

Local Government Association (LGA) briefing: Local Audit and Accountability Bill, House of Lords

Second Reading

Wednesday 22 May 2013



The Local Audit and Accountability Bill will extend the council tax referendum provisions introduced in the Localism Act, enshrine the legal status of the local authority publicity code and introduce a new regime for the auditing of public bodies (the Bill abolishes the Audit Commission and creates a framework where councils will have to establish an independent auditor appointment panel in order to appoint their own auditors).

LGA key messages

- The Local Audit and Accountability Bill extends the council tax referendum provisions introduced in the Localism Act (clause 39). **The LGA opposes the inclusion of a centrally imposed limit** because local elections are the opportunity for people to pass judgement on their council.
- The Bill gives the code of recommended practice on local authority publicity statutory underpinning (clause 38). It provides the Secretary of State with the power to direct a local authority regardless of whether that authority is complying with the code to which these powers relate.
- **These are wide ranging powers that allow central government to interfere with, dictate to and second guess councils. There is no evidence that council publications are competing unfairly with local newspapers and therefore no need for the existing code to be put into primary legislation.**
- The Bill abolishes the existing audit regime and the Audit Commission (clause 1). The Government's commitment to cutting back on external inspection and assessment has undoubtedly helped councils and saved money.
- National procurement of audit is the most efficient way for councils to procure auditors. The recent tendering exercise by the Audit Commission delivered savings to councils of £250m. Sufficient flexibility should be retained in the Bill to allow national procurement to continue.
- Clause 34 gives powers to the National Audit Office (NAO) to conduct studies into the 'economy, efficiency and effectiveness' of local government'. **We are concerned about the potential for "mission creep" by the NAO given the absence of any constraints or limits regarding the total number of studies per year.**
- However, the new requirement on the National Audit Office (NAO) to consult with relevant parties on any studies into the economy, efficiency and effectiveness of local and health authorities is welcome and something the LGA has called for.

Briefing

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Council Tax

- Clause 39 extends the council tax referendum provisions introduced in the Localism Act to include levying bodies such as Waste Disposal Authorities, Integrated Transport Authorities, Pension Authorities and Internal Drainage Boards.
- Local government has endured the steepest reductions over the current Spending Review with 33 per cent cuts in real terms. The current financial position of many councils is unsustainable in the medium to long term. Including increases in levies set by outside bodies in the calculation of council tax referendum limits adds further uncertainty to council finances and could lead to further reductions in essential local services.
- The LGA opposes a centrally imposed limit on council tax levels as the cycle of local elections is the democratic and proper place for people to pass judgment on their council.
- As currently drafted the Bill (clause 39 (15)) could allow the Secretary of State to retrospectively impose a different referendum limit on authorities where their council tax increase for 2013-14 would have been excessive under the new definition, but not under the current definition. This is not fair on those authorities who have taken decisions in good faith based on the legislation in place at the time.
- Local government in England is subject to a variety of different levying arrangements, covering significant regionally important issues such as transport and drainage, as well as a wide range of more local issues. There is enormous scope for perverse outcomes which may be difficult to resolve under this framework. For example, an internal drainage board needing to take emergency action to manage flood risk may be denied the capacity to do so by the outcome of a referendum. There may also be a risk that infrastructure projects that support economic growth could be at risk because of these measures.
- **Given these concerns, the LGA is calling for the Government to remove clause 39 from the Bill.**

Publicity Code

- Clause 38 will give the Publicity Code statutory underpinning. It also provides the Secretary of State with the power to direct a local authority regardless of whether or not they are complying with the code. These are very wide ranging powers.
- Moreover, clause 38 is unnecessary as there is no evidence that council publications are competing unfairly with local newspapers and by the Government's own admission there are very few councils not complying with their existing recommendations.

