



# Localism Bill: General Powers for fire and rescue authorities

## Impact assessment



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## **Impact assessment**

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<b>Title:</b> Localism Bill - General Powers for fire and rescue authorities  <b>Lead department or agency:</b> Department for Communities and Local Government (DCLG)  <b>Other departments or agencies:</b> Wales, Department for Business, Innovation and Skills, Department of Health, HM Treasury	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> DCLG 0045
	<b>Date:</b> January 2011
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary legislation
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## Summary: Intervention and Options

### **What is the problem under consideration? Why is government intervention necessary?**

The general power of competence impact assessment sets out limitations that the Well Being Power has placed on local authorities. Only the 15 county fire and rescue services will be covered by the proposed general power of competence. Stand-alone fire and rescue authorities will need a similar power to address the lack of sufficient freedoms and flexibilities to do things that they might properly wish to do which could benefit or contribute to their purposes. Freeing up fire and rescue authorities by providing general powers in the same vein as for local authorities, will therefore, both rectify this situation and promote the radical devolution of power away from Westminster and Whitehall to councils and communities.

The Bill ensures consistency for fire and rescue authorities which are not part of a county council. In addition to the general powers proposed, the Bill also amends the current restrictive charging regime in place for all fire and rescue authorities and aims to enable them to deliver more personalised effective and efficient services for individuals and communities. **These changes can only be made by amending primary legislation.**

**What are the policy objectives and the intended effects?** The functions and actions of fire and rescue authorities are governed by statute: these functions are primarily prescribed by the Fire and Rescue Services Act 2004. Wider general powers are intended to empower fire and rescue authorities with greater freedoms and flexibilities to act in the interests of delivering their purpose, except where otherwise prohibited.

**What policy options have been considered? Please justify preferred option (further details in Evidence Base)**

- 1. Do nothing:** This would not meet the Government’s objective of removing barriers, changing behaviour and providing all fire and rescue authorities with wider general powers.
- 2. Introduce new legislation to provide fire and rescue authorities with a general power of competence:** This option was rejected as it would, in effect, change the single purpose status of fire and rescue authorities. It is possible to achieve the objective of providing a power specifically for the better delivery of fire and rescue services, without this consequence.
- 3. Amend existing legislation and add wider provisions in the Localism Bill:** This will provide fire and rescue authorities with the legal capacity to do anything which they believe furthers their statutory objects. The existing charging provisions of the Fire and Rescue Services Act 2004 will be simplified to enable greater freedom and flexibilities<sup>1</sup>.

This option was chosen as the most effective means of delivering the objective of greater freedom for fire and rescue authorities whilst maintaining their single purpose status.

<p><b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b></p>	<p>It will be reviewed 01/2016</p>
<p><b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b></p>	<p>Not currently</p>

**Ministerial Sign-off** For final proposal stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.***

Signed by the responsible Minister: Bob Neill ..... Date: January 2011 .....

<sup>1</sup> Section 19 of the Fire and Rescue Services Act 2004 enables the Secretary of State to lay a charging order (negative resolution) following public consultation which sets out which functions fire and rescue authorities may charge for and the person who may be charged. Currently fire and rescue authorities are able to charge for 14 functions.

# Summary: Analysis and Evidence

# Policy Option

**Description: Provide General Powers for fire and rescue authorities**

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

Description and scale of key monetised costs by 'main affected groups' N/A

**Other key non-monetised costs by 'main affected groups'** The proposed legislation does not entail any direct costs for fire and rescue authorities since it is an enabling power, giving fire and rescue authorities the discretion to use it if they wish to do so. It is possible that fire and rescue authorities could incur particular costs as a result of engaging in an activity but because it is a general discretionary power it is impossible to predict what these would be.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate	N/A			N/A

Description and scale of key monetised benefits by 'main affected groups' N/A

**Other key non-monetised benefits by 'main affected groups'**

There should be a reduced demand on legal resources by fire and rescue authorities i.e. in considering the application of specific powers to take action where they consider such action is justifiable. It could also reduce the actual and potential costs arising from legal challenge. More importantly, the new powers will remove the uncertainty for fire and rescue authorities and could significantly increase their confidence, enabling them to adopt innovative approaches to service delivery and efficiency savings thus helping them to deliver better local services for less. Successful examples of implementation should further increase the confidence of fire and rescue authorities to make greater use of the power.

