

Annex E

Protocol on Central Government Engagement and Intervention in Poorly Performing Local Authorities

Preamble

1. This Protocol, revised on 19 February, 2003, derives from the Framework for Partnership signed in November 1997 by the Deputy Prime Minister on behalf of the Government and the Chairman of the Local Government Association (LGA) on behalf of local authorities. The Framework provides for the Government and the LGA to discuss policy for the use of intervention powers, including how best to facilitate a role for the LGA in supporting local authorities.
2. The Protocol gives expression to the shared aim of central and local government to raise standards in public service, to support and assist local authorities in improving services, to provide a clear framework for engagement and intervention by central Government, where council performance is unacceptable, and an orderly process for resumption of service by local authorities as necessary following intervention.

Purpose

3. The Protocol sets out the general principles that will underpin the engagement of central government with individual local authorities whose performance, including their capacity to improve, is categorised as poor or weak with little or no prospect for improvement. It also applies to other circumstances where Government takes the view that an authority's performance in a particular service area is sufficiently poor to justify Government engagement or intervention. The LGA may play an active role in assisting the Government in determining the nature and extent of any engagement or intervention.
4. The term 'engagement' is used to refer to non-statutory action taken with regard to an authority where there is a serious concern regarding a substantial failure that might lead to statutory action if satisfactory improvement is not achieved. The form of engagement will be determined by the nature of the problem but for example will usually, in the case of poor and weak authorities, involve the appointment of a lead official whose role will include assessing whether the council has – or is developing, possibly with external support - the capacity and commitment to deliver improvement. Since action in these circumstances is by agreement with the authority, there is a wide range of measures that might be taken in order to secure improvements.

Annex E

5. The term 'intervention' is used to refer to action by the Secretary of State in exercise of his powers under section 15 of the Local Government Act 1999 and under other comparable legislation that applies to specific services or circumstances [Annex A]. The form of each intervention will depend, as in the case of engagement (para. 4), on the nature of the problem and also on the scope of the statutory powers (para 25).
6. The term 'Secretary of State' is used throughout to mean the appropriate Secretary of State.
7. Local authorities have a responsibility to deliver to local people services to clear standards. Authorities should set those standards - covering both cost and quality - for all the services for which they are responsible. But in those areas, such as education and social services, where the Government has key responsibilities and commitments, the Government itself may set such standards. The best value duty in Part 1 of the Local Government Act 1999 requires councils to make arrangements to secure continuous improvement in the economy, efficiency and effectiveness with which they deliver services and meet standards. Standards that should be met in specific services are set out in other comparable legislation.

Role of the LGA in helping authorities at risk of failure

8. Where evidence and experience show that a local authority is at risk of failing in its duty in respect of a service or services, there are several ways of achieving improvements. Councillors, officials and contractors all have a responsibility for delivering quality services and addressing shortcomings and failings. The LGA and the Improvement and Development Agency are committed to work with local authorities to support improvement where problems exist. The LGA encourages its member authorities to give early warning of potential problems emerging from inspections, draft reports, complaints, reviews or other sources so that advice and support can be offered. Other authorities may offer support through networks, or the authority may be helped to identify and procure other external advice and assistance.

Principles governing engagement and intervention by the Secretary of State

9. When a Comprehensive Performance Assessment (CPA) has been completed, it is intended to provide a rounded view of the performance of the authority and an early warning of weaknesses that need to be addressed. It facilitates the adoption of timely remedial action by the authority. The CPA will also become the primary indicator of the need

Annex E

for central government engagement with the authority as a whole, especially to secure improvements across a range of different services where it is judged that there is very limited internal capacity to improve. Engagement and possibly intervention in respect of individual services can also be expected following, for example, a critical inspection report or poor performance information, and this will take account of an authority's corporate performance from an early stage. The provisions of this Protocol apply to both types of case.

10. The Secretary of State will exercise intervention powers under section 15 of the Local Government Act 1999 and other comparable legislation only when there is clear evidence that an authority is failing either to discharge its functions adequately or failing to meet its statutory obligations.
11. The Secretary of State will inform the authority of the reasons for intervention whenever using his powers under this legislation.
12. The form and extent of engagement and intervention will reflect the type and seriousness of failure and the need for effective improvement.
13. The authority will normally be given the opportunity to make the necessary improvements itself. In exceptional cases of serious corporate or service failure, when there is a serious risk of harm or financial loss, paragraph 26 of this Protocol will apply.
14. Authorities will provide accurate and timely responses to requests for information (as soon as possible, but normally within 10 working days), and co-operate with such action as the Secretary of State may direct in accordance with his powers and this protocol.
15. In cases where a function is exercised by the Secretary of State or a person acting on his behalf, both the Secretary of State and his nominee will be subject to the statutory duties that the authority would normally be subject to in respect of that function.

