



Localism Bill: general power of competence for local authorities

Impact assessment



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local authorities
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Title: Localism Bill: general power of competence for local authorities Lead department or agency: Department for Communities and Local Government Other departments or agencies:	Impact Assessment (IA)
	IA No: DCLG 0044
	Date: January 2011
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation
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Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Research has indicated that the existing broadly defined well-being power in the Local Government Act 2000 has not been widely used by local authorities. A recent Court judgement also threw into doubt the use of the power in enabling local authorities to give guarantees and indemnities and to act in their own financial interest to generate efficiencies and secure value for money outcomes. Therefore, to both rectify this situation and promote the radical devolution of power away from Westminster and Whitehall to councils and communities, the Government is intending to replace the existing well-being power with a general power of competence for local government, to be taken forward through the forthcoming Localism Bill. This change can only be effected through primary legislation.

What are the policy objectives and the intended effects?

To replace the current 'well-being' power with a broader definition of the capacity of local authorities to act, the proposed general power of competence will build on proposals in the Coalition Government Agreement. It is intended to change fundamentally the way local government behaves, giving them the same capacity to act as an individual generally has, which will enable them to do anything apart from that which is specifically prohibited. This will result in greater innovation and a new, more confident and entrepreneurial approach which should, in turn, lead to greater efficiencies, improved partnership working and the ability to help their communities in ways previously outside their remit. General powers will also be given to Fire and Rescue Authorities that are not also county or district councils (see separate Impact Assessment).

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

1. Doing nothing would not meet Government's stated objective of providing local authorities with a general power of competence.
2. Amending the well-being power by removing the reference to social, economic and environmental well-being and adding provisions to enable local authorities to act in their own financial interest to generate efficiencies and secure value for money outcomes is not given a cost benefit analysis in the Impact Assessment as it would not deliver the required cultural shift and increased confidence of a bespoke general power of competence.
3. Providing a new general power of competence for local authorities would enable them to: act in the interest of their communities and in their own financial interest to generate efficiencies and secure value for money outcomes; to raise money by charging and trading in line with existing powers and to provide indemnities and guarantees. This option is viewed as most likely to deliver the required outcome ie to provide councils with the legal capacity to do anything that is not otherwise expressly prohibited.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?

It will be reviewed
01/2016

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Not currently.

Ministerial Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: Greg Clark..... Date: January 2011

Summary: Analysis and Evidence

Policy Option 3

Description:

Provide Local Authorities with a General Power of Competence

Price Base Year	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

N/A.

Other key non-monetised costs by 'main affected groups'

The proposed legislation does not entail any direct costs for local authorities since it is an enabling power, giving local authorities the discretion to use it if they wish to do so. It is possible that local authorities could incur particular costs as a result of engaging in an activity but because it is a general discretionary power it is impossible to predict what these would be.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

N/A

Other key non-monetised benefits by 'main affected groups'

There should be a reduced demand on legal resources by local authorities i.e. in considering the application of specific powers to take action where they consider such action is justifiable. It could also reduce the actual and potential costs arising from legal challenge. Perhaps most importantly, the power could significantly increase the confidence of local authorities, enabling them to consider more innovative approaches to service delivery and efficiency savings thus helping them to deliver 'more for less'. Successful examples of implementation should further increase the confidence of local authorities to make greater use of the power.

Key assumptions/sensitivities/risks

Discount rate (%)

N/A

The new power is intended to both remove limitations in existing powers and reduce the risk of legal challenge thus giving local authorities increased confidence in their legal capacity to act both on behalf of their communities and in their own interest to generate efficiencies and savings. The risk of substantial misuse of public resources is seen as unlikely given the degree of internal local authority and external scrutiny to which local authorities' use of resources is typically subjected.

Impact on admin burden (AB) (£m):	Impact on policy cost savings (£m):	In scope
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New AB: N/A	AB savings: N/A	Net: N/A	Policy cost savings: N/A	Yes/No
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Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England		
From what date will the policy be implemented?			2011		
Which organisation(s) will enforce the policy?			None		
What is the annual change in enforcement cost (£m)?			N/A		
Aoes enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A
Does the proposal have an impact on competition?			Yes, but see evidence		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: N/A		Benefits: N/A
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro -	< 20 -	Small -	Mediu m	Large -
Are any of these organisations exempt?	N/A	N/A	N/A	N/A	N/A

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance	No	7
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	7
Small firms Small Firms Impact Test guidance	No	7
Environmental impacts		
Greenhouse gas assessment	No	7
Wider environmental issues	No	7
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	7
Human rights Human Rights Impact Test guidance	No	7
Justice system Justice Impact Test guidance	No	7
Rural proofing Rural Proofing Impact Test guidance	No	7
Sustainable development Sustainable Development Impact Test guidance	No	7

