

Appendix

Consultation questions

Question 1

Do you have comments on the context in Chapter 1?

The chapter sets out a reasonable context for the provisions; however, there are suggestions that the legal context set out in section 2 is not correct.

Question 2

Do you have comments on the purpose or relevance of this policy statement?

The policy statement is relevant.

Question 3

Do you have comments on how the powers on non-devolved matters would be applied and the role of devolved administrations?

This question is not relevant to the Council.

Question 4

Do you have comments on the proposed approach in relation to local government?

The Council welcomes the commitment to a partnership approach. However, the proposals appear to be a somewhat one-sided partnership with the Government being the final arbiter. We would have expected the policy to provide for some form of real independent arbitration where there is a failure to agree.

We welcome the engagement of local government in making representation on proposed new EU law. However, it is noted that local government will not have the same ability to resist the imposition of new EU law as that afforded to the Government. We also note that there is much existing EU law applying to the duties of local government that have not been subject to the partnership approach set out in the policy.

We welcome the commitment to work with stakeholders and consult on any revisions to the policy.

Question 5

Do you have comments on whether public authorities, which are not local authorities, would wish to see equivalent provisions for involvement? If so, please explain what these would be and how any capacity constraints, such as for smaller organisations, could be managed.

It would seem reasonable that any organisation capable of being designated under the process should be brought within the provision of the policy.

Question 6

Do you have any comments on the principle and general application of working in partnership?

The principles appear fair.

Question 7

Do you have comments on the processes for designation and the time and opportunity given for corrective action?

We support the principles, however, these will need to be effectively translated into practice. We would expect the process to reflect the extent to which any authority has been engaged in the matter; and that timescales etc to be reasonable and practicable.

Question 8

Do you have comments on the process for passing on fines?

We do not consider the principles of the process to be reasonable, where the Minister makes the final decision. We believe that there should be some form of independent arbitration.

Additionally, to be fully transparent we would expect that in the passing on of any sanction, the authority should have access to all documentation of any kind relating to the making and passing on of the sanction.

Question 9

Do you have comments regarding the level of detail to cover in this policy statement on criteria to establish the authority's ability to pay the apportioned EU financial sanction? Or is that best left to be defined in individual circumstances?

We have set out in our response to question 8 our concern about the final decision resting with the Minister.

Given that this is to be the case, it would be helpful if the policy statement could include or be accompanied by rules of evidence that would be used.

Question 10

Do you have comments regarding the membership of an independent advisory panel, including how panel members are selected?

We are concerned that all panel members will be ministerial appointments. We believe that notwithstanding any intention otherwise, the panel will not be seen as independent, especially given that the Minister will also make the final decisions. We are also concerned that the panel could consist of one member.

We would suggest that to comply with the principles set out in the consultation paper, that the Government revise its proposals for panel membership to provide for stakeholder members and perhaps an appointment from the judiciary.

Question 11

Do you have comments on the broad terms of reference under Annex A?

We contend that it is not possible for the panel to act as an independent body as constituted and that its remit is also clearly to work to the Government.

Question 12

Do you have comments on the approach regarding achieving compliance and ending liability?

Compliance will not always necessarily be straightforward where several agencies are involved. The Government should set out clearly how compliance is intended to be achieved in complicated circumstances and how differences between agencies would be reconciled.