provisions within the Act.

Staff Implications

46. There are implications for both senior and low paid staff of the Authority in terms of the Pay Policy provisions of the Act, which may breach their rights under Data Protection legislation.

Legal Implications

47. The legal implications are referred to in full in the body of this report.

Financial Implications & Value for Money

48. Powers

The extension of the powers of the Authority may reduce legal challenge and consequently any associated costs.

49. Charging Powers

The extension of charging powers may provide opportunities to generate additional income depending on any policy decisions of the Authority.

50. Council Tax

The Secretary of State will set a limit on Council tax increases each year. If the Authority wants to make a local decision to increase any more than the limit set by the Secretary of State then it will have to ask each of the five District Councils to hold a referendum. The Districts are empowered to charge the Authority for this. The forecast cost of this would be approximately £2million (based on £400k per District) which is likely to constrain the Authority's ability to use large Council tax increases as part of any financial strategy.

Risk Management, Health & Safety, and Environmental Implications

51. There are no direct implications within this report relating to risk management, health and safety or the environment.

Contribution to ****Our Mission – To Achieve; Safer Stronger Communities – Safe Effective Firefighters****

52. Although the Act gives greater powers to the Fire Authority it does not provide for any financial improvement to the challenges faced by the Authority and therefore will not assist our Mission.