

Review of Statutory Duties

The review of statutory duties is an important step in moving towards a genuinely decentralised system of governance, lifting the burden of bureaucracy to allow local areas to determine how best to address local issues and concerns.

The current number of duties stands at over 1200. Quite clearly this amounts to a vast swathe of requirements on local areas dictating not only what they should do but often how they should do it.

This is not simply a numbers game. A statutory duty imposes requirements and costs on local areas reducing the amount of discretion available over what and how limited budgets are spent. There are however instances when it is an important and appropriate tool.

David Cameron MP has said that *'We shouldn't always think that the answer to every problem is some detailed policy or bureaucratic scheme'¹*. We agree; what is required is a shift in behaviour and culture so that the use of statutory duties is focused and appropriate. We identify a selection of unnecessary and costly duties in our response which cost much needed funds to administer and implement. We also highlight the culture of gold plating duties through unnecessary and prescriptive guidance and regulations.

Increasingly, we would like to see Whitehall looking to more enabling and empowering mechanisms to achieve change and outcomes focusing on support for local capacity building and devolution of powers and responsibility to the local level. We set this out in more detail in our publication *Essential Localism²*.

We urge government to act immediately to remove those burdens which are identified as being unnecessary and revise urgently those burdens that are inappropriate and costly. There are a number of similar reviews being undertaken across government and it is important that the information from each is shared across departments to inform the government's overall approach to burden reduction. Each must inform each other. We look forward to working with the government to lift the burden of bureaucracy on local areas across these reviews.

Lifting burden by changing culture

Lifting the burden of bureaucracy is one of the six key actions for decentralisation identified by Greg Clark MP in his guide to the Localism Bill. In our response, *Essential Localism*, we argued that we need a new way of

¹ 22nd February 2010

² *Essential Localism*, Local Government Association, 2011

doing business between central government and local areas. The review of statutory duties is an important opportunity to step back and consider the approach taken to policy making. Simply doing less of the same will not be sufficient to achieve the whole- system reform that gives powers to local areas and saves billions.

Statutory duties are an important tool but they should be used only when appropriate. Increasingly, we would like to see government considering an enabling approach by providing powers and tools for councils to achieve shared outcomes locally without telling them how to do it.

However, the predisposition of civil servants to fall back on traditional levers and tools to influence change and outcomes remains evident in legislation currently making its way through parliament and we are keen to work with government to shift culture and behaviours to ensure that decentralisation is sustainable. For example, new duties in the localism bill including requirements on local authorities to hold referendums on a variety of issues in line with centrally set triggers.

Where new duties are imposed on local authorities they should be fully funded in accordance with the new burdens doctrine.

Example	LG Group recommendation	Rationale
<p>Additional duties on local government are proposed as a consequence of the proposed abolition of Primary Care Trusts (PCTs) and Strategic Health Authorities, in the Health and Social Care Bill. A wide range of duties will be transferring to local government.</p>	<p><i>Revisit impact assessment to ensure the requirement is fully funded.</i></p>	<p><i>Ensure burdens on councils are fully funded.</i></p> <p>In order to be able to discharge these new roles it is crucial that appropriate resources are transferred to support councils.</p> <p>For example; the transfer of duties to appoint medical examiners from PCTs to single and upper tier local authorities will be a wholly new requirement for local authorities. This new service had been expected to impact on the NHS through: the requirement for PCTs to recruit and train medical examiners and their support officers; the requirement for PCTs to monitor and manage performance of the service; the requirement for PCTs to provision office facilities, resources and access to information systems – all of which will now impact on local</p>

Example	LG Group recommendation	Rationale
		authorities and all of which will have cost implications.
Requirement on local authorities to prepare a tenancy strategy ³ .	Revise the requirement.	Remove unnecessary prescription on local areas. The duty should be revised to focus on outcomes and enabling measures rather than the production of paperwork.
Guidance underpinning the duty to co-operate in the Localism Bill ⁴ .	Remove the requirement.	Remove unnecessary prescription on local areas. Councils are already working together across areas to plan strategically for growth. They do this not because of a duty or centrally imposed requirement but because councillors recognise the pressing needs of their areas are willing to work together to tackle joint priorities. The centralist assumption that local planning authorities must be told by the centre to work together; and more so how to work together is not in line with our understanding of localism
Duties to investigate complaints of a statutory nuisance and to serve notices where this is likely to reoccur ⁵ .	Revise the requirement.	Provide local areas with greater flexibility. There are a number of situations where these duties would be more appropriately expressed as enabling powers for local councils. For example, where action can be taken under other regimes, such as Environmental Permitting councils remain under this duty leading to duplication.
Requirement of local authority to carry out actions identified in adopted Noise Action Plans.	Revisit impact assessment to ensure requirement is fully funded.	Ensure burdens on councils are fully funded. This relates to a requirement to fulfil EU obligations. The action plans impose insufficiently funded burdens on local

