

Agenda item: 6

NORTH WALES FIRE AUTHORITY

EXECUTIVE PANEL

23 FEBRUARY 2004

FIRE AND RESCUE SERVICES BILL

Report by the Clerk

Purpose of report

- 1 To give further consideration to the Bill and to agree what lobbying should be undertaken.

Background

- 2 The Bill was published just before the last meeting of the Panel. While the Panel was able to consider some aspects of it, it asked for a full report for this meeting.

Advice

- 3 The key issues of principle for consideration are the role of the National Assembly and the many powers of direction and intervention conferred by the Bill on central government.

Role of the Assembly (see comments on clauses 27, 31 and 59 and Schedule 1 in the appendix)

- 4 Clause 59(1) of the Bill provides for the Assembly to have the functions in respect of Wales which are given to the Secretary of State for England.
- 5 However the Assembly is also given the powers in Part 4 (employment) of the Bill. According to the explanatory notes, the Assembly is not meant to have the powers in respect of "pensions (clauses 33 to 35) and consequential provisions". I suggest that the Panel may wish to question whether the Assembly should have any of the powers in Part 4, which would allow the Assembly to establish a separate negotiating body for Wales. (If that is the intention, the Assembly should also be given the powers in the Fire Services Act 2003 – it is not.)
- 6 There are important questions to raise in respect of best value. As drafted, the Bill amends local government legislation as if the Secretary of State were still going to be responsible for the operation of the best value regime in respect of Welsh fire authorities. The fire authority wishes to be brought within the Wales Programme for Improvement. The

Panel is therefore invited to support the comments on paragraphs 85, 95 and 96 of Schedule 1, which seek to have the position on best value spelled out in the Bill.

- 7 As drafted, the Bill would allow the Assembly to merge fire authorities by a simple majority vote and to appoint some of the members of fire authorities. It is suggested that the Panel asks for the Bill to be amended to exclude a power for the Assembly to appoint fire authority members and for any Assembly order which merged fire authorities to be subject to at least a 2/3 majority (which is what is required for amendments to the Assembly's standing orders!). See the second comment on clause 59(2).

- 8 Finally, there are some minor points to raise in terms of whether it is intended that the Assembly should create a separate fire inspectorate (clause 27), treating Assembly Ministers in the same way as Ministers of the Crown (clause 31) and not subjecting the National Framework for Wales to Parliamentary procedures (first comment on clause 59(2)).

Powers of direction and intervention

- 9 The comments in the appendix do not deal with whether the powers should be opposed as a matter of principle. The Local Government Association is lobbying hard to have these centralising features, including clauses 10, 11, 16 and 17, removed. The Panel needs to consider whether to back these calls. Regardless of the matter of principle, there are detailed points to raise on the drafting and operation of the powers of direction and intervention, in terms of ensuring that there is a consistent requirement for consultation and their successful operation in a cross-border context (see comments on clauses 9, 10 and 14).

Other points

- 10 The appendix raises several other points including a number of areas where the drafting of the Bill is either defective or unclear. I can take members through these in detail. I draw particular attention to:
 - 10.1 clause 19: the fire authority should have the power to charge for attendance at automatic fire alarms where there is no fire, and this should be addressed in the regulations which are the subject of a separate consultation paper;
 - 10.2 clause 47: any false alarm to a fire authority should be an offence, not just a false alarm about a fire;
 - 10.3 provision not included in the Bill: the power to provide for allowances of fire authority members to be pensionable.

Recommendation

11 That the Executive Panel

- 11.1** considers the Fire and Rescue Services Bill;
- 11.2** approves the formal submission of comments to the ODPM as set out in the annex, subject to any amendments it wishes to make;
- 11.3** decides what other lobbying it wishes to undertake.