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

Evidence Base

No	Legislation or publication
1	<u>Local Government Act 2000:</u> http://www.opsi.gov.uk/acts/acts2000/ukpga_20000022_en_2#pt1
2	Providing powers for best value authorities to participate in mutual insurance arrangements: Impact Assessment CLG 2009 http://www.communities.gov.uk/publications/localgovernment/bestvalueauthorityvia?view=Standard
3	Practical use of the well-being power CLG 2008 http://www.communities.gov.uk/publications/localgovernment/practicalwellbeingpower
4	Comprehensive Performance Assessment - The Harder test: scores and analysis of performance in single-tier and county councils 2008, Audit Commission 2009 http://www.audit-commission.gov.uk/SiteCollectionDocuments/AnnualReports/2009/05032009CPATheHarderTestREP.pdf
5	Summing up: a review of financial management in local government 2005-2008 http://www.audit-commission.gov.uk/SiteCollectionDocuments/AuditCommissionReports/NationalStudies/23042009summingupREP.pdf
6	Local authorities' power to trade following the end of categorisation under Comprehensive Performance Assessment: Impact Assessment, 2009. http://www.communities.gov.uk/publications/fire/latradepowersia
7	The CLG Select Committee report <i>Balance of Power: central and local government</i> May 2009

Evidence Base (for summary sheets)

Introduction

This impact assessment reports on the potential impact of implementing the Coalition Government's commitment to provide councils in England with a general power of competence. This proposal is an important part of the decentralisation and localism elements of the Coalition Agreement and will help promote the devolution of power away from Westminster and Whitehall to local councils and communities. Local people will expect more from their councils as they become more involved in local democracy through the Big Society and the proposed new power will assist local authorities in meeting that challenge with confidence, changing the way they behave by both enabling them and encouraging them to be much more active and innovative. This should lead to new entrepreneurial approaches, better service delivery more tailored to local problems, more effective partnerships and greater efficiencies. The intention is that provisions should be included in the *Localism Bill*, with Royal Assent and implementation planned for the end of 2011.

Background

Local authorities are creatures of statute. Their role is defined in numerous different Acts of Parliament and they are unable to act unless given the power to do so by legislation. The well-being power set out in sections 2–5 of the *Local Government Act 2000* was meant to enhance their legal capacity by giving local authorities in England and Wales a broadly defined power to improve the economic, social or environmental well-being of their local area, subject to certain restrictions – including the power to raise money.

The general power of competence for local government is a concept that has been the subject of some debate over a number of years, so far without converging on a single definition. It was raised by the DCLG Select Committee as part of their report, *The Balance of Power: Central and Local Government* (May 2009), by the Conservative Party Policy Green Paper, *Control Shift: Returning Power to Local Communities* (February 2009) and the Local Government Association in its draft *Local Government Power of General Competence Bill*, (March 2010).

The issue of local government powers is also included in *The Coalition: our programme for government* (May 2010) as follows: “*The parties will promote the radical devolution of power and greater financial autonomy to local government and community groups*”. Chapter 4 states: “*We will give councils a general power of competence*”.

Problem under consideration

Whilst in general terms the well-being power has been upheld by the courts as a broad power, research into its use in 2008 showed that only 15 per cent of local areas said they had made use of the power in pursuing their objectives since its introduction. We understand that the tendency is to rely on a specific power wherever possible as this is considered less risky i.e. in terms of likelihood of legal challenge.

In addition, a recent Court of Appeal judgment on mutual insurance arrangements by a number of London councils (the *London Authorities Mutual Ltd – the LAML case*), in June 2009 has put a limit on the well-being power in relation to ‘speculative activities’ and the giving of guarantees and indemnities. The London Authorities Mutual Ltd case also raised concerns about whether local authorities had the power to act in their own financial interest to generate efficiencies and secure value for money outcomes – an increasingly important ability given the current financial climate. This has meant that local authorities have felt increasingly constrained in acting innovatively or entrepreneurially to the overall benefit of their local area.

Rationale for intervention

The research and court case taken together have shown that there are doubts about the breadth of the well-being power and a lack of confidence within local authorities in using it, which has resulted in more attention, and calls for a general power of competence as a possible

solution. Given that local authorities are creatures of statute, and can only act where they have specific powers to do so, the only effective option for intervention would be a legislative one.

Local people will increasingly expect more from their local council as they become more involved in local democracy through the Big Society, and the proposed new power will help local authorities to meet that challenge. Therefore, to both rectify the problems identified above and promote the radical devolution of power away from Westminster and Whitehall to councils, communities and individuals, the Government intends to introduce a general power of competence for local government, an important part of the Decentralisation and Localism elements of the Coalition Agreement, to be taken forward through the *Localism Bill*.

Summary policy objectives

To provide local authorities with a general power of competence, building on proposals in the Coalition Government agreement. This aims to fundamentally change the way in which local authorities behave, by giving them the same capacity to act that an individual generally has, apart from that which is specifically prohibited.

Together with other measures in the forthcoming bill, the policy aim of the new general power is to bring about a cultural shift in the way that local authorities behave, by both enabling them and encouraging them to be much more active and innovative. In turn this will develop into to a new, more confident, civic entrepreneurialism, leading to more effective services, increasingly tailored to local problems, improved partnerships and the potential to work both with their communities in ways that were previously outside their remit and in their own interest to generate efficiencies and deliver 'more for less'.

