

ITEM 8e

Somerset Rivers Authority Board Paper

Title: SRA Precepting body – Update on legislative options

RECOMMENDATION

The SRA Board is asked to:

1. Note the contents of this paper and comment on the proposed Next Steps

Purpose of the item:

To update SRA Board members on the issues and status of work to look at options open to the SRA to develop precepting legislation ourselves.

Background and context

Although government has made it clear that it is their intention to develop legislation to enable the SRA to become a precepting body, there is an issue with finding parliamentary time to bring this forward. At the SRA Board meeting held in March, the Board learned that one option that could result in an earlier result could be to pass legislation through a Private Members Bill and this had been the route suggested by the then and current Secretary of State for Communities and Local Government. The Board were keen to look at all the options for legislation and asked for a progress update to be given at the next Board meeting. However, following this, the General Election was called.

In April, the then and current Floods Minister, Dr Therese Coffey, wrote to the Chair of the SRA following a meeting at Beer Wall, reiterating the then Government's commitment, but indicating that if the SRA is interested in pursuing the Private Member's Bill route, the government would consider the bill very carefully. It could be that the Private Member's Bill route is used by government for 'Handout Bills' (see further detail below under Options).

Several months prior to this, the Board had been informed by DCLG officers about the likely development of government introduced legislation which would take the form firstly of primary legislation to set a framework, establish principles and confirm powers to a new class of body, namely Rivers Authorities. Secondary legislation would follow to exercise the powers and apply the principles for the particular instance that the primary legislation has given in general terms. In our case, it would be a statutory instrument to establish the Somerset Rivers Authority in law, and would elaborate the detail i.e. the power to manage flood risk as it pertains to Somerset, the legal form and how that power is exercised and regulated as it pertains to Somerset etc.

In discussions with Defra and DCLG colleagues during the early part of this year, it became clear that if primary legislation was introduced by government, we would have 6 months to develop a Somerset specific proposal to establish the detail necessary for the secondary legislation, and on that basis we would have a full year from now to achieve agreement across the partnership to that detail. The features that would need to be covered, some by primary, many in secondary and some established as a matter of policy by the authority and/or government would include:

- It's legal basis. Is it a body corporate, an association etc?

- Purpose
- Functions
- Powers (what's needed to carry out its work eg powers to issue a precept, to prepare a schedule of works)
- Capabilities (eg data-sharing)
- Duties placed on it and others (e.g. duty to co-operate or have regard to strategies etc)
- Provisions about its ability to employ people and their pension rights.
- How does it set its priorities? Is it to be required to have a strategy in place? Must it consult on it?
- Precepting (who charges, who is charged, who is consulted, what can be taken into account when setting precepts, i.e. only what's needed for the exercise of the authority's functions)
- Likely to need a shadow authority prior to its formal establishment to fund its first year of operation / employ staff / produce a strategy etc.
- Clarity about sources of funding (e.g. precept, borrowing, grants, returns on investment)
- Geographical borders. Can it work with bodies outside its borders.
- Can it undertake work on behalf of others? Can it commission others bodies to do work on its behalf? (e.g. local councils, IDBs, Environment Agency)
- Needs a governance structure – i.e. a Board. Also to state its composition, rules of appointment and process for appointing the chair.
- May need a financial sub-committee to take decisions re the level of precept. Need to consider whether it should only contain elected representatives. Should there be other sub-committees to oversee other functions? Which decisions require the approval of the whole board?
- Set out voting rights of the constituent members.
- Set out the relationship with the Secretary of State – what reporting and accountability mechanisms will there be?
- Accountability mechanisms – ie via locally elected councillors, who will represent the majority of board members, plus the financial sub-committee (with only elected representatives).

Clarity would also be needed over these issues:

- Environmental duties and sustainable development
- Appeals to the Secretary of State regarding the creation of a new authority
- Intervention powers of the Secretary of State
- Accounting Requirements
- Transparency requirements (i.e. what information needs to be published)
- VAT Status
- Complaints to the Ombudsman
- Dissolution and Wind up
- Status of the financial sub-committee
- Liability to FOI legislation
- Ability to borrow

The most straightforward option would be for the government to introduce primary legislation, which would establish a general power for a Defra ministers to create “Rivers Authorities” through secondary legislation. Once the Bill was passed, the SRA could then call on ministers to exercise the power in order to establish a Rivers Authority in Somerset.

Taking a general power avoids the problems associated with Hybrid Bills (these affect the general public but also have a significant impact for specific individuals or groups – e.g. Channel Tunnel and HS2 and go through a much longer parliamentary process than Public Bills. It should be noted that only one Hybrid Bill has gained Royal Assent since 1997, the Crossrail Bill). If the contents of the Bill were Somerset-specific, it would be a Hybrid Bill.