**Key assumptions/sensitivities/risks**

Discount rate (%) N/A

A statutory single purpose authority has to act in accordance with the functions, purposes and objectives prescribed for it by Parliament and whatever powers it is given: such powers have to be necessarily exercised in accordance with those functions. The new powers will provide fire and rescue authorities with the freedom to do whatever they consider appropriate to deliver their functions/objectives.

The new power is intended to both remove limitations in existing powers and reduce the risk of legal challenge thus giving fire and rescue authorities increased confidence in their legal capacity to act both on behalf of their communities and in their own interest to generate efficiencies and savings. The risk of substantial misuse of public resources is seen as unlikely given the degree of internal local authority and external scrutiny to which local authorities' use of resources is typically subjected.

<b>Impact on admin burden (AB) (£m):</b>		<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
<b>New AB:</b>	<b>AB savings:</b>	<b>Net:</b>	<b>Policy cost savings:</b>	<b>Yes/No</b>

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		England <sup>2</sup> .			
From what date will the policy be implemented?		Autumn 2011 <sup>3</sup>			
Which organisation(s) will enforce the policy?		None			
What is the annual change in enforcement cost (£m)?		N/A			
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		Yes/No N/A			
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b> N/A		<b>Non-traded:</b> N/A	
Does the proposal have an impact on competition?		Yes – but see evidence			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		<b>Costs:</b> N/K at this time		<b>Benefits:</b> N/K at this	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b>	<b>&lt; 20</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
Are any of these organisations exempt?	N/A	N/A	N/A	N/A	N/A

## Specific Impact Tests: Checklist

Set out in the table below where information on any Specific Impact Tests undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on?	Impact	Page ref within IA
<b>Statutory equality duties<sup>4</sup></b> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	11
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	10
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes	11
<b>Environmental impacts</b>		
Greenhouse gas assessment	No	11
Wider environmental issues	No	11
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	11
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	11
Justice system <a href="#">Justice Impact Test guidance</a>	No	11
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	11

<sup>2</sup> Wales is likely to consider similar powers.

<sup>3</sup> The precise date will depend upon the legislative timetable.

<sup>4</sup> Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

<b>Sustainable development</b> <u>Sustainable Development Impact Test guidance</u>	No	11
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## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Fire and Rescue Services Act 2004 <a href="http://www.legislation.gov.uk/ukpga/2004/21/contents">http://www.legislation.gov.uk/ukpga/2004/21/contents</a>
2	Local Government Act 1972 <a href="http://www.legislation.gov.uk/ukpga/1972/70/contents">http://www.legislation.gov.uk/ukpga/1972/70/contents</a>
3	The Fire and Rescue Services (Emergencies)(England) Order 2007 (SI 2007/735) <a href="http://www.legislation.gov.uk/uksi/2007/735/contents/made">http://www.legislation.gov.uk/uksi/2007/735/contents/made</a>
4	Fire and Rescue Services (England) Order 2004 (SI 2004/2305) <a href="http://www.legislation.gov.uk/uksi/2004/2305/contents/made">http://www.legislation.gov.uk/uksi/2004/2305/contents/made</a>
5	Fire and Rescue Services (England) (Amendment) Order (SI 2007/2784) <a href="http://www.legislation.gov.uk/uksi/2007/2784/contents/made">http://www.legislation.gov.uk/uksi/2007/2784/contents/made</a>
6	Chartered Institute of Public Finance and Accountancy (CIPFA) statistics for 2007/08 <a href="http://www.tisonline.net/charging/default.asp">http://www.tisonline.net/charging/default.asp</a> (subscription service)
7	Charging by Fire and Rescue Authorities <a href="http://www.communities.gov.uk/archived/publications/fire/chargingbyfire">http://www.communities.gov.uk/archived/publications/fire/chargingbyfire</a>
8	<i>Extension to charging by Fire and Rescue Authorities – Findings and further consultation</i> <a href="http://www.communities.gov.uk/archived/publications/fire/extensioncharging">http://www.communities.gov.uk/archived/publications/fire/extensioncharging</a>
9	Adding a specified category to the Charging Order <a href="http://www.communities.gov.uk/publications/fire/chargingorder">http://www.communities.gov.uk/publications/fire/chargingorder</a>
10	The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years). Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>										
<b>Annual recurring cost</b>										
<b>Total annual costs</b>										
<b>Transition benefits</b>										
<b>Annual recurring benefits</b>										
<b>Total annual benefits</b>										

