



National Audit Office

Report

by the Comptroller
and Auditor General

Department for Communities and Local Government

Local government new burdens

Summary

The New Burdens Doctrine

1 Since 2010, local authorities have worked with financial constraints. Central government has significantly reduced its funding to local authorities. It has also tried to limit authorities' council tax increases. It has offered them 'freeze' grants and required them to get taxpayers' consent for increases above a level that Parliament set. We have estimated that from 2010-11 to 2015-16,¹ according to the government's measure of changes in income, local authorities' 'spending power' will have reduced by 25%.

2 Local authorities have coped well with these income reductions, largely by reducing spending. Authorities have mostly protected spending on statutory services but have significantly reduced spending on some discretionary services.

3 The government recognises that placing unfunded new requirements on local authorities puts pressure on them either to increase locally raised income or reduce spending on existing activities. In 2011, the government reaffirmed its commitment to the New Burdens Doctrine (the Doctrine). The Doctrine set out how the government would ensure that new requirements that increased local authorities' spending or reduced their income did not lead to excessive council tax increases. The Doctrine commits the government to assess and fund extra costs for local authorities from introducing new powers, duties and other government-initiated changes. If the government fails to apply the Doctrine properly, local authorities would have to meet additional costs.

4 The Department for Communities and Local Government (the Department) is responsible in central government for local authority funding. It oversees and coordinates, as part of its wider work on local government finance, how the government applies the Doctrine. Departments that initiate changes are responsible for assessing potential new burdens.

5 The Department published guidance for departments on how to apply the Doctrine. This indicates:

- government actions that might create new burdens;
- how departments should assess potential new burdens; and
- how the government will evaluate implementation.

¹ Comptroller and Auditor General, *Financial sustainability of local authorities 2014*, Session 2014-15, HC 783, National Audit Office, November 2014.

6 Importantly, the new burden assessment process requires departments to consult local authorities to understand how new requirements will affect them.

Our report

7 This report considers how well the government has applied the Doctrine. Our audit approach and evidence base are described in Appendix One and Appendix Two, respectively.

8 Our findings draw on evidence the Department provided about how it manages, supports, challenges and evaluates departments' work on new burdens. We also draw on evidence from government departments and local government representatives on how departments assessed the following potential new burdens, as case studies:

- Changes to statutory guidance under section 182 of the Licensing Act 2003 (Home Office).
- Introducing a right to free early education for disadvantaged 2-year-olds (Department for Education).
- Transferring funding for local welfare assistance (Department for Work & Pensions).
- Requiring authorities to comply with some parts of the *Local Government Transparency Code* (Department for Communities and Local Government).
- New duties in 2015-16 introduced by the Care Act (Department of Health).²
- Transferring the Local Land Charges register from local authorities to HM Land Registry (HM Land Registry).

9 Our report has three parts:

- Part One describes recent changes to local authority finances and the Doctrine's aims and scope.
- Part Two considers how well the Department manages and oversees the new burdens regime.
- Part Three examines how government departments have assessed new burdens, drawing on our case studies.

2 A more extensive examination of Care Act implementation is provided in: Comptroller and Auditor General, *Care Act first-phase reforms*, Session 2015-16, HC 82, National Audit Office, June 2015.

Key findings

Managing and overseeing the regime

10 The Department has effective ways to find out about potential new burdens.

Departments know they must tell the Department about potential new burdens. Policy clearance processes make it unlikely that potential new burdens escape the Department's attention. The Department gives local authorities opportunities to raise concerns about new burdens (paragraphs 2.2 to 2.8 and Figure 6).

11 The Department scrutinises policy changes which could potentially be new burdens and takes a proportionate approach to decide which of these departments should assess fully.

The Department's new burdens team scrutinises potential new burdens it learns about based on information from departments. It decides which of these departments must assess, based on the potential for controversy, complexity and likely cost of new requirements. This approach means the administrative burden on departments is minimised while ensuring they scrutinise potentially significant new burdens. About one-third of the potential new burdens considered by the Department since 2008 were assessed by departments (paragraphs 2.9 to 2.12 and Figures 7 and 8).

12 Although it has no reason not to, the Department does not publish routinely details of potential new burdens it considers or assessments done.

This lack of transparency undermines the Department's efforts to consult with the local government sector and creates uncertainty for local authorities (paragraphs 2.13 to 2.14 and Figure 9).

13 The Department provides guidance and support for assessments, which departments have welcomed, but it could challenge other departments more.

The Department's guidance has helped departments to assess new burdens. The vast majority of departments in our review were positive about the Department's support during assessments. The Department challenges other departments on some aspects of their new burden assessments. However, we identified cases where more scrutiny by the Department of costs would have been desirable to reduce the risk of underfunding authorities (paragraphs 2.15 to 2.18 and Figure 10).