The route to legislation – options

Setting aside a government introduced Public Bill, the options open to us are:

- a) Private Member's Bill – these Bills have had a 4.4% success rate (38 out of 862 introduced, achieving Royal Assent) since 2010. None of these have been Hybrid Bills. These are introduced by backbenchers through the following alternative routes, and parliamentary time for which is given in the following preferential order
 - a. The Ballot (one Ballot per parliamentary session, and this year's was held on the 29th June). The ex-Chair of the SRA had secured Rebecca Pow's support to apply, but unfortunately she was unsuccessful in the draw. If the new government's commitment remains the same as the previous one, then this could have become the route for a 'Handout Bill' this year; these are smaller Public Bills that the government cannot persuade the legislative time-tablers to devote Government parliamentary time to and therefore sponsoring Departments secure the support of a friendly MP who then is supported by civil servants and the bill is drafted by government lawyers. It remains a route for next year.
 - b. The Ten Minute Rule. This is a good opportunity to raise the profile of an issue and to see if it has support among other Members. Given the previous government has already expressed support and commitment to legislate in their own right, nothing extra would be achieved by this, other than it would test whether the new government felt the same way. Arguably early discussions with new Ministers would be a quicker and more effective way of achieving this.
 - c. Presentation. Members introduce a Bill in this way, having given notice, but do not speak in support of it – these rarely become law.
- b) Private Bill. Bill promoters must first present a petition to both Houses of Parliament on or before 27th November each year and copies of the Bill must be made available. The drafting of private bills and their piloting through Parliament must be undertaken by one of 7 registered parliamentary agents (Roll A Agents). Last year all 7 were approached by SCC Legal Services to gain initial advice. All firms identify the subject matter as unique, complex and potentially controversial, but significantly all say that there is a real risk that the subject matter (local taxation) may not be accepted by the government or Parliamentary House officials as suitable for a Private Bill. As a result of this, indicative costs, assuming the Bill would be accepted as suitable and is unopposed, could be in the range of £150,000 - £200,000, with one firm identifying a considerably higher figure (£500,000). In summary, this route requires considerable resource, there is limited time for us to draft it before the November deadline and the advice of Parliamentary Agents is that it will not be successful.

- c) Bill content and therefore type. We need to make a choice about whether our Bill is Somerset specific (Hybrid) or is enabling legislation granting a general power. Whichever route is taken, government and civil service support will be paramount to achieving success. It is therefore important to ensure that the option, Bill type as well as route, does not alienate the very support we need to ensure success.

Despite the difficulties, low likelihood of direct success and costs, the argument for pursuing one of these alternative routes could be:

- a) To increase pressure on the government such that they find time to introduce a Bill themselves. If this is accepted, then the argument about Bill content and which route would be best, needs to consider what is the most cost effective method (minimal legal drafting) of ensuring the greatest pressure on government for a Bill that is likely to be consistent with the cross government support already achieved.
- b) To help the government find a route for their own legislation i.e. a 'Handout Bill'. In this instance the route we choose would have to be the Private Member's Bill route and there would be no need to draft it ourselves, as it would be effectively taken over by government once the ballot was secured.

Current status and Next Steps

Given the General Election, the most urgent next step is to establish whether the new government has the same priorities and commitment to support precepting legislation as the last. To that end, the ex Chair and Vice-Chair jointly wrote to all incoming Ministers, Somerset MPs and the ex chair of Efra, Neil Parish, at the end of June seeking their continued support. Once we have a new SRA Chair, it is suggested that he/she makes contact with Ministers and MPs to follow up and gain information about how much support there is. At this stage it should be possible to establish whether the government has an appetite to devote time, either within their own timetable or via a Handout Bill.

In addition, given Rebecca Pow has unfortunately been unsuccessful in the ballot, it is suggested that we contact the successful MPs to see if they would sponsor a Private Member's Bill for us. It does need to be recognised, however, that MPs who are successful in the ballot are deluged with requests from interest groups who usually have a Bill ready drafted.

In respect of the Private Member's Bill options, we need to establish what level of detail is required by when, for each of the content types and routes for introduction. Some information has been supplied by the House of Commons offices which will assist this, but it needs analysis and further work to understand at what stage drafting would take place and by whom, for each option (excluding the Handout Bill option). It is therefore suggested that it would be helpful to prepare a matrix of options on how detailed the Bill would need to be, and by when, with their costs and benefits, including a realistic timetable.

Ideally we would want to achieve the objective of persuading the government to find time for enabling legislation themselves, or as a Handout Bill, so that we can then work on gaining agreement to the detail afterwards. However, this might be viewed as less effective in achieving the necessary pressure on government. Nevertheless, either way, the detailed work (the partnership agreeing their preferences in respect of all the features outlined in the

Background and Context section above) will need to be done and is likely to take some time. As a result it would seem sensible to start this as soon as holiday commitments allow.

Recommendation:

The SRA Board is asked to:

1. Note the contents of this paper and comment on the proposed Next Steps

Date: May 25th, 2017, updated July, 2017

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