- Clause 38 (5) gives the Secretary of State the power to ‘make a direction to an authority whether or not the Secretary of State thinks that the authority is complying with the code to which it relates’. This is an incredibly wide ranging power that gives central government the ability to interfere with the business of a council regardless of whether or not they are breaking any part of the code of conduct. **The Government should state why they need a blanket provision of this sort and why the policy objective cannot be achieved through the use of existing legislation.**
- Local authorities are currently required by section 4(1) of the Local Government Act 1986 *to have regard* to the contents of the Publicity Code in coming to any decision on their publications. Section 6 of the Act defines publicity as ‘any communication in whatever form, addressed to the public at large or a section of the public.’ Should the Secretary of State have reason to believe that a local authority has failed to comply with their statutory obligation to have regard to the Code, then he is able to intervene by seeking judicial review against the local authority. **So far the Secretary of State has not said why this existing power is not enough.**
- Councils support the commercial newspaper industry by paying them £26 million a year to publish statutory notices. When you take into account total spend, including general advertising, **councils are spending nearly £44 million per year with the commercial newspaper industry.** The current legislation which requires councils to publish statutory and other notices in local newspapers should be repealed at the earliest opportunity. These notices do not represent value for money with 84 per cent of councils stating that there are more cost-effective ways to communicate with residents.
- The majority of councils produce newsletters because they are the most cost effective way of reaching a high proportion of residents. 79 per cent of council publications reach 90 per cent or more of the local population. Just one per cent of local newspapers reach 90 per cent or more.
- Before the Government changes the status of the current code, it should set out the evidence for this decision. **An independent review should be undertaken to establish what, if any, impact council publications have on local newspapers.**

Local government audit

Appointment of Auditors

- Part 3, clauses 7 to 16 set out the process by which councils and health bodies should appoint their auditors. Clause 9 requires councils to appoint an independent audit panel (further details are in schedule 4) and provides a duty for audit appointments to be made on the basis of advice given by this panel. Such a duty unnecessary and impracticable. It should be amended as eligibility requirements in Schedule 5 will be sufficient to ensure the professional integrity and independence of potential auditors.
- Furthermore, councils already operate within a complex regime of existing safeguards and controls designed to guarantee regularity and propriety;

including the requirement to set balanced budgets. In addition, all the indications are that councils will have considerable practical difficulties finding enough suitably knowledgeable independent local people willing to serve in this capacity.

Procurement of local audit

- National procurement of external audit is the most efficient way of procuring audit at the best possible cost to local councils. The recent tendering exercise by the Audit Commission delivered savings to councils of £250m. Sufficient flexibility should be retained in the Bill to allow national procurement to continue. This is because the financial climate in which local government is operating has changed dramatically since these proposals were originally announced three years ago.
- In making their contribution to deficit reduction, councils are dealing with severe financial restraint whilst at the same time delivering high quality services to their residents. Councils are therefore keen to “lock in” the significant savings by extending the current audit contracts and retaining the possibility for further national procurement.
- Moreover, **the proposals in the current Bill to enable local appointment will lead to *increased costs*** because:
 - The total cost of councils individually procuring audit will be significantly higher than a single central national procurement process.
 - The prices achieved by individual appointment of external audit would be higher overall than what we already know is achievable through national procurement.
- Amending the Bill to allow for national procurement does not imply Ministerial agreement to the approach. It simply demonstrates a willingness to keep the option available for the future and recognition that alternative options may become more attractive in the future.

The National Audit Office

- Clause 34 gives powers to the National Audit Office (NAO) under the guise of the Comptroller and Auditor General to conduct studies into the ‘economy, efficiency and effectiveness with which relevant authorities have used their resources’.
- The potential for ‘mission creep’ by the NAO and the absence of any constraints or limits regarding the total number of studies per year in the Bill is alarming. **There should be a statutory limit on the number of studies the NAO carries out each year as these are often burdensome for councils.**
- The NAO should be precluded in the Bill from replicating the Audit Commission’s value for money studies programme because, as the Government rightly acknowledges, improvement and efficiency is something best delivered by the sector itself.

- The new requirement on the National Audit Office (NAO) to *consult* with relevant parties on any studies into the economy, efficiency and effectiveness of local and health authorities is welcome and something the LGA has called for.