

## **EU Financial Sanctions**

### **Purpose of report**

For discussion and direction.

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This paper provides an overview of the LGA's work to influence the EU fines policy in the Localism Act, and seeks Members views on delivering a new central-local relationship on EU proposed laws

### **Recommendation**

Members to provide their views on delivering a new central-local relationship on EU proposed laws.

### **Action**

LGA officers to take forward Member recommendations.

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## **EU Financial Sanctions**

### **Summary**

1. This paper provides an overview of the LGA's work to influence the EU financial sanctions policy in the Localism Act, and seeks Members views on delivering a new central-local relationship on EU proposed laws.

### **The issue**

2. Central government negotiates, signs, and transposes EU laws. Once transposed into UK statutory instruments, EU Directives have a significant, administrative, financial and regulatory impact on the way local authorities are run, and the services they provide or procure, costing time and money to implement.
3. Examples of the how EU Directives affect councils include:
  - 3.1 energy efficiency targets for municipal buildings and housing stock;
  - 3.2 Recycling/waste laws framing local environmental and waste services;
  - 3.3 Procurement rules guiding the way councils buy goods, works and services;
  - 3.4 Working Time rules which regulate shift patterns in Fire and Rescue Authorities and residential care homes; and
  - 3.5 consumer policy establishing principles for trading standards.
4. However, while local authorities (e.g. through Committee of the Regions) seek to influence the drafting of EU laws, they have no direct decision making power. The LGA is on the record in criticising past and present Governments for ineffective consultation when it negotiates, agrees and implements EU laws affecting them.
5. In terms of local/central relations on EU issues, the Localism Act 2011 was a "game changer". As a result of the Act, any fines imposed on the Government by the EU (for failure to implement EU law properly) could be devolved to local government, if a council has contributed to the national failure to deliver.
6. The LGA had significant concerns about Bill's original proposals, which would have given Ministers powers to arbitrarily pass on a fine to a local authority. The LGA called for the proposals to be scrapped on the grounds they were unfair, unworkable, dangerous to their budgets, and unconstitutional. The LGA identified that no other country had legislated for a law of this kind without devolving the requisite financial autonomy or ability to influence EU laws to local (or regional) government. The 'unconstitutional' issue most exercised councils and legal commentators as it offered no independent appeal process in case of dispute between the authority and the Minister, who would in effect be judge and jury even though Government was likely to be partly to blame for incurring the fine.

### **LGA campaign to influence**

7. LGA elected members and officers took every opportunity to discuss this with Ministers from the Department for Communities and Local Government (DCLG), DEFRA, and the Cabinet Office. In the Commons, the LGA briefed MPs and there were calls for the policy to be scrapped.
8. When the Bill reached the Lords, it was clear Government would not delete the clauses. Sustained lobbying by the LGA, on behalf of our member authorities, and the Greater London Authority, resulted in a major rethink of Government policy to ensure sufficient safeguards were in place should the policy ever be used. A compromise was presented at Lords report stage. LGA lead members and peers secured key concessions, which are detailed below.
9. The final Act requires Ministers to lay before both Houses of Parliament, on a case-by-case basis, details of every council they intend to pass on a fine to, including the EU infraction they are alleged to have breached and the UK obligation. This will be subject to a vote in both Houses. An independent advisory panel, which will include representatives from local government, will advise and recommend, on the authority's culpability.
10. Ministers using the legislation must have regard to a statutory statement of government policy. The LGA drafted its own version with the aim of building in protections for councils. Our draft sought to commit government to a new way of working with local government around the principles of working in partnership when EU laws are being drafted; developing a fair, reasonable and proportionate process to apportion fines and a clear consideration of the ability to pay. The Government converted our proposal into a Whitehall version and consulted key stakeholders. The LGA also responded to the consultation, and was satisfied with the final statement published by Government in June 2012 which provides for a fairer and more transparent system.

### **New central-local relationship on EU proposed laws**

11. Devolution of fines under the Localism Act demonstrates the continued impact of EU regulation on local authorities, and the Government's responsibility to turn EU regulations into effective UK law. Through the work on EU fines, local government has the opportunity to renew its partnership with Government in Parliament and Whitehall and to play a greater role when UK positions on new EU laws are being formulated.
12. Now that the work on the policy framework has been finalised, the Board needs to consider some formal mechanism to ensure that the spirit of partnership which was formulated during these negotiations becomes a working practice. Board members are asked to consider the options below. From members' discussion, the following work is suggested. The Board may want to consider what support we can give to councils to avoid the devolution of any EU fines. Board support could include:

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- 12.1 Ensuring that any attempt to devolve EU fines to local authorities is fair and evidence-based. The LGA will ensure local government expertise is adequately represented on the **independent advisory panel** from within the sector (see paragraph 9). This will be progressed during the autumn.
  - 12.2 Supporting councils to mitigate the imposition of EU fines. for instance since the Act introduces new liability issues into **public contracts**, the LGA will work with our member authorities to ensure they consider EU fines issues, and that respective liabilities are appropriately highlighted to contractors, and/or reflected in current (where appropriate) and future contracts.
  - 12.3 Inputting council views into Whitehall's draft explanatory memoranda which indicate the initial UK Government stance to proposed EU laws. This work started in September 2012.
13. LGA will work across Government to ensure implementation of EU law is effective and appropriate. It is suggested that the Board could consider:
- 13.1 Leading a local/central **EU summit with key Government departments** focusing discussions on 2013 EU work programme proposals which most affect council services, to ensure Government is committed to involve us in developing UK positions on EU law and in the way it is transposed.
  - 13.2 Building a **relationship with parliamentarians** in relevant scrutiny committees in the Commons and Lords, and with key Whitehall department with an interest in EU developments to ensure that the impact of future EU law on Councils is considered by Parliamentarians.