\* For non-monetised benefits please see summary pages and main evidence base section

## Evidence Base (for summary sheets)

**TO NOTE:** This impact assessment should be considered together with the impact assessment for the Localism Bill which is linked to the one for the general power of competence for local authorities in England.

### Introduction

This assessment reports on the potential impact of providing single purpose fire and rescue authorities in England with wider general powers to ensure that all fire and rescue authorities operate with the freedoms and flexibilities appropriate to the type of fire and rescue authority and to simplify existing charging provisions by removing the order for what may be charged for and replacing with specific provisions where charging is not possible.

The proposal meets the Coalition Agreement to devolve power away from Westminster and Whitehall to local authorities and communities. Local people will expect more from their fire and rescue authority as they become more involved in local democracy through Big Society. The proposed new power will assist fire and rescue authorities in meeting that challenge with confidence, changing the way they behave by both enabling them and encouraging them to be much more active and innovative. This should lead to new approaches, better service delivery which reflects local priorities, more effective partnerships and greater efficiencies. The intention is that provisions should be included in the Localism Bill, with Royal Assent and implementation planned for the end of 2011.

### Background

The Fire and Rescue Services Act 2004 currently sets out the primary functions for all types of fire and rescue authorities in England and Wales (Metropolitan, London Fire and Emergency Planning Authority, Combined and Counties). There are 46 fire and rescue authorities in England. The fire and rescue authority for an area in England is either a county council (county fire and rescue authorities), or a statutory single purpose body made up of a committee of local councillors which oversees the policy and service delivery of each fire and rescue service in a defined area. London in addition has appointments made by the Mayor.

The general power of competence for local government is a concept that has been the subject of some debate over a number of years, so far without converging on a single definition. It was raised by the Department for Communities and Local Government Select Committee as part of their report, *The Balance of Power: Central and Local Government* (May 2009), and by the Conservative Party Policy green paper, *Control Shift: Returning Power to Local Communities* (February 2009) and the Local Government Association in its draft *Local Government Power of General Competence Bill*, (March 2010).

The issue of local government powers is also included in *The Coalition: our programme for government* (May 2010) as follows: “*The parties will promote the radical devolution of power and greater financial autonomy to local government and community groups*”. Chapter 4 states: “*We will give councils a general power of competence*”.

### Problem under consideration

The research outlined in the general power of competence impact assessment and the London Authorities Mutual Ltd Court case taken together show that there are doubts about the breadth of the well-being power and a lack of confidence within local authorities in using it, which has resulted in more attention, and calls for a general power of competence as a possible solution. Given that local authorities are creatures of statute, and can only act where they have specific powers to do so, the only effective option for intervention would be a legislative one.

The same is equally true for fire and rescue authorities. Many fire and rescue authorities lack, and perceive themselves to lack, sufficient freedoms and flexibilities to do everything that they might properly wish to do and calls for greater powers have increased; only county fire and rescue authorities have access to the Well Being Power. To drive the way fire and rescue authorities behave, enabling and encouraging them to be much more innovative and efficient, and allowing them to deliver the best possible service for their communities, Government has decided to provide them with additional general powers. To further empower fire and rescue authorities, Government is also simplifying the existing charging regime.

The recent Court of Appeal judgment on mutual insurance arrangements by a number of London councils (the London Authorities Mutual Ltd) , in June 2009 has put a limit on the Well Being Power in relation to 'speculative activities' and the giving of guarantees and indemnities. The judgement ruled that such activities are not easily sanctioned through general powers and as such require more explicit provision. The London Authorities Mutual Ltd case also raised concerns about whether local authorities had the power to act in their own financial interest to generate efficiencies and secure value for money outcomes – an increasingly important ability given the current financial climate. The court case indicates that there are doubts about the breadth of the existing well-being power and a lack of confidence within local authorities – and county fire authorities - in using it, which has resulted in more attention, and calls for a general power of competence as a possible solution. Fire and rescue authorities faced a similar issue with their own Fire and Rescue Authority Mutual Ltd case.

