

Local Government Association (LGA) briefing: for House of Commons Second Reading of *Deregulation Bill*

3 February 2014



KEY MESSAGES

- The LGA welcomes the Government's approach to reduce legislative burdens on public sector bodies, business, civil society and individuals. **Our 'Rewiring Public Services'¹ campaign is already advocating this approach.**
- The Bill represents an opportunity to allow local authorities to reduce bureaucracy, drive public service reform and support economic growth in their communities. **The Government must use this Bill to allow councils to make a real difference in their communities and reduce the burdens on them further.**
- **For example, the LGA would support the introduction of new deregulatory measures into this Bill.** This could include ending obsolete statutory notices in newspapers and consolidating outdated licensing schemes.
- **The Government should seize the opportunity to go further on certain reforms, such as housing.** Allowing local authorities to set the right to buy discount and to invest receipts in a more straight forward manner would support investment in affordable homes. The Government should also remove the housing borrowing cap, which is a barrier to house building and would allow councils to build up to 60,000 new homes in the next five years.

Apprenticeships (Clause 3 and 4)

- **The LGA welcomes the move to simplify and fund apprenticeships directly through employers (Clause 3 and 4).** The move has the potential to address structural weaknesses in vocational education, by giving employers real ownership.
- There will be **inevitable challenges in delivering reform that local authorities are well placed to help address**, in particular engaging and supporting local employers to sustain growth in the number and quality of apprenticeships, and reducing fragmentation and shaping strategic view of skills across the local economy.
- We recommend Government engages with local authorities to ensure reform is successful, for example building on the evidence through City Deals and learning from Apprenticeship Hubs, Apprenticeship Training Associations and other efforts that have proven the added value of local leverage over provision.

Right to Buy (Clause 21)

- **By expanding the eligibility for the Right to Buy this clause makes it more important than ever that the Right to Buy system maximises investment in replacement homes.** The current system does not reflect local

Briefing

¹ See LGA website: - www.local.gov.uk/campaigns for full details

housing markets and undermines the ability of local authorities to invest in new build housing to meet local needs.

- A blanket discount cap, as is currently in place, ignores the large differences in property values up and down the country, and in some areas will not provide a discount sufficient to generate sales and vice versa. **Greater flexibility should be provided to enable councils to set the Right to Buy discount locally, to reflect local housing markets.**
- Under the current system, the amount of receipts kept by the Treasury is based on the predicted amount of Right to Buy sales in each authority. This means that only when the Treasury has received the predicted amount does money become available to be retained locally.
- The restrictive criteria which accompany Homes and Communities Agency agreements to retain receipts locally also restrict the ability of local authorities to invest in housing. For example, the agreements limit councils to funding only 30 per cent of new build costs from Right to Buy receipts, as well as limiting the use of other housing revenue account receipts as funding.
- **The Government should bring forward amendments to the Bill which would allow for direct and full retention of receipts and greater flexibility over how they are used and ensure the discount could be set locally.** This would incentivise councils to use their assets, such as land, for replacement housing and could allow councils to bring development sites forward that may not be attractive or viable to other providers.

Household waste: de-criminalisation (Clause 29)

- Councils are on the front line encouraging recycling in their communities through raising awareness and providing information to residents. This has helped ensure that the proportion of household waste recycled has reached 43 per cent.
- There are a limited number of households who consistently fail to comply by continually leaving rubbish out in the street or failing to separate waste for recycling. In such instances, councils use a number of interventions including notices on bins, letters to householders and visits to the property to discuss how bins are used.
- The limited powers that councils have to issue fixed penalty notices in the case of serious and persistent misuse are only ever used as a last resort and after other means have been exhausted. **On average this is just over two penalties issued per council area each year or one for every 26,000 households.**
- This Bill proposes to remove the criminal sanction in England and stipulates that a civil penalty can only be issued following a series of letters and notices and where the actions of the householder cause nuisance or are detrimental to any amenities of the locality. **There is no evidence that these powers are being used disproportionately and the LGA does not therefore see an evidence-based reason to change the system.**
- The changes will also mean councils no longer have any enforcement powers in circumstances where residents persistently fail to comply with arrangements for separation of waste for recycling.

- These proposals will significantly undermine councils' efforts to work with their communities to increase recycling rates and reduce use of landfill sites and pollution. It will increase the cost of disposing of contaminated waste and is contrary to Government policy to reduce contamination of recycling. This Clause could ultimately impact on the UK's ability to comply with EU recycling rates.

