

EU Fines: Independent Advisory Panel – local government nominations

Purpose of report

For information.

Summary

The Localism Act contains the requirement that, before an EU fine can be passed to local authorities, Ministers must seek, and take heed of the advice of an independent advisory panel on EU fines adjudication. The LGA is responsible for nominating local government experts to the panel in cases which involve an English local authority.

Local authorities implement a vast range of regulations which derive from EU Directives once the UK Government has agreed and transposed them on to the UK statute book. The LGA has focused on establishing the pool based on those service areas which have to implement a significant amount of EU derived legislation.

The list of service areas and local authority experts is attached at **Appendix B**. This pool will be refreshed on an annual basis and is before the European and International Board for oversight and corporate ownership.

Recommendation

Members are asked to note the pool of experts from within the sector to be drawn upon in the event that an independent advisory panel on EU fines is required, which will be refreshed on an annual basis.

Action

Officers to progress any actions arising as appropriate.

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Background

1. The LGA had significant concerns about the original proposals to enable Ministers to arbitrarily pass on a European Union (EU) fine to one of our member authorities. This proposal could have landed our member authorities with a fine of millions of pounds, with no recourse. We called for the proposals to be scrapped on the grounds they were unfair, unworkable, dangerous to their budgets and unconstitutional. Once it was clear the proposals would not be deleted, the LGA worked to ensure sufficient safeguards were in place to protect local authorities should a Minister seek to pass on all, or part of an EU fine. The LGA's successful lobbying resulted in a fairer, more transparent policy than previously proposed
2. The Act requires Ministers to lay before both Houses of Parliament details of every local authority they intend to pass on a fine to, on a case-by-case basis. Each case will be subject to a vote in both Houses. If the intention to pass on all, or part of an EU fine, is supported by both Houses, the Minister must establish an independent advisory panel.
3. The panel will include representatives from local government and its function will be to advise and make recommendations to the Minister on: the parties involved; the split of responsibilities and culpability; and to ensure that the case for both the apportionment and recovery of costs is fair and robust. The Minister is required to consider the panel's advice and recommendations, which will be publically available.
4. In cases involving a local authority in England, the LGA is responsible for nominating local government experts to the panel. Given the safeguard has been secured by the LGA, we have sought to secure nominations to ensure we are one step of any developments which might arise. The Greater London Authority will arrange its own nominations separately.

EU Financial Sanctions:

5. The Government rightly points out that an EU fine has never been imposed on the UK. However, by introducing this policy, it suggests that there is a real risk. A minimum EU fine to the UK would be £10 million plus daily/periodic penalties for non-payment/fulfilment of EU obligations.
6. Once transposed into UK regulation, 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. The following EU Directives affect councils in various ways:
 - 6.1 energy efficiency affects municipal buildings and housing stock;
 - 6.2 recycling/waste frame all council environmental and waste services;

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- 6.3 procurement frame the way councils buy goods, works and services;
 - 6.4 working time significantly affect shift patterns in Fire and Rescue Authorities and residential care homes;
 - 6.5 renewable energy enable councils to generate alternative energy; and
 - 6.6 consumer policy affect trading standards.
7. The sector must be prepared should a fines issue ever arises. The LGA is committed to working with Government to avoid the incurrence of an EU fine:
- 7.1 Developing a more positive relationship with Whitehall on EU issues so the Government and Whitehall engage us at an early stage on EU policy development which once transposed, could significantly impact on local authorities (see Item 3).
 - 7.2 Established a standing pool of local authority representatives for those service areas most likely to be affected by EU derived legislation. This will enable the sector to respond swiftly and effectively should a Panel ever be required.

Independent Advisory Panel – ‘pool of experts’

- 8. This report updates members on the establishment of this standing pool of experts.
- 9. The terms of reference for the panel are broad, stating only that the panel must consist of one or more people with legal, topical, and sector expertise and that all nominations will be subject to the Minister’s approval. To ensure local government expertise is adequately represented, the LGA, together with Society of Local Authority Chief Executive’s (SOLACE), have proposed that each panel will include an elected Member, an officer and chief executive expert from within the sector.
- 10. Six service areas were identified as most likely to be affected by EU derived legislation: environment and energy efficiency; local government finance; procurement; regulatory services; waste and recycling; and employment law. A ‘miscellaneous’ category is included in case a fine may arises which falls outside the six identified service areas.¹
- 11. The pool has been compiled in conjunction with SOLACE, Lead Members from the relevant LGA policy Boards, relevant professional officer networks and the LGA political group offices. **Appendix A** provides further details of the nomination process undertaken, with the completed list of elected Member, officer and chief executive experts nominated to the pool attached at **Appendix B**.
- 12. Given an EU fines case is likely to be technical, high profile, and time consuming, appointments will need to be reviewed on a case by case basis by the LGA Chief Executive and Chairman, in conjunction with advice from relevant policy officers.

¹ Appointments to this category will be sought on a case by case basis once the details of the fine are known.

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Next Steps

13. It is proposed that the pool of service areas and local authority experts is reviewed on an annual basis and that for continuity and efficiency, this process be brought in line with the LGA's appointments to Outside Bodies procedure.

Financial Implications

14. There are no financial implications for the LGA, other than officer time and resources in maintaining and reviewing the vulnerable service areas and the pool of experts. Expenses and allowances for Panel members, along with provision of a secretariat to the Panel, will be covered by DCLG.

Background reports

15. For further information, Terms of Reference for the independent advisory panel and further detail on the proposed role of the panel is detailed in the Policy Statement on the DCLG web page <https://www.gov.uk/government/publications/policy-statement-for-part-2-of-the-localism-act-2011>.

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APPENDIX A

Nomination process

1. The approach undertaken to establish this standing pool of local authority experts was as follows:

Elected Members

- 1.1 The four political lead Members of the relevant LGA policy Boards and Panels were asked to nominate the elected Member experts for their specific service area(s). Political balance has not been reflected in the pool as the role of a member on the panel is apolitical, therefore appropriate expertise and skills is the primary concern. Additionally, in the event that a Panel is required, only one member would be involved at any one time. Political oversight has been maintained through the lead Members of the Panels/Boards approval process and through the LGA political group offices having advanced sight of the appointment process and final list of nominations.

Officers

- 1.2 The primary professional officer networks for each of the six service areas were approached and asked to nominate officer representation.²

Chief Executives

- 1.3 SOLACE has agreed to nominate a chief executive from within their network for each of the identified service areas as and when a fine arises.

² For those areas where the professional network is not easily identifiable, an individual has been identified who will advise on a case by case basis which professional body to seek a nomination from.