### **Rationale for intervention**

The issue of local government powers was included in *The Coalition: our programme for government* (May 2010) as follows:

*“The parties will promote the radical devolution of power and greater financial autonomy to local government and community groups’.* Chapter 4 states: *“We will give councils a general power of competence”.*

Local people will increasingly expect more from their fire and rescue authorities as they become more involved in local democracy through Big Society, and the proposed new power will help them to meet that challenge. Therefore, to both rectify the problems identified above and promote the radical devolution of power away from Westminster and Whitehall to councils, communities and individuals, the Government intends to introduce a general power for fire and rescue authorities which is an important part of the decentralisation and localism elements of the Coalition Agreement, to be taken forward through the Localism Bill.

### **Summary policy objectives**

Ministers are proposing general powers for single-purpose fire and rescue authorities to allow them the freedom to do whatever they consider appropriate, where the outcome is intended to be beneficial to the delivery of their functions, integrate functions with other emergency services, and charge for non-core discretionary services. This will drive behavioural changes in fire and rescue authorities and lead to more personalised, effective and efficient provision of local services. This could yield significant benefits to local communities.

However, some limitations will be placed on fire and rescue authorities' powers. As for local authorities' general power of competence they will remain governed by the existing regimes in relation to taxation and borrowing. Fire and rescue authorities will also not be able to override existing, specific, statutory limitations on their powers. The Secretary of State will have powers to prevent fire and rescue authorities from using the power in specific circumstances (a reserve power).

Devolving power to fire and rescue authorities should lead to better more efficient local services with the primary focus on people and places.

In summary the policy objectives are:

- To ensure that single-purpose fire and rescue authorities can do anything that they consider to be appropriate in relation to their functions and objectives as single-purpose bodies which is not otherwise expressly prohibited.
- To empower fire and rescue authorities so that they can more confidently and effectively act in both their own interest and the interests of the communities they serve.
- Provide the Secretary of State with a power to set conditions, or prevent fire and rescue authorities relying on the power in specified circumstances.

### **Individual proposals in more detail**

The intention is for fire and rescue authorities whilst retaining their current core functions, to have wider general powers which will enable them to undertake any activities which they consider to be connected with their functions. This will replace the current power for fire and rescue authorities to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of the fire and rescue authorities functions. These cover:

- Fire safety
- Fire-fighting
- Rescue and protection in relation to road traffic accidents
- Other emergencies specified by an order made by the Secretary of State (which currently comprises urban search and rescue and chemical, biological, radiological, nuclear incidents and responding to other incidents).

For example the powers will mean that fire and rescue authorities:

- Will be more able to enter into commercial joint ventures to redevelop redundant fire buildings with proceeds being ploughed back into new or updated buildings.
- Undertake greater joint service delivery with other emergency services.
- Make greater use of assets and capacity to support Big Society.

In addition, section 19 of the Fire and Rescue Services Act 2004 will be amended to enable the simplified charging provisions but we will retain the existing requirement that fire and rescue authorities are **unable** to charge for:

- Extinguishing fires, or protecting life and property in the event of fires, other than fires at or under the sea (which is an existing provision).
- Emergency medical assistance.

Additional reserve powers, outlined in the local authority general power of competence impact assessment, will prevent fire and rescue authorities from acting in specified circumstances or in specified ways.

In particular, they will remain governed by the existing regimes in relation to taxation, precepting and borrowing (including Prudential Borrowing). Fire and rescue authorities will also not be able to override existing, specific, statutory limitations on their powers. Existing state aids legislation, which prevents use of public funds for commercial activities in ways which distort the market, will apply in such cases.

**The Secretary of State will also have a power for the new charging provision which is similar to the existing section 94 of the Local Government Act 2003 for local authorities, which, we would expect to be used to prevent fire and rescue authorities from charging in response to emergencies in certain circumstances.**

### **Links to other policies and strategies**

This impact assessment should be considered together with the impact assessment for the Localism Bill and is strongly linked with the one for a general power of competence for local authorities in England which also doesn't include monetised costings.