³ Localism Bill, Clause 126

⁴ Localism Bill, Clause 90

⁵ DEFRA 083 -084

Example	LG Group recommendation	Rationale
		highways authorities. No funding was allocated to local highways authorities to implement actions in the action plans, which one authority estimated at between £500,000 to several million.

Appropriate use of statutory duties

A statutory duty imposes requirements and costs on local areas reducing the amount of discretion available over what and how limited budgets are spent. There are however instances when it is an important and appropriate tool providing clear responsibility for local authorities to provide appropriate services for local people.

Some examples include those duties that can ensure protection of public safety, vulnerable people and business such as product safety, animal health and welfare, climate change, under age sales, food safety and public health.

Accountability to local people

Accountability should focus on local people not providing paperwork to Whitehall departments. Duties which require councils to produce strategies, plans and schedules and reports should be reviewed with a focus on reducing the volume. There are over 40 such duties in place currently and imposing blanket requirements for councils to produce paperwork is not an appropriate or efficient mechanism to achieve desired outcomes.

Existing duties require the production of the following plans:

- Annual Post 16 Transport Policy Statement
- Performance Management Policy for Teachers
- Adoption Support Services Plan
- Transport Strategy
- Homelessness Strategy
- Housing Strategy (not commenced)
- Sustainable Community Strategy⁶
- Local Area Agreement
- Local Economic Assessment
- Work and Skills Plan

Whilst a number of duties requiring the production of plans may be appropriate we would like to see a more proportionate and focused approach to duties imposing the development of plans and strategies and the removal

⁶ Proposed for removal in CLG consultation on Best Value Guidance

of those plans that are no longer relevant or effective; for example Local Area Agreements are no longer government policy and can be removed immediately.

Local authorities are leading the way on the transparency agenda; councils increasingly publish information about performance, spend and services in a way that makes sense locally. This enables local people to hold councils to account and also provides valuable information which facilitates access to services and participation.

The data reporting demands of central government departments which require the average council to fill in and submit estimated 12.6 million boxes each, at an estimated cost of around £1.8 million a year. The government has recently announced that all data collections not on a single list should stop; **as a minimum all requirements to collect and send data to government imposed by a statutory duty not on the single data list should be repealed and local authorities should not need to continue to collecting this data in the interim** – some examples are provided below. We also expect to see a significant reduction in the size of the single data list in the Autumn which should lead to further requirements to remove duties

Example	LG Group recommendation	Rationale
Every local planning authority must make an annual report to the Secretary of State giving such information as is prescribed in relation to the extent of its implementation of the Local Development Scheme, and the extent to which the policies set out in the Local Development Documents are being achieved ⁷ .	<i>Remove this requirement.</i>	<i>Provide local areas with greater flexibility.</i>
The duty to provide information to the Secretary of State on the status of contaminated land ⁸ .	<i>Remove this requirement.</i>	<i>Remove unnecessary reporting requirements on local areas.</i>

Guidance and micro-management

True localism sees accountable decision-making take place at the most locally-appropriate level. This should allow for local flexibility on the way in which decisions are reached and communities involved. The methods used in rural parts of Bradford, for example, may be different to those used in central

⁷ DCLG 184

⁸ DEFRA 109

London areas. Any localist Government must give the freedoms for these variations to work.

Producing reams of detailed guidance specifying both what and how local areas go about their business has become widespread; we estimate that **over 70% of CLG sponsored duties detailed in the consultation have guidance attached⁹ and over 80% are accompanied by regulations.**

A large number of duties not only specify what councils should do but prescribe how they should do it. This limits the discretion of councils and often ties up much needed funds in process, administration and mechanisms which may not be appropriate or effective locally.