Annex Fire and Rescue Services Bill – introduction print

Draft comments from North Wales Fire Authority

Clause 2(5) Confirmation is sought that, because of the provision made by clause 4(3), it is possible to use the powers in clause 2 to combine two or more of the combined fire authorities that exist at the moment. If this is the case, then there should be a requirement for consultation with any other authority which would, apart from the scheme, be a fire and rescue authority under section 1. It is anomalous that there is a requirement for such consultation only when a “new” combination scheme is amended or revoked under clause 2(6) or an existing combination scheme is amended or revoked under clause 4(5).

Clause 9(5) The requirement for consultation is supported but it does not guarantee that any fire and rescue services authority directly affected by the order would be consulted. The formulation adopted in the present draft of clause 2(5) should be used here. The same point arises on clauses 19(6), 28(5) and 29(4).

Clause 10 Unlike all the other powers of direction in the Bill, there is no obligation to consult before making a direction. The explanatory note suggests that the power might be used only in cases where there is no time to make an order under clause 9 or “where national or regional considerations need to be taken into account”. However there is no restriction to the power in clause 10, which could therefore be used to give permanent directions in respect of certain sorts of fires or emergencies, thereby depriving a fire and rescue authority of what would otherwise be its normal duties and functions. It is considered that either a requirement for consultation should be included in clause 10 and/or some limitation should be imposed on the circumstances in which a direction may be given or the period during which such a direction has effect.

Clause 14 Leaving to one side whether these powers of direction are necessary and appropriate, it is not clear how it is intended that the power of direction should operate where one fire and rescue authority is in Wales and one is in England. The effect of clause 59 is that the Assembly will have the direction powers for Wales and the Secretary of State will have them for England. It would not be appropriate (or possible) for the Assembly to give a direction to an English authority or for the Secretary of State to give a direction to a Welsh authority. To take a hypothetical example: say Cheshire and North Wales failed to reach agreement about a reinforcement scheme, Cheshire referred the matter to the Secretary of State, and he concluded that a direction should be issued. While he could issue such a direction to Cheshire, he could not issue it to North Wales. Nor could the Assembly issue a direction to North Wales because it would not

have received (and could not receive from Cheshire) a request under clause 14(1)(c). It is suggested that the Bill may need to make provision that, where one or more of the authorities are in England and one or more are in Wales, the powers of direction in clause 14(2) are to be exercised jointly by the Secretary of State and the Assembly. A similar point arises in respect of directions under section 17, and in respect of cross-border co-operation between Scotland and England.

Clause 19(1) The separate consultation paper on the draft regulations under this clause confirms that it could be used to enable fire and rescue authorities to charge for attendance in response to an automatic fire alarm when there turned out to be no fire. The North Wales Fire Authority supports the ability to charge in such circumstances: false automatic fire alarms represent a quarter of the total number of calls and we need an effective range of tools to reduce their impact, including charging.

Clause 22(3)(c) Given the drafting of the remainder of this clause, the appropriateness of using the plural here (fire and rescue authorities) is questioned. What effect is it intended to have in terms of the width of the order-making powers?

Clause 27(1) It is noted that, because of clause 59(1), this would effectively allow a separate fire inspectorate for Wales through assistant inspectors being appointed by the Assembly. Is this intended?

Clause 31(3) Given that the Assembly is to have policy responsibility for fire and rescue services in Wales, members of the Assembly Government should be treated in the same way as Ministers of the Crown. "The Assembly First Secretary or an Assembly Secretary" as defined in section 53 of the Government of Wales Act 1998 should be added to the list of persons who may not be the chairman of a negotiating body.

Clause 43(1) while this may reflect the drafting of the 1947 Act, we question whether it is necessary for an employee to be authorised in writing for the purposes of this section. All firefighters should be able to exercise these powers in responding to an incident without worrying about whether they are authorised or not: the powers in clauses 44 & 45 are different.

Clause 47(1) The drafting of this clause reflects the 1947 Act but does not deal with the new duties and powers conferred on fire and rescue authorities by this Bill. The offence should be widened to include any false alarm given to a fire and rescue authority, not just in respect of fire.