More broadly, the general power of competence policy forms part of the Structural Reform Plan for the Department for Communities and Local Government and will be a delivery agent for elements of the decentralisation agenda.

## **Specific Impact Tests**

The potential impact of this policy has been considered in line with the relevant guidance in the following areas: an initial new burdens assessment has been completed, together with an initial equalities assessment.

However, given that the wider general powers will be of discretionary use by fire and rescue authorities, our view is that there is unlikely to be any financial burden for fire and rescue authorities associated with the use of the power, which is intended to offer increased flexibilities to them, and furthermore that it would be for fire and rescue authorities to assess the impact on minority groups and businesses when formulating their proposed use of the power.

### **Competition impacts**

It is possible that fire and rescue authorities may consider the use of powers to engage in activities that might bring them into competition with business. Existing state aids legislation, which prevents use of public funds for commercial activities in ways which distort the market, will apply in such cases.

We also believe that providing all fire and rescue authorities with increased freedoms and flexibilities should drive behavioral changes and enable them in turn to move towards more personalised, effective and efficient provision of local services for their communities and individuals.

### **Statutory equality duties**

An initial screening has been completed and concluded that a full Equalities Impact Assessment is not needed.

### **Environmental impacts, social impacts, sustainable development**

We have assessed these and do not consider that the policy will result in any adverse impacts.

### **Small firms impact**

The proposed general powers do not entail any direct costs for fire and rescue authorities since it is an enabling power, giving them the discretion to use it if they wish to do so. The powers are designed to change fire and rescue authority behaviour so it is extremely hard to predict how they will be used. See *Specific Legal Safeguards Concerning the Use of Financial Resources* below for more information.

Ministers have agreed that it is for each of the 46 fire and rescue authorities in England to assess the impact on the business and wider local community and to set trigger levels where charging can happen and in what circumstances.

## **Description of options considered**

Three options were identified:

**1. Do nothing:** This would not meet Government's stated objective of removing barriers and providing **all** fire and rescue authorities with a wider range of powers.

**2. Introduce new legislation to provide fire and rescue authorities with General Powers of Competence:** This option was rejected as it would, in effect, remove the single-purpose status of a fire authority. This would not be the most effective method of implementing ministers' objectives of providing a power specifically for the better delivery of fire and rescue services, as it would risk the dilution of skills and resources currently focused on fire and rescue services.

**3. Amend existing legislation and add wider provisions in the Localism Bill:** This option was chosen by ministers as providing the most effective method of implementing their objectives whilst setting out the new powers being given to fire and rescue authorities in the clearest way i.e. to provide fire and rescue authorities with the legal capacity to do anything that is not otherwise expressly prohibited by legislation. To rectify this situation ministers are seeking to give single-purpose fire and rescue authorities wider general powers which are appropriate to their role. Existing charging (up to full cost recovery) provisions<sup>5</sup> will also be simplified.

## **Costs, benefits and risks assumptions**

As with the general power of competence proposed for local authorities, the general powers for single-purpose fire and rescue authorities is an enabling power. Fire and rescue authorities are not being asked to comply with a prescription – rather they will act on their own volition. The deliberately broad definition of the powers means that there is no typical application and Department for Communities and Local Government does not hold any data to base assumptions upon. Rather than trying to predict what fire and rescue authorities may use the powers for we have sought to provide reassurance to the question: What assurance is there that fire and rescue authorities will, in general, act both lawfully and make the best use of any public expenditure incurred as a result of exercising their wider powers?

## **Costs, benefits and risks of each of the three options considered**

### **OPTION 1: DO NOTHING**

#### ***Costs and benefits***

Nil in terms of monetised and non-monetised costs or benefits however, failure to provide single purpose fire and rescue authorities with wider general powers would result in a situation where all fire and rescue authorities were not operating with all the freedoms and flexibilities appropriate to the type of fire and rescue authority i.e. county fire and rescue authorities will, by virtue of being part of a county council, benefit from the general power of competence.