As well as stifling innovation and limiting the ability of councils to react to changing circumstances locally; additional reams of guidance are ineffectual. The judgement in relation to the Brent LBC v Risk Management Partners has demonstrated that it has no legal force. **We propose that all statutory guidance should be revoked** - it simply provides cover for lazy drafting of primary legislation and promotes a dependency culture¹⁰.

Calculating the cost of excessive policy activity and what can be saved is inevitably difficult. Looking at the seven departments that most closely interact with local government in 2008/9¹¹ **we believe that it is a reasonable ambition to reduce departmental administration costs (including paybills) by a further 20 per cent, through reducing unnecessary activity that creates costs but adds little value.** This would save just under £1.5bn, and take the overall costs of departmental administration for these departments to just less than its 2000-1 level¹².

If the Government steps back from prescription, a marketplace of ideas will open up in which sector bodies such as ourselves, professional bodies, NGOs and business bodies have scope to detail best practice and offer peer support through, for example, creating template policies for dissemination and discussion across councils. This will reduce the risk of reinventing the wheel, and allow for informed localist policies to be developed, based on experience but rooted in the local area.

Even where important policy decisions have already been taken, such as the abolition of top-down plans and the bureaucracies that enforced them, the wind-down of the old arrangements is taking time. It is understandable that new, more local, arrangements will not mushroom into full operation straight

⁹ Both statutory and non statutory guidance

¹⁰ 'The meaning of the language... is a question for the court and cannot ultimately depend on the view of it taken by the Secretary of State in guidance issued, 'Brent London Borough Council v Risk Management Partners Ltd [2009], EWCA Civ 490, paragraph 29.

¹¹ DCSF, Home Office, CLG, Health, DWP, DCMS and Defra

¹² Total outturn administration budgets 2008/9 DCSF, Home Office, CLG, DWP and Defra £7.384 (b) http://www.hm-treasury.gov.uk/d/pesa2010_chapter1_tables.xls

away however it is key that where policy decisions remove requirements that this is implemented to make a difference on the front line.

Example	LG Group recommendation	Rationale
<p>Councils are currently required to advertise notices in local papers. Various duties require the publication of notices, not all provisions are the same – for example some require publication more than once.</p> <ul style="list-style-type: none"> • The duty to publish a table of hackney carriage fares where the authority has fixed the rates¹³. • Duty to publish planning notices in local papers¹⁴. 	<p>Revise this requirement.</p>	<p>Remove unnecessary prescription.</p> <p>We estimate that councils spend around £40 million a year on statutory planning notices alone. The enforced advertising of these notices in local papers could instead pay for the construction of 2,180 new council homes, pay the annual salaries of another 3,000 care workers or employ an extra 2,000 refuse collectors to empty people’s bins.</p> <p>We believe these rules – which predate the advent of the internet – should be brought up to date. Councils, in consultation with residents, should be able to decide how best to keep people informed while ensuring they get the best value for money.</p>
<p>The duty to maintain and make available a contaminated land register¹⁵</p>	<p>Remove this requirement.</p>	<p>Remove unnecessary reporting requirements on local areas.</p>
<p>Duties which relate to councils’ environmental permitting of industrial processes are necessary for compliance with EU directives¹⁶.</p>	<p>Remove this requirement.</p>	<p>Remove unnecessary prescription.</p> <p>This requirement is hugely detailed; for example allowing for regulations to specify the form of and descriptions of information that should be contained in the register.</p> <p>These duties could be made less burdensome by removing the requirement for councils to include on its public register any</p>

