POLICY BRIEFING

New Legislation: Review of decisions and religious observances

15 May 2015

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Summary

This briefing covers two separate pieces of legislation which received Royal Assent just before the end of the last parliament. They concern increasing accountability over local authority decisions on local events and putting beyond doubt that councils (and other local authorities) can include prayers as an item of business at their meetings, and support, facilitate or be represented at religious or similar events.

This briefing will be of particular interest to all elected members, those officers working in democratic support functions and those involved with licensing activities and related consents.

Briefing in Full

This briefing covers two separate pieces of legislation which received Royal Assent just before the end of the last Parliament. The first requires local authorities to put into place formal review procedures for any decision which stops or restricts a proposed event on the grounds of health or safety. It also enables the Local Government Ombudsman to fast track related (and other) complaints. The second puts beyond doubt that local authorities are able to include prayers and other religious observance at their meetings, should they wish to do so and are able to support, facilitate or be represented at religious or similar events.

Local Government - review of decisions

The Local Government (Review of Decisions) Act 2015 which received Royal Assent on 26 March requires local authorities to put into place formal review procedures for any decision which stops or restricts a proposed event on the grounds of health or safety. It also enables reviews of such decisions (and others) by the Local Government Ombudsman to be fast-tracked. It does this by inserting a new part (Part 2A) to Local Government Act 1974, which will come into force on 26 May 2015.

The policy behind the new legislative provisions came from a 2010 review conducted by Lord Young on the operation of health and safety laws and the growth of the compensation culture ("Common Sense, Common Safety"). Lord Young found in the case of local events:

> *"some inconsistency across local authorities, and the rules on health and safety are not always applied with a view to a proper risk management approach. In some instances it is clear that officials are giving poor advice to organisations and individuals, who are in turn prevented from running an event (for example a school fete) when there is no legitimate reason not to on health and safety grounds."*

The review also found that event organisers *"could also be discouraged from even planning such an event for fear or expectation that a local authority official will not allow it."* Lord Young recommended that the reasons for "banning" events on the grounds of health and safety should be put in writing with citizens given a route for redress to challenge decisions. The Government accepted this recommendation and made the commitment to seek a legislative opportunity to make the change. The Act follows closely follows the detail of Lord Young's recommendations.

The legislation was sponsored by the Conservative MP, Mark Spencer, as a Private Member Bill. It was the second attempt to pass this legislation through this route. This second attempt received government support as a 'hand out' bill, that is, it was essentially a government bill that had not found parliamentary time which the government offers to MPs who are successful in the private members bill ballot.

The new Act applies to decisions taken by local authorities which have the effect of stopping the holding of an event, or which impose restrictions or conditions upon the event, for reasons relating to health and safety. It makes two changes of law. The first is to require local authorities to put certain measures in place for internally reviewing decisions - specifically:

- To give a written notice (electronically or otherwise) of the decision and the reasons for it to the applicant or event organiser on the day the decision is taken or, if that is not reasonably practicable, the next working day.
- The applicant (or organiser) will then be entitled to request an internal review of the decision. This has to be carried out as soon as reasonably practicable, and in any event within 15 days of the request.
- The review may result in the decision being confirmed, withdrawn or replaced by any other decision.
- The outcomes of the review will then have to be notified in writing to the applicant (or organiser) including reasons for the decision.

The Act does not specify by whom within the local authority the review should be undertaken. Existing rights of appeal open to the applicant will still apply in relation to

any decision following the internal review. This part of the Act applies to local authorities in England and Wales, but only to events in England.

The second change will enable the Local Government Ombudsman to introduce different procedures for different sorts of complaints. The legislation explicitly mentions that this includes 'fast-tracking'. The rationale is so that the Ombudsman can determine the outcome of the complaint and make a recommendation before the event takes place. This discretionary power is granted to both the Ombudsman service in England and Wales. There are four issues of note:

- The powers are not confined to 'fast tracking', it allows the Ombudsman to put in place a range of different procedures for different sorts of complaints.
- It is not confined to complaints related to local events, but potentially any complaint or class of complaints.
- While the legislation provides for the possibility of a fast-track process for events to allow the ombudsman to examine those decisions and overturn them or recommend that they be reviewed rapidly, there is no obligation on the Ombudsman to use these powers in this way or at all.
- The substantive powers of the Ombudsman will not change; significantly this means that while the Ombudsman will be able to recommend the reversal of a decision or even the payment of compensation, they are unable to enforce such a recommendation.