#### ***Risks***

Single-purpose fire and rescue authorities may wish to do something to benefit both their own interests and those of the communities they serve but would be unable to because the legislative framework they are required to operate within will not enable them to do so. This will

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<sup>5</sup> Section 19 of the Fire and Rescue Services Act 2004 enables the Secretary of State to lay a charging order (negative resolution) following public consultation which sets out which functions fire and rescue authorities may charge for and the person who may be charged. Currently fire and rescue authorities are able to charge for 14 functions.

stifle innovative thinking and ability to improve services which is contrary to the Coalition Government's commitment to the localism agenda. This will also create a two-tier fire and rescue service as county fire and rescue authorities will have access to the wider general powers of competence by virtue of being part of a county council.

## **OPTION 2: INTRODUCE NEW LEGISLATION TO PROVIDE FIRE AND RESCUE AUTHORITIES WITH GENERAL POWERS OF COMPETENCE (I.E. SAME AS LOCAL AUTHORITIES)**

### ***Costs and benefits***

As with option 3 it is not possible, at this time, to quantify/assess the potential monetised and non-monetised costs and benefits.

### ***Risks***

That with no defining purpose there would be nothing to separate fire and rescue authorities from other local authority service providers, in that they would no longer have regard to only the delivery of a single service. This may risk fire and rescue authorities removing their focus from the delivery of fire and rescue services to the delivery of other local services which in itself opens up the possibility of unhelpful service duplication locally.

## **OPTION 3: AMEND EXISTING LEGISLATION AND ADD WIDER PROVISIONS IN THE LOCALISM BILL (PREFERRED OPTION)**

### ***Costs and benefits***

As indicated elsewhere it is not possible, at this time, to quantify/assess the potential monetised and non-monetised costs and benefits as the proposed amendments to legislation will provide fire and rescue authorities with an enabling power which they can use at their discretion.

The benefits are expected to be wide ranging for both fire and rescue authorities and communities. The general powers will drive behavioural change, offer simpler, quicker, less bureaucratic processes to go through to implement locally identified measures which fire and rescue authorities and the communities they serve deem to be beneficial to the effective delivery of their services and functions. There is the possibility that the powers will increase mutually beneficial partnerships between fire and rescue authorities and third parties including other fire and rescue authorities and other blue light services.

The proposed amendment to legislation does not impose any direct administrative burdens on fire and rescue authorities but it will ensure that all fire and rescue authorities have the freedom and flexibility to act without the express consent of the Secretary of State in relation to anything that they consider to be connected to their functions and purposes and is in the interests of the communities they serve but also retain their single purpose status.

### ***Risks***

The expected increase in the number and scope of activities that the general powers will allow would entail some risk that fire and rescue authorities may lose the focus on the delivery of the fire and rescue service. However, this risk is acceptable if Government wishes to see fire and rescue authorities develop truly innovative and beneficial approaches. The mitigation to this risk is the element that defines this option from option two, which is that, the legal and audit framework bounding the activities of fire and rescue authorities should ensure that the general powers yield overall net benefits and substantially so in comparison with the existing provisions. The requirement to consult locally will provide transparency and a strong safety check for the charging provisions.

## ***General public law constraints***

Like local authorities, fire and rescue authorities as decision making public bodies, are subject to judicial review on public law grounds, such as the 'reasonableness' of decisions. The practical effect of potential challenge is that over time, local authorities and fire and rescue authorities have adopted auditable practices which demonstrate not only the apparent robustness of decision making but which assist fire and rescue authorities adopting business case development, option appraisal etc.

### *Specific legal safeguards concerning the use of financial resources*

These are:

- The duties on an authority's chief finance officer to report to the fire and rescue authority or cabinet when some part of its decision making machinery has made, or is about to make, a decision that would contravene the law or incur unlawful expenditure (Part 8 of the Local Government Finance Act 1988) The decision maker is then barred from taking action to implement the decision until they have considered the report.
- The duty of an authority to ensure that its financial management is adequate and effective, that it has a sound system of internal control which includes arrangements for the management of risk, to review the system of internal control at least annually and, based on the review, to approve a statement on internal control to be published with the annual statement of accounts (Accounts and Audit Regulations 2003).
- The duty to maintain an adequate and effective internal audit of the authority (Accounts and Audit Regulations 2003).
- The duty to balance the revenue budget annually (Local Government Finance Act 1992 and Part 2 of the Local Government Act 2003).
- Under the Prudential System, the restriction of borrowing to what is affordable (Part 1 of the Local Government Act 2003).