¹³ DfT 028

¹⁴ DCLG 148

¹⁵ DEFRA 108

¹⁶ DEFRA 086, DEFRA 113-114

Example	LG Group recommendation	Rationale
		information also contained on the Agency's public register.
Requirement in the Coroners and Justice Act 2009 that the relevant local authority should secure the provision of officers and staff needed by coroners, accommodation and maintenance ¹⁷ .	<i>Remove this requirement.</i>	<i>Ensure burdens on councils are fully funded.</i> The current provision will allow the police to transfer the costs of the staff they currently provide to coroners to councils without consultation or agreement on the part of the councils involved.
Duties prescribing the workings of crime and disorder reduction partnerships ¹⁸ .	<i>Revise this requirement.</i>	<i>Remove unnecessary prescription on local areas.</i> The Home Office has been reviewing the regulations around partnerships with the aim of reducing them. The statutory duties related to the workings of crime and disorder reduction partnerships should be a key part of this review.
Duties prescribing the conduct of crime and disorder scrutiny committees ¹⁹ .	<i>Remove this requirement.</i>	<i>Remove unnecessary prescription on local areas.</i> Much of the conduct of crime and disorder overview and scrutiny committees could sensibly be left with local authorities to determine.
Duty to demand ground rent in a prescribed form ²⁰ .	<i>Remove this requirement.</i>	<i>Remove unnecessary prescription on local areas.</i> Prescription around how and in what format local authorities demand ground rent is completely unnecessary.
Duty to have regard to a code of conduct on publicity ²¹ .	<i>Remove this requirement.</i>	<i>Remove unnecessary prescription on local areas.</i> The code of practice is entirely at odds with principles of localism and would place severe restrictions on the ability

¹⁷ MOJ 010

¹⁸ HO 003, 005, 009, 017, 023

¹⁹ HO011, 012, 025, 026

²⁰ DCLG039

²¹ DCLG 061

Example	LG Group recommendation	Rationale
		<p>of local authorities to communicate with their residents about vital public services.</p> <p>We believe the most appropriate way of regulating local authority publications is for the sector to put forward its own code of conduct.</p>
<p>Numerous duties set out in planning policy guidance and statements²².</p>	<p><i>Revise this requirement.</i></p>	<p><i>Remove unnecessary prescription on local areas.</i></p> <p>We agree with the government that there is simply too much planning guidance. It is crucial that the Minister's vision of reducing the 2,000 pages of planning guidance to a streamlined and effective National Planning Policy Framework is put into practice.</p>
<p>Duties relating to local air quality management²³.</p>	<p><i>Revise this requirement.</i></p>	<p><i>Remove unnecessary prescription on local areas.</i></p> <p>We support the review currently being undertaken by DEFRA and look forward to working with the department to streamline the requirement, reducing reporting requirements and unnecessary prescription.</p>
<p>As currently drafted, the Police Reform and Social Responsibility Bill mandates the issuing of a receipt for payment of the annual fee when a premises holder pays the fee after the licence has been suspended. This is a very prescriptive measure and does not reflect the situation in other fee paying regimes.</p>	<p><i>Remove this requirement.</i></p>	<p><i>Remove unnecessary prescription on local areas.</i></p> <p>Many councils already issue receipts (or will do so if requested).</p> <p>Any increase in administrative costs such as those that will occur as a result of mandatory receipts will have to be passed on to trade in the form of increased licence fees, something councils are eager to</p>

²² DCLG 138-139, DEFRA121, 015

²³ DEFRA 081, 093, 094, 096, 097

Example	LG Group recommendation	Rationale
		avoid if possible in order to support local business. The LGA does not believe the Government response to this, that a receipt would be an indication that licensable activities could resume, equates to a need for anything more than a recommendation in guidance.

Getting on with the job rather than waiting for permission

The general power of competence in the government's localism bill has the potential to enable a new central local relationship driven by councils responding to the wishes of their electors. We hope that it will provide a framework to allow councils to act in the interests of their communities confident in their legal standing, taking innovative steps that will save taxpayers money and be more responsive to what local voters say they want.

The government can further support this change by reviewing those duties that require councils to seek ministerial consent. A large number of provisions in primary legislation require councils to seek the consent of Secretary of State for actions and decisions. Of course, a number of these consents may be legitimate, however the vast majority concern very local issues and decisions that local authorities working with their communities are best placed to make. In these circumstances it is inappropriate and inefficient to require consent to be obtained from Whitehall before local action can be taken.

The LG Group would like to see **an Abolition of Ministerial Consents bill** which would 'sunset' all consent provisions in primary legislation unless government confirmed them individually via affirmative resolution in both houses.

Example	LG Group recommendation	Rationale
To apply to the appropriate national authority for approval of a quality contracts scheme ²⁴ .	<i>Remove this requirement.</i>	<i>Provide local areas with greater flexibility.</i> This duty is unnecessary as there is already legislation in place which means that councils have to comply with competition legislation.

