

Update on EU Fines (Localism Bill)

Purpose of report

For information / noting.

Summary

This paper provides updates Board Members on LG Group work to influence the EU fines clauses within the Localism Bill, currently going through the House of Lords. Officers will present the issue at the meeting following LG Group Executive discussions on the issue.

Recommendations

This paper provides updates Board Members on LG Group work to influence the EU fines clauses within the Localism Bill, currently going through the House of Lords.

Action

Officers will present the issue at the meeting following LG Group Executive discussions on the issue.

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Update on the Localism Bill

Background

1. Part 2 of the Localism Bill introduces EU Fines clauses which would give Ministers the power to force local authorities in England to pay part, or all, of any EU fine to the UK Government for failing to comply with an ECJ ruling relating to non compliance with EU law. The Welsh Assembly Government is responsible for determining how any fines are levied in Wales.
2. The LG Group and our member authorities believe these unprecedented and retrospective plans to allow Ministers to pass down national fines to local authorities are **unfair, unworkable, unconstitutional, and dangerous for council budgets**. At a time when local authorities' budgets are already being stretched to their limits, the added threat of Ministers delegating national fines on to them is of serious concern to our member authorities.

Progress on EU Fines

3. This issue which has most exercised councils, and legal commentators, is the 'unconstitutional' issue. The policy would enable a Minister to be judge, jury and executioner when passing down EU fines to councils, even though the Government is likely to be partly to blame for incurring the fine e.g. for poorly communicating EU laws and their implementing measures. If an authority disputes this, their only option will be to challenge decisions through judicial review.
4. Elected members and officers have taken every opportunity to discuss EU fines with Ministers and CLG officials. During the Bill's passage through the Commons, LG Group called for the clauses to be removed from the Bill, and have worked to suggest alternative solutions to enable Ministers to scrap the policy:
 - 4.1 '*Team UK*' partnership solution between central and local government working together to negotiate practicable future EU laws; and
 - 4.2 '*Sector self improvement*' offer to support and early warn councils where clear local authority responsibilities could result in an EU fine.

Recent activity

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Item 3

5. Moving into the Lords, our understanding is that Ministers are unlikely to delete the policy. Our strategy is to secure safeguards for the sector should the policy ever be enacted. Peers were briefed in advance of Second Reading and Committee (28 June). In Committee, Peers raised LG Group concerns throughout a lengthy debate. A stand part amendment for deletion was tabled. Dealing with the 'unconstitutional' issue:
 - 5.1 Baroness Eaton (Con) tabled a detailed set of LG Group cross-party amendments for independent arbitration building in procedural safeguards. Presented by Cllr Lord Tope, it would remove the Minister from the decision making process. It protects the sector should the policy ever be enacted by ensuring the authority and the Minister make representation to independent arbitration. As well as being independent, this is quicker, cleaner and cheaper than going through the courts. Ministers responded that decisions should not be made by a single unelected individual.
 - 5.2 An alternative amendment, supported by a statement of policy, tabled by Baroness Gardner of Parkes (Con), enables a Minister to appoint an independent review panel, but this still means the Minister appoints the panel, and makes the decision as to whether to issue a fine, and does not have to take on board the panel's view. While this does not address the impartiality issue, we understand Ministers are sympathetic to this amendment.
6. Earl Atlee (Con), a Government Whip, undertook to come back to Report stage with a compromise based on the mood of the House, before which he will undertake discussions with interested Peers and bodies (LG Group, GLA etc). This is encouraging.

Next steps

7. On 14 July, LG Group Executive Members were due to agree options to pursue discussions with the Government that build on this debate and which result in a compromise that allowed the clauses to remain in an amended form. Officers will provide an oral brief to this report, and Board members may provide further insight into developments.