

SOLACE RESPONSE TO:

Draft Local Authorities (Functions and Responsibilities) (England) Regulations 2015

March 2015

BACKGROUND

Solace is the representative body for over 1200 Chief Executives and senior strategic managers working in the public sector in the UK, committed to promoting public sector excellence. We provide our members with opportunities for personal and professional development, and seek to influence debate around the future of public services to ensure that policy and legislation are informed by the experience and expertise of our members. Whilst the vast majority of Solace members work in local government, we also have members in senior positions in health authorities, police and fire authorities and central government.

INTRODUCTION

Solace welcomes the opportunity to respond to the Department for Communities and Local Government's (DCLG) technical consultation on the proposed Draft Local Authorities (Functions and Responsibilities) (England) Regulations 2015.

The proposed regulations will affect the functions and responsibilities of local authorities and as the only representative body for all local authority Chief Executives and senior managers, Solace is in a unique position to express the views of local authority professionals .

We therefore welcome the opportunity to comment through this consultation. Our response seeks to complement the responses offered by other local government sector bodies and associations. Given the role of Solace, we have chosen to focus our response on the broader strategic questions raised by the consultation rather than offering a comprehensive and detailed response to every issue raised. However, this focus should not be interpreted as disagreement with any more detailed points made by colleagues in other professional associations or from local authorities themselves.

SOLACE'S OVERALL RESPONSE

Solace recognises the need to consolidate the existing regulations with the amendments that have been published since 2000, and we welcome the attempt to bring these together to create a single set of regulations. We believe this attempt will remove some areas of existing uncertainty and provide greater clarity and transparency overall. However, the consultation includes proposed changes that would have some wide ranging implications for local authorities which we would like to highlight.

Our response will focus on three main issues:

1. Transferring a large proportion of decision-making responsibility from the executive to the full council, which makes the decision-making system in local government more bureaucratic and significantly less efficient.
2. Issues arising from the proposed regulations regarding a “mayor’s plan” (Schedule 4) concerning handling decisions impacting on strategic and other plans in authorities operating Mayor and Cabinet governance arrangements.
3. Clarification needed in regards to the policy intention for Health and Wellbeing Boards to be able to exercise any functions of their authorities, whether executive or non-executive, in reference to Schedule 2, Paragraph 22 of the regulations.

1. Transferring a large proportion of decision-making responsibility from the executive to the full council, which makes the decision-making system in government increasingly more bureaucratic and less efficient.

Solace is strongly in support of localist measures, such as the Localism Act, which offers real choice for councils and local people to decide how their council should be governed. We would be in support of the creation of a more limited list of functions setting out which powers the executive cannot exercise, leaving the decisions to which specific functions would fall into the executive’s remit for each council to determine.

Additionally, Solace welcomes the attempt to give greater clarity about the roles of the full council and the executive, especially in the case of council budgeting. However, we strongly feel that the proposed regulations would inevitably lead to transferring a significant proportion of decision-making responsibility from the executive to the full council, and thus blurring the lines between executive and non-executive governance whilst undermining the very purpose of executive governance. The change as it is proposed would add unnecessary bureaucracy to the process and delay to the decision-making system whilst decreasing efficiency.

Firstly, we believe that requiring full council to make all decisions on new parking controls and waste disposal frequencies seems not in proportion, when far more significant decisions are determined by the executive under the regulations. Importantly, some of these decisions would inevitably be relatively trivial and they would not justify full council time or require urgent action in order to achieve the council’s desired outcomes. Therefore, we believe that delegation of these powers is necessary. In addition, specific drafting of these proposals is necessary to clarify the regulations, as this has only been raised in the covering letter sent to Chief Executives on 29 January 2015. In the absence of the drafting, it is difficult to determine potential impacts and consequences in specific areas.

Furthermore, we feel that the centralist approach in placing a £500,000 value threshold on land disposal for reporting on to the full council is completely disproportionate and an entirely inappropriate move. For example, the significance of this threshold will vary considerable across the country and will certainly be considered incredibly low for authorities in London and the South East, and many areas beyond that. The proposal would have differential impacts, as an identical

disposal in all other factors except land value that would not fall to full council in one area would fall to full council in another area. Secondly, clarification is needed in regards to defining “value” of an asset, for instance, whether it refers to estimated value prior to the disposal, the value of the asset according to the statement of accounts, or the market value of the property.

2. Issues arising from the proposed regulations regarding a “mayor’s plan” (Schedule 4) concerning handling decisions impacting on strategic and other plans in authorities operating Mayor and Cabinet governance arrangements.

Some of our members have raised concerns about the above provision in Schedule 4 regarding a “mayor’s plan”. Specifically, our members have raised with us that, considering the current extensive powers of an executive mayor, the addition of a mayoral plan would obscure the role of most members of a council. As such, this might run the risk of undermining public confidence in their council and thus in democracy more widely.

Furthermore, our members have also raised that it could arguably be impossible to tie the content of a mayor’s plan into their manifesto and as such, the mechanism would have considerable potential for abuse, especially if a mayor had no plan to seek another term.

Additionally, it also seems that this provision contradicts the issue that we have addressed in point number one of this response in reference to more powers being transferred to full council from the executive, whereas this provision indicates a move in the opposite direction.

3. Clarification needed in regards to the policy intention for Health and Wellbeing Boards to be able to exercise any functions of their authorities, whether executive or non-executive, in reference to Schedule 2, Paragraph 22 of the regulations.

Solace understands the proposed regulations state that the policy intention is for Health and Wellbeing Boards to be able to exercise any functions of their authorities, whether executive or non-executive (Schedule 2, Paragraph 15). This would result in Health and Wellbeing Boards being able to exercise a wide range of powers on behalf of a local authority in areas that impact on health and wellbeing, whether this is in housing, education, youth justice or other areas. However, we understand that there are some legal issues arising from the draft regulations which would imply that these provisions might not enable Health and Wellbeing Boards to do what we are hoping they would be able to.

The phrasing of this draft regulation as currently drafted does not work. In particular, “authority” functions do not necessarily equal “executive” functions because the powers of the executive cannot be exercised by the Council and therefore, the phrasing in the regulation should mention the “executive” to authorise Health and Wellbeing Boards to take executive decisions in these areas. The provision might be better drafted to authorise the Health and Wellbeing Board to take decisions on any function of the executive that may affect the health and wellbeing of any person, to the extent that may be determined by the executive from time to time.