Clause 54 Among other things, this provision would allow the Secretary of State to pass the costs of any inquiry onto the fire authority or other local authority. While the exercise of the powers in section 250(4) of the 1972 Act has to be reasonable, there is a question of principle to be raised, namely that in most cases the initiative for an order, directions etc. that might give rise to an inquiry will have come from the Secretary of State. It is not considered appropriate that fire authorities should have to pay for inquiries where the initiative comes from the secretary of State.

Clause 59(1)(a) Given what is said in the explanatory notes, Part 4 should not be included here.

Clause 59(2) It is agreed that it is not appropriate to submit the Assembly's subordinate legislation to Parliamentary procedure. The same applies to the National Framework for Wales and reports in respect of it. Clause 21(6) should apply with the additional modification of omitting the words "and lay before Parliament", and clause 24(a) should apply with the additional modification of substituting "publish a report" for "report to Parliament".

Clause 59(2) The North Wales Fire Authority believes that all members of fire and rescue authorities in Wales should be appointed by county and county borough councils. There are also concerns about the Assembly's ability to merge the existing fire authorities on the basis of a simple majority vote in the Assembly, when (for example) amendments to the Assembly's standing orders require a two thirds majority by virtue of a provision in the Government of Wales Act 1998. The following additional modifications are therefore requested in the application of the legislation to Wales:

- Clause 3 shall have effect as if the words "or by the Secretary of State" in subsection (3)(a), and subsections (4) and (5) were omitted;
- Clause 2 shall have effect with the addition of the following subsection:
“(11) An order under this section shall not come into force unless a motion to approve the order is passed by the Assembly on a vote in which at least two-thirds of the Assembly members voting support the motion.”

Paragraph 85, Schedule 1 This does not give the Assembly the powers to specify the operation of the best value regime in respect of fire and rescue authorities in Wales. In line with the provision made by clause 59, an amendment is required to section 29(2) of the 1999 Act to omit the reference to authorities mentioned in section 1(1)(e) of that Act. While it might be possible to achieve a similar effect by means of a transfer of functions order under the Government of Wales Act 1998, it is considered preferable that the Bill should deal with the transfer of functions in respect of fire authorities that have been created since the

Assembly was established. The point raised here may therefore be more generally applicable to Acts that have been passed since the Assembly was established in 1999. Another example is mentioned in the comment on paragraph 96 below.

Paragraphs 93 to 96, Schedule 1 Paragraph 76 amends section 39(1) of the Local Government Finance Act 1992. However is there not a need to amend the reference to “fire authority” in section 83(2) of the Local Government Act 2003 so that it is clear that the Assembly may extend section 39(1)(da) of the 1992 Act to fire and rescue authorities in Wales?

Paragraph 95, Schedule 1 While section 99 of the 2003 Act applies to English local authorities, the drafting of section 99(7)(a) “a county council in England” is noted. For consistency and to ensure that fire and rescue authorities in Wales are not subject to categorization by reference to performance, it would seem necessary to insert “in England” after “fire and rescue authority” in the new section 99(7)(h).

Paragraph 96, Schedule 1 It is accepted that the Secretary of State is the relevant body so far as fire authorities in Wales are concerned now. However, given clause 59 of the Bill and the intention to bring Welsh fire and rescue authorities within the best value regime as operated in Wales, the correct amendment to section 101(7) of the 2003 Act is the omission of paragraph (b), not its substitution.

Provision not yet included in the Bill

The Assembly Government has identified that section 99 of the Local Government Act 2000 does not provide for the possibility of allowances of fire authority members to be pensionable. The North Wales Fire Authority has repeatedly called for consistency of treatment with pensions in respect of allowances received by county councillors, and for allowances of fire authority members to be pensionable. The Fire and Rescue Services Bill is the ideal vehicle to make the modest amendment to the 2000 Act that is required.

It is necessary to amend section 8(5)(a) of the Severn Bridges Act 1992. This provides that tolls may not be levied in respect of “a vehicle being used in the discharge of the functions of a fire authority under the Fire Services Acts 1947 to 1959”. It is surprising that this amendment appears not to have been identified already by the ODPM which is responsible for most functions under the 1992 Act or by the National Assembly.