### *External audit*

In addition, the external auditor will be concerned about internal control systems, both as part of the audit of the statement of accounts and as part of the auditor's duty to assess arrangements for securing value for money and compliance with legal requirements. The auditor has a duty to make a public report when matters come to light that need to be brought to the attention of the authority or the public. The regular annual audit reports are also available to the public.

### *Best value regime*

Fire and rescue authorities are best value authorities and therefore are required to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. This includes consulting representatives of:

- Local tax payers, business rate payers.
- Services users.
- Others with an interest in the areas.

### *Other safeguards*

Proposals will not provide fire and rescue authorities with any new powers to raise tax or precepts, or to borrow. But it will be designed to allow fire and rescue authorities to undertake innovative activity to drive efficiency linked to their single-purpose status. Potentially fire and

rescue authorities in using their general powers could undertake activity that presents some risk to the taxpayer.

However, fire and rescue authorities will not be able to do this in some protected space. For example they will have to abide by all relevant regulatory regimes – such as those governed by the Financial Services Authority if they were seeking to engage in financial services - as well as the specific rules applied to local government in relation to audit and related financial regimes mentioned above. As stated above therefore, we believe that no separate competition or small business assessment is necessary.

In all, there is a complex system of checks and balances in place that help to prevent inappropriate risk taking that would lead to general misuse of public funds.

#### *Fire and rescue authority financial control - evidence*

The existence of a legal and auditing framework does not mean that fire and rescue authorities necessarily comply with such requirements. However, data from the Audit Commission concerning the financial management processes of fire and rescue authorities in general have sound mechanisms in place to manage financial risks.

The overall Use of Resources scores for the three years of Comprehensive Performance Assessment to 2008 scored fire and rescue authorities from nought to four across a range of financial governance related activities, with four being the best performing and two meaning that only minimum standards were being met. Most fire and rescue authorities score for each of the three year to 2008 either a three (37 of 46) or a four (for of 46), suggesting a relatively high degree of professional standards concerning the management of public funds. No fire and rescue authority scored lower than a two.

### **Summary and preferred option with description of implementation plan**

#### **OPTION 3: AMEND EXISTING LEGISLATION AND ADD WIDER PROVISIONS IN THE LOCALISM BILL**

This option will give fire and rescue authorities more freedoms and flexibilities and provides the most effective method of implementing ministers' wishes whilst setting out the new powers being given to fire and rescue authorities in the clearest way i.e. to provide fire and rescue authorities with the legal capacity to do anything that is not otherwise expressly prohibited.

Once agreed, to form clauses in the forthcoming Localism Bill to be introduced in 2010-11 with the aim of being in force by autumn 2011.

## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

### Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p><b>Basis of the review:</b></p> <p>This legislative change is to ensure that single purpose fire and rescue authorities have additional powers at the same time as the general power of competence is given to fire and rescue authorities that are part of county councils under the forthcoming Localism Bill. It is very much an adjunct to the general power of competence and as such the post implementation review of this policy will be part of the wider review of the policy as a whole, thus stopping duplication and overly burdening the fire and rescue authorities with additional information requests and so on.</p>
<p><b>Review objective:</b> See the PIR for the general power of competence</p>
<p><b>Review approach and rationale:</b> See the PIR for the general power of competence</p> <p>Over the coming months, further details of any proposed research and analysis will be considered by a Localism Bill review steering group, to ensure that the methods are appropriate, proportionate, and cross-cutting where possible, so that we collect only essential information/data at both the baseline and follow-up review stages.</p>
<p><b>Baseline:</b> See the PIR for the general power of competence</p>
<p><b>Success criteria:</b> See the PIR for the general power of competence</p>
<p><b>Monitoring information arrangements:</b> See the PIR for the general power of competence.</p>
<p><b>Reasons for not planning a PIR:</b></p>