Sustainable Community Strategy (Clause 54)

- We welcome the removal of this burdensome duty on local authorities and the need for their officers to undertake this duty. This will free up capacity. If a council still believes a SCS is a priority there is nothing to stop it producing one.
- The process for producing a SCS was tightly prescribed and burdensome, including a local needs assessment as well as consultation with partners and residents. This meant it was difficult to keep the strategy up to date to reflect changes such as the global economic downturn and the impact on the availability of public sector resources. At the same time elements of an SCS have been superseded by the detailed and evidence-based priorities now contained in a number of the key underpinning partnerships such as the Health and Wellbeing Board and the Community Safety Partnerships. Removing the requirement for an SCS will enable councils to streamline corporate planning processes.

Consultation Duties (Clause 57)

- The LGA welcomes the removal of the duty to consult. Councils want to have a meaningful conversation with their residents about all aspects of civic life. We are supportive of the proposed removal of the duty to consult as it would free councils from a prescriptive, top-down approach that stifles that conversation and encourages instead a sterile system of tick box consultation. Democratically elected local councillors, as the chosen representatives of their places, also have a key role to play in ensuring all groups in their ward or division have a voice.
- Councils are using a whole raft of approaches to have in-depth conversations with their residents about the important decisions they will be making in the coming months and years. They do not need to be told to do so; it is part of the business of being a council.
- Kirklees Council is running "It's Time to Talk" with a comprehensive range of open events, online discussions, and meetings with local groups² Worcestershire County Council is involving its residents in its "Big Obesity Debate" using town hall events, social media, public sector partners and the broadcast media to address "a complex, personal and provocative debate [that is] too important to leave out the public's opinion."³ Among a host of engagement activities, the London Borough of Sutton invites residents to submit ideas via a simple website where residents can respond to council proposals and other residents' ideas.⁴ **None of these efforts are happening because of statutory obligations.**

² <http://www.kirkleestalk.org/>

³ <https://www.facebook.com/YourWorcestershire>

⁴ <http://www.speakoutsutton.co.uk/>

The growth duty (Clauses 61-64)

- Enabling economic growth should underpin regulation. As a result of their wider community focus, councils already have a long tradition of promoting economic growth and of working in partnership with business and other stakeholders, including through Local Enterprise Partnerships (LEPs).
- The Government should demonstrate the added value a growth duty would offer businesses and consumers, alongside a substantiated explanation of the outcomes that will be achieved if a statutory duty was introduced. There is a danger that focusing on a statutory duty risks creating a system of bureaucracy and monitoring, without actually achieving any real or tangible benefits for business.
- The LGA welcomes the fact that the growth duty has not been extended to local authorities. Local government has been at the forefront of supporting growth and an additional duty would only bring with it reporting and monitoring burdens rather than enhancing our work.

NEW DEREGULATORY CLAUSES RECOMMENDED BY THE LGA

Reducing licensing burdens on businesses

- **The Deregulation Bill should be used as an opportunity to overhaul the current licensing system to encourage economic growth and give local communities the ability to shape their neighbourhood and protect their high streets.**
- We are disappointed that the Government has not used the Bill to implement a cross-Whitehall initiative to remove outdated or unnecessary licensing regimes. For example, the licences for performing animals and hypnotists should be abolished and there is the opportunity to create single, simplified licences for subjects such as licensed animal establishments, road closures, street activity and holiday premises.
- There are well over **150 licences and permits** issued by councils, and many more issued by Government and its agencies. A business entering an established market will be faced with a complicated maze of different applications that need to be completed and sent to different organisations. This becomes potentially even more complex for a business looking to create a new market or business model.
- We already know that some large businesses have to employ a **dedicated person** to keep track of the different renewal dates that their licences require. This is costly and burdensome, and detracts from their core focus of growing their business and serving their customers. It also means that no one regulatory body has a clear oversight of a business which cannot only, in the worst case scenario, lead to dangerous or illegal activity being missed, but also subjects a responsible business to uncoordinated and unnecessary inspection visits from a whole range of agencies.
- The Government should also take this opportunity to provide a simplified approach to a number of licensing regimes that have emerged over the past hundred years. Each licensing regime has its own unique legal framework of

renewal periods, supporting documentation, inspection, statutory forms and appeals which are confusing for businesses.

- In 'Rewiring Public Services'⁵ we propose that all licensing regimes should be based on a common legal framework, one which recognises the "licence for life" principle under the Licensing Act 2003. This principle only requires businesses to submit an annual fee rather than the complete a full, bureaucratic renewal for a licence.
- A simplified approach to licensing would legally embed the role of local licensing committees into all licence regimes, providing a transparent way of making policies and decisions accountable to both residents and businesses.
- **With the licensing committee providing the true link to local priorities and risks, they should be given full power to remove licensing that is stifling growth and no longer appropriate in a local area.** They should also be able to respond to emerging local risks, such as growing concerns in respect to the proliferation of shops with the same use (for example, betting shops, estate agents, fast food shops, and pay day loan companies) on local high streets.