²⁴ DfT 196

Example	LG Group recommendation	Rationale
Duties which require councils to comply with statutory regulations on traffic signs ²⁵ .	<i>Remove this requirement.</i>	<p><i>Provide local areas with greater flexibility.</i></p> <p>Current arrangements mean if a council wants to use a sign that is not in the DfT's approved list of signs it needs to obtain approval from the Secretary of State.</p> <p>We understand that DfT are currently reviewing this provision and the LGA would support greater flexibility for local areas through the removal of this duty.</p>
Requirements to seek consent from the Secretary of State to introduce or vary permit schemes for managing street works ²⁶ .	<i>Remove this requirement.</i>	<p><i>Provide local areas with greater flexibility.</i></p> <p>We understand that DfT are currently reviewing this provision and the LGA would support greater flexibility for local areas through the removal of these duties.</p>

Costly, unnecessary and outdated duties.

Example	LG Group recommendation	Rationale
Duties designed to prevent councils directly running bus companies when bus services were de-regulated ²⁷ .	<i>Remove this requirement.</i>	<p><i>Remove outdated requirements on local areas.</i></p> <p>As there are no longer any council run bus services, there</p>

²⁵ DfT 100

²⁶ DfT 281-291

²⁷ DfT 117, 118 & 119

Example	LG Group recommendation	Rationale
Duties for London authorities on licensing Hackney Carriages ²⁸ .	<i>Remove this requirement.</i>	is little need for these duties. <i>Remove outdated requirements on local areas.</i> We would suggest that more recent duties on licensing private hire vehicles ²⁹ would cover these requirements which can therefore be deleted.
Police Authority Regulations 2008 ³⁰ .	<i>Remove this requirement.</i>	<i>Remove outdated requirements on local areas.</i> With the introduction of police and crime commissioner the regulations will be out of date from May 2012.
Powers under the Crime and Disorder Act 1998 to allow the Secretary of State to require local authorities to provide a report ³¹ .	<i>Remove this requirement.</i>	<i>Remove outdated requirements on local areas.</i> These provisions are replaced by a provision in the Police Reform and Social Responsibility Bill enabling police and crime commissioners to request a report.
Duty to inspect the local authority area from time to time to detect statutory nuisances ³² .	<i>Remove this requirement.</i>	<i>Remove unnecessary prescription on local areas.</i> This is over prescriptive and completely unnecessary.
Duty to have regard to LAA targets and publish information relating to them ³³ .	<i>Remove this requirement.</i>	<i>Remove outdated requirements on local areas.</i>
If the Secretary of State so directs, a local planning authority must prepare a revision of any Local Development Document, which is then subject to the examination process again ³⁴ .	<i>Remove this requirement.</i>	<i>Remove outdated requirements on local areas.</i> The government's moves to make the planning system more responsive and accountable locally mean that this duty is

²⁸ DfT 001-007

²⁹ DfT 138 - 146

³⁰ HO 001 & 015

³¹ HO 006 and HO 020

³² DEFRA 082

³³ DCLG 076 - 77

³⁴ DCLG 183

Example	LG Group recommendation	Rationale
		inappropriate.
Duties relating to the Clean Air Act 1993 ³⁵	Revise this requirement.	<p>Remove outdated requirements on local areas.</p> <p>Duties and their removal should be considered as part of a wider revision of the Act to make it fit for purpose.</p>
Duties relating to the Energy Performance of Buildings Directive ³⁶ .	Revise this requirement.	<p>Remove unnecessary prescription on local areas.</p> <p>The original EU Directive stipulated that public buildings of 1,000m² or over must display an energy certificate, the validity of which should not exceed 10 years. In transposing the Directive into UK law, DCLG decided certificates, should be renewed annually. This underestimated the start-up investments required for delivering these anticipated benefits and ultimately resulted in increased administrative and financial burden on councils.</p> <p>Following the revision of the Directive³⁷ prompting a revision of threshold downwards local authorities across the EU must produce more certificates. For English councils, this will cost disproportionately more because of the annual renewal issue.</p> <p>Renewal periods are brought in line with the minimum EU standard.</p>

³⁵ DEFRA 092

³⁶ 2002/91

³⁷ The Directive was revised in 2010 (Directive 2010/31) and will be transposed by December 2012.