14 The Department has not encouraged departments to review their assessments and has no method to capture and share learning.

Review and learning are important to ensure the new burdens regime operates fairly for local authorities. Departments should review uncertain assessments after introducing changes to ensure local authorities get the right funding. The guidance says the Department will select up to 6 assessments for independent post-implementation review each year, and discuss with departments their approaches to doing assessments. We found no reviews or learning had taken place since 2009 (paragraphs 2.19 to 2.22).

15 Inadequate information systems limit how well the Department uses intelligence from the new burdens regime to understand local government pressures, but this is improving. At the start of our review, the Department's system for recording and tracking action on potential new burdens was weak. The Department did not maintain it well and could not extract useful data from it. The Department could not easily supply a list of completed assessments or of 'live' new burdens. Since November 2014, the Department has improved its tracking system and must now record and monitor burdens routinely (paragraphs 2.23 to 2.26).

Departments' new burden assessments

16 Departments take the cost assessment process seriously but have struggled in some cases to get reliable cost data from local authorities. Departments used a variety of existing data and collected new data from authorities to model likely costs of new burdens. However, estimating reliably the volume of new activities and associated costs or savings is difficult for authorities. There can often be little data to inform departments' assessments (paragraphs 3.2 to 3.4 and Figure 12).

17 Departments rarely outline explicitly the uncertainty of cost estimates in their assessments, even where this is high. Data limitations lead to uncertainty in assessments which increases the risk that local authorities will not be appropriately funded for new burdens. This, in turn, increases the need to review new burden cost estimates after implementation. The lack of evidence that departments review their new burden assessments is therefore concerning (paragraphs 3.5 to 3.7, 3.19 and Figures 13 and 14).

18 Some departments' approaches for calculating costs created risks that new burdens would be under- or over-funded. Risks arose where departments made efficiency assumptions, used central estimates and agreed funding separately from assessments (paragraph 3.8 and Figure 15).

19 Departments have consulted well with local authorities, using different methods. In our case studies, departments supplemented formal consultations with, for example, surveys, workshops and regional events. Departments consulted with the Local Government Association and other representative bodies. But sector representatives said departments were not transparent about how they reached decisions (paragraphs 3.9 to 3.13 and Figure 16).

20 Departments' new burdens funding to local authorities is not always transparent and can be reduced quickly, resulting in concerns about underfunding.

New burdens funding from grants outside the Revenue Support Grant is separately identifiable. However, when new burdens funding merges into Revenue Support Grant it is less clear how much funding local authorities get. It can also quickly become subject to reductions. In 2 case studies, funding methods require local authorities to negotiate with local partners to agree the levels of new burden funding they get (paragraphs 3.14 to 3.17 and Figures 17 and 18).

21 There is little evidence of departments reviewing new burden assessments after introducing new requirements. This suggests departments have not tested the accuracy of their estimates and assumptions against experience or learnt from their approaches to assessment (paragraphs 3.18 to 3.19 and Figure 19).

Conclusion

22 As the government reduces core funding to local authorities, it has committed to assess and fund new burdens it places on them, to avoid putting additional pressure on council tax and existing services. It is not only important that departments assess new burdens rigorously, but they must do so transparently, to ensure local authorities perceive the process as fair. Departments must also test their assessments after new burdens are implemented to make sure that funding is appropriate, particularly when assessments contain significant uncertainty.

23 Departments have embraced the Doctrine. The Department's guidance has promoted consistent assessments and encouraged departments to consult local government on the impact of new requirements. But the government is not sufficiently open about which new burdens are assessed and the outcome of assessments. The Department has also not promoted reviews of assessments after new burdens are introduced, to ensure funding is adequate.

24 The Department needs to use intelligence from the new burdens regime better, to improve its understanding of pressures affecting local authorities' financial sustainability. Even though many new burdens are small, their cumulative impact could matter and should be considered when government sets local authority funding. The Department has taken steps since November 2014 to improve its understanding of new burdens. It will need to continue to do so, to feed this knowledge into the next spending review.

Recommendations

- 25** To manage the new burdens regime better to ensure it operates fairly for local authorities the Department should:
- a** be transparent about which potential new burdens departments formally assess and which they do not, and why, and publish their completed assessments, to engage local government in a dialogue about new burdens;
 - b** ensure assessments scrutinise sufficiently the disproportionate effect for some authorities of new burdens that have a low impact overall;
 - c** use its information on potential and agreed new burdens to understand the cumulative financial pressures on local authorities, to help the Department in cross-government discussions about local government funding;
 - d** review its support, challenge and guidance to departments to ensure these match the government's intentions; and
 - e** ensure that, where necessary, departments review new burden assessments after introducing new requirements, and capture and share lessons to improve assessments.