Removing the duty on local authorities to publish statutory notices in their local newspapers

- It is a legal requirement for local authorities to pay to advertise public or statutory notices in local newspapers, covering a range of subjects such as informing residents about planned road closures, certain types of planning and licensing applications, road traffic orders and changes to local education provision.
- The requirement dates back to 1972, a time when local and weekly newspapers and radio were popular sources of information. The last 41 years has seen vast changes in technology and shifts in consumer preferences. **This requirement remains in force despite evidence that the way people access news and information has changed significantly and the circulation of local newspapers is failing.**
- **The legal duty to publish statutory notices in local newspapers should be removed.** This reform would not remove the duty on councils to inform their residents about statutory notices or any other area of council policy, it would simply allow them to decide whether or not the local newspaper was the best place to do this. For instance, licensing applications are also advertised through notices placed on the building, and the majority of representations are triggered by seeing these notices, rather than those in the paper.
- Statutory notices are an expensive and ineffective way of communicating with resident. Councils spend £26 million a year on public notices; 84 per cent of councils say there are more cost-effective ways to publish public notices, such as on websites and direct emails; 42 per cent of councils are charged more by local newspapers to publish public notices than for other general advertising and the costs are continuing to rise. Businesses also incur significant costs through this archaic requirement and the British Beer and Pub Association has recently joined the LGA in calling for their scrapping.

⁵ See LGA website: - www.local.gov.uk/campaigns for full details

- These are substantial costs at a time when local government is facing the dual challenge of financial stability and sustainability. Statutory notices are also out of date when evaluated in the context of recent technological advances in online communications (websites, Facebook, twitter and e-mail being some of the most popular digital platforms). **We urge the Government to remove the duty to publish statutory notices in local newspapers.**

Common sense in litigation

- We are concerned that there are potential loopholes created by literal reading of regulations. For example Aylesbury District Council brought a legal case⁶ against a taxi company earlier this year, following concerns that the company did not hold the proper license for operation.
- The case used legislation adopted locally 24 years previously, but failed because the Council was unable to provide documentary evidence that they had presented the original proposal to introduce the licensing regime to each parish council in their area.
- **The LGA is concerned that this case sets a dangerous precedent**, which could be used to question long established decisions that have been conducted in an appropriate manner, applied consistently and are well understood by communities. The potential to question the basis for such decisions could prove costly to every single council and undermine the licensing policies at the heart of local communities.
- **The LGA proposes that the Deregulation Bill introduce a definitive statement that criminal or civil proceedings cannot be used to question whether a public authority has correctly implemented adoptive provisions if they were made more than 10 years previously**, they have been continuously applied since they were adopted and the chief executive (or equivalent) certifies in writing that these conditions have been met.

Removing the Housing Borrowing Cap

- In the Autumn Statement, the Government announced that borrowing limits for the Housing Revenue Account will be raised by £150 million per year in 2015/16 and 2016/17. **The LGA has welcomed the announcement as recognition by the Treasury that the current model to cap local authority borrowing is not fit for purpose.** We see this as an important first step to support local authorities to increase supply of affordable housing.
- Research⁷ shows that removing the cap entirely could deliver up to **60,000 new homes**, quadruple what they are able to do at present over the next five years. This would be a huge boost for development and jobs, help tackle the housing crisis, and help address the demand for affordable rented homes. For instance, the housing waiting list has increased by 70% over the last decade.
- **The total level of borrowing that would occur, if the cap was removed, would be insignificant when compared to national debt.** Research by Capital Economics, of economists, fund managers and credit ratings analysts

⁶ A summary of the case can be found on the council's website at <http://tinyurl.com/kd2yh5e>

⁷ Let's Get Building, November 2012, <http://tinyurl.com/aqxmepa>

indicates that **there would not be a significant reaction from the markets** to the likely increase in borrowing (£7bn over five years) that would result from lifting the borrowing cap. This is mainly due to the relatively small size of the figure, which is far smaller than the statistical error for public borrowing. “*A well constructed and targeted package: I think the markets could accept that quite readily.*” Roger Bootle, Managing Director of Capital Economics

- Removing the cap would in reality simply mean that the market sets ‘the cap’ on borrowing, rather than the Secretary of State, since local authorities would only be able to borrow prudentially (i.e. within the limits of what their rental income on any resulting properties would allow.)
- **The LGA’s call for removal of the cap is supported by a large number of housing stakeholders including:** Shelter; the CLG Select Committee; Home Builders Federation; Federation of Master Builders; Chartered Institute of Housing; National Housing Federation; London Councils; National Federation of Builders; National Federation of Arms-Length Management Organisations; and Association of Retained Council Housing.

END