The specific decisions to which the Act applies is not specified. But it is anticipated that the decisions which it would apply to most frequently are to events which take place in the street or license premises which might include temporary road restrictions, event notices and street trading licensing.

While the policy behind this legislation concerns solving the problem of health and safety interfering with small charities and community groups when trying put on small community events; the legislation itself is not restricted to either such groups or to such small events. Therefore it could apply to say a large music festival.

Local Government – religious observances

The Local Government (Religious etc. Observances) Act 2015 which received Royal Assent on 26 March 2015 allows for the inclusion of prayers and other religious observance at local authority meetings, should they wish to do so. It also enables local authorities to support, facilitate or be represented at religious or similar events. It does this by inserting two new sections into the Local Government Act 1972. These come into force on 26 May 2015. The legislation was a Private Member Bill sponsored by Conservative MP Jake Berry; it was a government 'hand-out' bill and therefore was supported by the Government.

The background to this is the 2011 High Court decision made on a case brought by the National Secular Society and the late Clive Bone (against Bideford Town Council) where the court found that saying of prayers as part of a formal council meeting was now not lawful as there was no statutory power permitting the practice. It had been thought that this was provided for under section 111 of the Local Government Act 1972, the court disagreed. This is because prayers were not deemed to "calculated to facilitate, or…conducive or incidental to, the discharge of any of their functions", given that the link with the functions in questions must not be too remote and that the council had not considered it essential for all its members to take part.

Shortly after the Government brought into force the power of general competence provided for under the Localism Act 2011 which it said would allow for this practice to continue. However, that power did not cover smaller parish councils, single-purpose authorities (such as fire and rescue authorities) and integrated transport authorities.

This new power addresses that, but in doing so covers a wider range of local authorities, including those that already have the benefit of the general power of competence. That includes for example in addition to local authorities: parish councils, a joint committee or board, a combined or joint authority, an economic prosperity board, a fire and rescue authority, passenger transport executive, integrated transport authority. For some types of authority only one of the two new powers applies. The Act applies to local authorities in England. Specifically these new powers provide:

- That the business at a local authority meeting (or other listed local public bodies) may include time for prayers or other religious observance or observance connected with a religious or philosophical belief.
- This is regardless as to whether the meeting is a committee meeting, a joint committee of two or more authorities or a sub-committee of either of these.
- That a local authority (or other listed local public bodies) may support or facilitate to be represented at a religious event and an event with a religious or philosophical belief or connected to such a belief.

Comment

Review of decisions on events

While legislation on local events was recommended by Lord Young's 2010 health and safety review, this was very much fed by the DCLG ministerial team at the time, who were already on a crusade against council bureaucracy. As a result 'barrier busting' teams were sent from Whitehall to lend support to community groups and myth-busting guidance (see also here) issued on holding street parties and other local events.

The legislation sponsor Mark Spencer MP said that the new provisions "would bring transparency and accountability to the decision-making process in a way we have not seen before, and would do away with the culture of decisions behind closed doors." The Labour Opposition welcomed the new legislation stating that it is "about making councils think—about reasonable risk and about a proportionate assessment of health and safety—before they act."

The Local Government Association had expressed some concerns about the new provisions; these were neither shared by the Government nor the Opposition. These concerned the potential bureaucratic implications for local authorities and relationship with the Licensing Act 2003 (and the Police Reform and Social Responsibility Act 2011) which already requires councils to provide a reason for rejecting an application and an appeals' process, which apply to any aspect of the licensing process and not just health and safety matters. However, it is not unusual for multiply avenues of appeal on decisions made by public bodies. The 2003 and 2011 Acts primarily concern the formal licensing of licence premises and not all the required consents for small outdoor and street-based local community events, nonetheless the new provisions potentially provide a low-cost option which is more befitting for community groups than appeal via a magistrate's court.

The Government maintains that if local authorities behave as they should there will be no extra burdens and costs on them; pointing out that how the appeals process is run is entirely down to the local council.

