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Intervention Protocol Consultation Response

Purpose of report

For discussion and direction

Summary

This paper provides details of DCLG's consultation on an Intervention Protocol for Fire. It also sets out a potential response to the consultation.

Recommendation

Members are asked to consider the key points of the consultation on an Intervention Protocol for Fire and to comment on and agree a final version of a consultation response from FSMC.

Action

Officers to take action as directed.

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Intervention Protocol Consultation Response

Background

1. It is a requirement under section 23 of the Fire and Rescue Services Act 2004 that an intervention protocol be prepared and for the secretary of state to have regard to it.
2. Following the development and publication of the new National Framework for Fire, the government is now consulting on a revised intervention protocol (which is referred to in paragraph 4.9 of the National Framework).
3. The original intervention protocol was drafted at a time when the performance and framework for local authorities was substantially different. Following representation from the LGA, the department recognised that the original intervention protocol was outdated and is therefore now consulting on new arrangements.
4. There is no similar requirement for local authorities. DCLG and the LGA have agreed a Local Government Accountability System Statement (paragraphs 54 to 63 have a similar scope to the Intervention protocol discussed here and are attached at **Appendix A**).

The New Intervention Protocol

5. The draft Intervention Protocol sets out the circumstances leading to statutory intervention, what happens on intervention and how exceptional and urgent cases will be dealt with. The draft intervention protocol also sets out a role for the LGA in supporting authorities at risk. In summary the Draft Intervention Protocol states that:
 - 5.1 There must be clear evidence that an authority is failing to act in accordance with the National Framework;
 - 5.2 the failure must be sufficiently serious to warrant intervention;
 - 5.3 evidence needs to be robust from sources such as audit, financial reports, investigations or judicial findings;
 - 5.4 the Secretary of State has the powers to commission a corporate governance investigation and or an investigation led by the Chief Fire and Rescue Adviser;
 - 5.5 The extent of intervention will be determined on a case by case basis; and
 - 5.6 The relevant fire authority will be required to draw up a recovery plan.
6. The Protocol also states that the secretary of state can require an authority to:
 - 6.1 prepare or amend a recovery plan;
 - 6.2 ensure that particular functions are carried out to achieve specified objectives or

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priorities;

- 6.3 take consultancy advice;
 - 6.4 appoint interim management;
 - 6.5 enforce appropriate levels of delegation;
 - 6.6 secure a function from a specified provider or put the function out to tender;
 - 6.7 appoint a nominee to exercise certain specified functions on behalf of the authority; and
 - 6.8 any other action that will secure the necessary improvements
7. Under exceptional or urgent cases the Protocol states that the Secretary of State retains the discretion to reduce or condense the procedures.
8. The LGA has no formal role in intervention procedures. The LGA has and will continue to provide improvement support to the local government sector, where this is identified, and this is reflected in the text of the draft Intervention Protocol.

Draft consultation response

9. Members briefly discussed some of these issues when the National Framework was being developed. Members and senior officers are strongly of the view that a separate Intervention Protocol for fire authorities is unnecessary. The existing Local Government Accountability System Statement already covers fire and rescue authorities, and should be sufficient.
10. Therefore, our starting position is that we would like the government to take the earliest opportunity to repeal the relevant legislation (Fire and Rescue Act 2004 sections 22 and 23) to remove this requirement.
11. The Intervention Protocol as drafted makes clear that the LGA has a role in sector improvement. The LGA will work with all authorities who request its support. This support is voluntary. It is also forward looking and aimed at supporting councils address improvement challenges, rather than audit or inspection based.
12. The LGA has sought to ensure that the draft Intervention Protocol for fire is compatible with the section on assurance contained in the Local Government Accountability System Statement (paragraphs 54-63).
13. However, the LGA can only carry out its improvement function in partnership with the professional body to ensure we draw together all relevant expertise to support a service. The important role that CFOA has to play in supporting improvement in the sector is not recognised in the draft Protocol and we should urge Government to rectify this.

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14. The draft Protocol sets out the tools and the outline processes for intervention by the Secretary of State. However there is still a degree of ambiguity.
- 14.1. The draft protocol refers to a failure “so serious as to require government intervention”, but does not attempt to illustrate what constitutes “serious”.
 - 14.2. The draft protocol lists a series of potential interventions, but does not say when each of these would be deemed appropriate.
 - 14.3. The draft protocol is silent on whether the possible interventions are discrete or are to be used sequentially as part of a process of escalation. The trade off here is between flexibility (for the Secretary of State and the sector) and certainty/consistency.
15. In our response, Members may wish to press for further clarity on these issues before the Protocol is finalised.