Process

Identification of problems

16. Non statutory engagement will only be embarked upon, and formal intervention powers will only be invoked, on the basis of clear evidence. Such evidence may emerge, for example, from:
 - CPAs including the corporate assessment
 - audits of financial accounts

Annex E

- audits of local performance plans
- audits of performance information
- inspection reports, including those arising from inspections directed under Section 10 of the Local Government Act 1999
- public interest reports
- reports of inquiries, Ombudsman investigations or judicial findings
- concerns raised about serious danger or harm to the public

Non statutory engagement in instances of corporate weakness

17. The CPA outcomes will be the usual means of deciding whether central government engagement to tackle corporate weakness is necessary.
18. Authorities would be expected to draw up a recovery plan promptly when asked to do so by the Secretary of State. They will be encouraged to seek help in the development of their plans, and funding may be made available for this purpose. Recovery plans will need to consider alternative ways by which services might be improved and delivered, following the review principles outlined in ODPM statutory guidance.
19. Poor and weak authorities will have priority in accessing assistance for capacity building through national programmes. Support and guidance will be made available to assist local authorities identify the most appropriate activity to address priorities identified in their recovery or improvement plans.
20. In addition to the support provided by the LGA, through the IDeA or by other means, the lead official (para. 4) will be able to identify other possible sources of support and guidance. The lead official will also advise whether partnership or improvement boards should form part of a wider support package. This will be the normal course of action where the CPA is the trigger.
21. However the need for engagement is identified, whether by CPA or other means, it will be necessary to determine as soon as possible whether action is needed:
 - to tackle weaknesses within the political or managerial leadership (the corporate core)
 - to address problems in single services alone
 - or to address problems simultaneously in both the corporate core and specific services.

Annex E

It will be for the relevant Secretary of State to determine ultimately the appropriate course of action and form of engagement with the local authority. In all cases, such action will be co-ordinated and proportionate in line with the principles in paragraphs 9 – 15, and with any Memorandum of Understanding to be agreed between Departments as to the way in which their actions will be decided and exercised.

Exercise of statutory intervention powers

22. If the Secretary of State decides that the facts of the case mean that statutory intervention is likely to be necessary, he will formally notify the authority and the LGA immediately of his decision to direct the authority under the powers contained in section 15 of the Local Government Act 1999, or in comparable legislation.
23. The authority will be given the opportunity to make representations about the direction proposed.

Nature of statutory intervention

24. In the case of the Local Government Act 1999, the Secretary of State may take such action he judges necessary to secure compliance by the authority with the requirements of Part 1. This may require, for example, directing the local authority to act within a specified period to:
 - prepare or amend a recovery plan
 - make sure a function is carried out so as to achieve specified objectives or priorities
 - take consultancy advice
 - appoint interim management
 - enforce appropriate levels of delegation
 - secure the function from a specified provider or put the function out to tender.
 - appoint a nominee to exercise certain specified functions of the authority
 - any other action that will secure the necessary improvements

The Secretary of State may also direct a local inquiry to be held under section 15(3) of the 1999 Act.

25. The Secretary of State may also take such action as is necessary to secure service improvements as granted to him under other legislation.

Annex E

Any such measures will need to be deployed consistent with this Protocol and any Memorandum of Understanding agreed between Departments.

Statutory Intervention in cases of urgency

26. Although the above arrangements for engagement and intervention will be the norm, there may be exceptional cases where the severity or persistence of failure, or the continuing risk of harm or financial loss, show that urgent intervention is necessary. If these circumstances prevail, and an authority could reasonably be expected to be aware of these problems and has failed to take adequate action to address them, then the Secretary of State retains the discretion to abbreviate the procedures outlined above as he sees necessary. When exercising his powers in this way, the Secretary of State will notify the authority and the LGA immediately of the intervention that is necessary and the reasons for intervention, and will provide a full explanation of his reasons for curtailing the procedures.

Monitoring, review and exit strategies

27. The Government wishes to keep its involvement in the running of local government to a minimum. Where statutory powers have been used to remove powers from a local authority, the Secretary of State will aim to return control to it as soon as improvements are well established and the council's political and managerial leadership has the capacity to sustain them. A small government team led by the lead official will normally undertake regular monitoring. The views of any partnership or improvement board will also be taken into account.
28. The test of success of recovery plans is the delivery of improvements against key performance outcomes. The audit and inspection process will be the principal means by which the Government will assess whether such outcomes have been achieved and whether these are sufficient to meet the criteria laid down in paragraph 29.
29. Where intervention is based on a direction that is not time-limited and leaves responsibility for the function with the local authority, the direction will normally be lifted when the Secretary of State is content that the objectives of the intervention have been met in terms of improved outcomes which can be sustained. He will seek to take into account any audit or inspection report which has been completed for this purpose. Lifting the direction will not nullify any contracts that resulted from it.

Annex E

Media relations and exchange of information

30. Any announcements, publications or press releases issued in relation to any part of the procedures for intervention covered under this protocol will be subject to the agreement set out in the section titled 'Public Announcements and Exchange of Information' in the Schedule for Arrangements for the Conduct of Central-Local Relations under the Framework for Central Local Partnership.