The expectation is that the ombudsman would use the fast-track procedure to deal with complaints arising from decisions of local authorities to ban or restrict events on health and safety grounds, so that if the recommendation by the ombudsman were that the decision be revisited, the authority would have the opportunity to do so before the event took place. However as the government readily admits the ombudsman already has discretion to distinguish the treatment of complaints, but maintains the new provisions will put that discretion beyond doubt. Even though it is the Local Government Ombudsman's current practice to vary its procedures in order to seek to make timely decisions on a case-by-case basis, given the individual circumstances of the case. That is unlikely to change as a result of this legislation.

As now the ombudsman will continue to not have the power to overturn a decision, but it can recommend that a decision be revisited. And in the scenario described by ministers where the ombudsman finds in favour of the applicants, but the timescales do not allow the event to go ahead, the ombudsman can recommend (but not compel) that the council pays compensation for the effects of a decision which was not made in the correct way. Ministers claimed this may include any funds generated by the event that would, for instance, have gone to the charity. However, they also readily pointed out to Parliament out compensation is recommended by the ombudsman in a very small number of all its cases, and when they do this might result in payments of hundreds of pounds, rather than thousands of pounds.

The Government resisted a proposed amendment to explicitly allow the ombudsman to award and instruct local authorities to pay compensation. This featured in the first attempt at private members legislation sponsored by Christopher Chope MP. Again, it did not find support from the government believing this to be both unnecessary and

counterproductive given there is almost total compliance with ombudsman recommendations and on the basis that it could potentially undermine the current non-adversarial process which means that investigations can progress more quickly and comprehensively than might otherwise be the case.

Religious Observance

The 2011 High Court judgement which found that local authorities had no legal power to authorise them to hold formal prayers as part of their meetings was met with consternation from the then DCLG ministerial team. The pragmatic response from the then LGA Chair, Sir Merrick Cockell, was that the case reinforced why local authorities needed a general power of competence which the 2011 Localism Act provided for, and its introduction was 'fast-tracked' to ensure the impact of the court judgement was negated. But this power did not cover all types of local authorities, notably town and parish councils, fire and rescue authorities, integrated transport authorities or a number of other bodies in the local government family; hence this new piece of legislation whose introduction re-ignited strong feelings over a fundamental difference of opinion over the relationship between religion and the affairs of local authorities and other public bodies.

Jack Berry MP, the Bill's sponsor, told parliament that the legislation was necessary to meet "an aggressive and unwelcome secular attack on our British values" and religious freedom. While the National Secular Society, who was partied to the 2011 court case, argued that the absence of prayers from the formal business does not impede the religious freedom of believers or deny anybody the right to pray. They want to see council meetings conducted in an equal manner welcoming all attendees, regardless of their individual religious beliefs or lack of belief; arguing therefore that religious worship should play no part in the formal business of council meetings. It is fair to say that Mr Berry's position was supported in the Commons, but was questioned in the House of Lords.

The Government also argued that it was necessary to provide councils with the power to support or facilitate religious events, as the 2011 High Court case put at risk councillors laying a wreath at a Remembrance Sunday and even closing roads to facilitate such ceremonies. But there is a distinct absence of any reports councils share these fears. And the court case was clearly focused on local authorities' powers to hold prayers as part of their formal meetings and not on wider matters. This was left unchallenged.

Ministers have made clear that the legislation is entirely permissive, restoring the position to what councillors and others thought to be the case before the 2011 court case. It does not compel anyone to pray, or any local authority to include prayers in their official business, nor does it define what constitutes prayer or religion. Importantly there is no obligation for members of the council who are not of faith to be in the chamber.

Anecdotal evidence suggests that councils adopt different approaches from area to area, reflecting local preferences and some vary these across the year to reflect key

religious dates and festivals. In practice very little will change as a consequence of the legislation, but equally further legal action along the lines of the 2011 case seems unlikely.

External Links

- Local Government (Review of Decisions) Act 2015
- Local Government (Religious etc. Observances) Act 2015

For more information about this, or any other LGiU member briefing, please contact Janet Sillett, Briefings Manager, on janet.sillett@lgiu.org.uk