Next steps

16. The deadline for responses is 15 November 2012. However DCLG has agreed to accept FSMC’s response following the agreement on its submission at the meeting on 16 November 2012.
17. LGA improvement support for the sector is largely confined to peer challenges and to leadership academies. There are potentially a range of other measures that could be developed by the LGA as an offer to the sector which would support the improvement offer and mitigate organisational risk. These include:
- 17.1. Mentoring for incoming fire authority chairs
 - 17.2. Support for top team development
 - 17.3. Ad-hoc support for fire authorities addressing particular issues
18. Funding for this type of support is not in place and we would need to discuss with CLG and others the sources of funding that could support this work.

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Appendix A

Local Government Accountability System Statement (extract)

How the system responds to failure

54. Councils which do not deliver for their local communities can be voted out by citizens. However, there are a range of external systems in place should councils fail to fulfil their functions which contribute to the maintenance of regularity, propriety and value for money. These are summarised below:
- For cases affecting an individual, the Local Government Ombudsman provides an independent route of complaint and redress.
 - For service specific failure, for example in children's services, the relevant government department has in some cases put in place specific failure and improvement regimes.
 - In terms of the overall corporate performance of a council, the Local Government Association is co-ordinating the local government sector in providing peer support to councils.
 - As a last resort, government has powers to investigate and intervene.
55. Where service failure occurs in an individual case, the Local Government Ombudsman (established under the Local Government Act 1974) can investigate. All council services can be investigated including housing, planning, education, social care, council tax, housing benefit and highways. As well as producing reports on individual complaints investigated, the Ombudsman prepares an annual review that is sent to all councils about their performance in dealing with complaints made about them to the Ombudsman. These reviews are available on the Ombudsman's website. <http://www.lgo.org.uk/CouncilsPerformance/>
56. Where the safeguarding of vulnerable people may be at stake, for example in adult social care or children's services arrangements for tackling these cases are covered under additional accountability statements (see for example the Department for Education statement,). They involve improvement and monitoring from the local government sector, led by the Local Government Association, programmes of inspection to identify failure and powers to intervene by government.
57. There are also rare cases of corporate failure that affect the whole authority. These may be cases where relationships between councillors and officers have irretrievably broken down and there may be failure across a number of services.
58. To prevent a council reaching this point, the Local Government Association co-ordinates the provision of peer support to councils on corporate performance. This can be particularly effective at key moments, such as when an authority is experiencing a transition. Sector-led improvement and support is co-ordinated at political level in the Local Government Association through their Improvement Board. Through their network of principal advisers, the Local Government Association is able to arrange mentoring by peers from another authority for members and officers, and peer review teams to support councils facing challenges.

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59. The Local Government Association has a systematic approach to identifying those councils that could benefit from preventative improvement support, based on data and informal conversations with the sector. This will be set out in a forthcoming document. Information sharing arrangements are also being put in place between the Local Government Association and government departments and the Inspectorates to ensure that the Local Government Association has the best possible intelligence to focus support. In addition, the Local Government Association will meet regularly with the Department for Communities and Local Government and each party will share intelligence about performance concerns and to assess the progress of sector support.
60. If an issue could not be resolved, or if a council refused to engage with sector led improvement, the Secretary of State could commission a corporate governance investigation to ensure a robust evidence base. He has a power to do so under s10 of the Local Government Act 1999. Currently the inspection must be carried out by the Audit Commission. The Department for Communities and Local Government will ensure that an equivalent power remains after the disbanding of the Audit Commission.
61. If a council was still unwilling to engage with the Local Government Association in light of the evidence gathered after an investigation, under s15 of the Local Government Act 1999, the Secretary of State has powers to intervene. He can direct authorities to take actions, and ultimately direct another body to take over specific functions of a council.
62. The Department for Communities and Local Government has a model for handling an intervention based on recent experience of intervention at Doncaster, which involves working closely with the local government sector. This can be used for future interventions, although it will be adapted to allow for the disbanding of the Audit Commission.
63. The process in Doncaster was as follows. After a Corporate Governance Inspection report by the Audit Commission and discussion with key stakeholders in Doncaster and the local government sector, the Secretary of State issued an intervention direction. This direction appointed a non-executive Recovery Board and three Commissioners to support and challenge the council and monitor recovery. The Secretary of State also appointed a new Chief Executive. These actions placed experienced leadership at the helm in Doncaster to closely monitor events and seek to bring about cultural change.