Individual proposals in more detail

The key element of this policy will comprise a provision in legislation that will provide local authorities, and parish councils that meet certain minimum standards, with the same capacity to act as an individual generally has, which will enable them to do anything apart from that which is specifically prohibited.

The power will also:

- allow authorities to act in their own financial interest to generate efficiencies and secure value for money outcomes and to raise money by charging for discretionary services and trade in line with existing powers.
- allow authorities to engage in activities, ruled by the Court of Appeal in the '*London Authorities Mutual Ltd*' (LAML) case, as outside the well-being power, such as providing certain indemnities and guarantees and engaging in speculative activities.
- provide the Secretary of State with a power to amend or repeal enactments that prevent or obstruct local authorities from using the power, and to remove overlapping powers.

However, some limitations will be placed on local authorities' powers. In particular, they will remain governed by the existing regimes in relation to taxation, precepting and borrowing (including Prudential Borrowing). Councils will also be required to act in accordance with statutory limitations or restrictions on their powers.

The Secretary of State will also have powers to set conditions, or prevent authorities relying on the power in specified circumstances.

Links to other policies and strategies

This Impact Assessment should be considered together with the overall impact assessment for the Localism Bill and linked with the impact assessment for a power of competence for Fire and Rescue Authorities in England.

More broadly, this policy forms part of the Structural Reform Plan for DCLG (Action 2.1i(a)) and will be a delivery agent for elements of the decentralisation agenda.

Specific Impact Tests

The potential impact of this policy has been considered in line with the relevant guidance in the following areas: an initial new burdens assessment has been completed, together with an initial equalities assessment. However, given that the power of general competence would be for discretionary use by local authorities, our view is that there is no new burden on local government as they would be choosing to use the power, and furthermore that it would be for local authorities to assess the impact on minority groups when formulating their proposed use of the power.

For similar reasons, we believe that the duty to undertake other environmental, social and sustainable development impact assessments would similarly rest with the local authority wishing to make use of the power and have therefore not completed initial assessments for these tests.

It is possible that local authorities may choose to use the power to engage in activities that might bring them into competition with business. However, to some extent the existing well-being power already permits this, and we are not proposing any changes to the existing charging and trading regimes that would enable local authorities to compete unfairly with businesses. As an example, in relation to the mutual insurance court case and subsequent action being taken by Government to enable local authorities to engage in mutual insurance arrangements, the initial evidence, as detailed in that impact assessment, would suggest that where local authorities have entered that market – or are enabled to – it would be more likely to aid competition and diversity of supply, as well as causing existing suppliers to consider their pricing strategies, than be anti competitive. Given that it is impossible to assess where local authorities might choose to enter the market in relation to the general power of competence, we believe that a competition or small business assessment could not be completed at this time.

Description of options considered

Option 1: do nothing – keep the well-being power

Option 2: amend the current well-being power – there are some variations to this but it might be possible to provide a broader power by amending section 2 of the 2000 Act to remove the reference to social, economic and environmental well-being and adding suitable provisions to ensure that local authorities would be empowered to act in their own financial interest to generate efficiencies and secure value for money outcomes.

Option 3: provide a new general power of competence for local authorities – this would provide a clearer statement which was less liable to interpretation by the courts of local authorities' freedom to act while incorporating the entitlement to act on behalf of their communities, to act in their own financial interest, to generate operational and other efficiencies, secure value for money outcomes; to raise money by charging for discretionary services and trade in line with existing powers² and to provide indemnities and guarantees. This option was viewed as the one most likely to deliver a widely based general power that would give councils the legal capacity or competence to do anything that is not expressly otherwise prohibited.

² For example, local authorities have a pre-existing power to trade. Section 95 of the *Local Government Act 2003* (“the 2003 Act”) authorises the Secretary of State, by order, to permit Best Value authorities to do for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions. This is commonly known as the power to trade. The power to trade is only able to be exercised through a local authority company (within the meaning of Part 5 of the *Local Government and Housing Act 1989*). Guidance on the new trading powers was published by ODPM on 28 July 2004. Under these powers, local authorities authorised to trade were those with a Comprehensive Performance Assessment rating of ‘excellent’, ‘good’, or ‘fair’, ‘and ‘4-stars’ to ‘1-star’ authorities. Other orders have been made in relation to Fire and Rescue authorities but not in relation to other best value authorities. However, from 1 October 2009, commercial trading powers have been available to all local authorities. The related impact assessment can be found at <http://www.communities.gov.uk/publications/fire/latradepowersia>. Trading under the power needs to be directed towards the achievement of Best Value in the related function. This means that local authorities cannot set up trading arms unrelated to core services or functions. The trading power is essentially an enabling power and other than presenting a scenario, the impact assessment did not make any predictions as to the form and scope of any trading activity that could arise from the extension of the power.

Costs, Benefits and Risks

Introduction

Both the well-being and general power of competence are enabling powers – local authorities are not being asked to comply with a prescription – rather they can act on their own volition using the powers. Moreover, the deliberately broad definition of the powers means that there is no typical application. Research from the well-being study identified activities as diverse as estate regeneration in Wakefield to a waste transfer station in Devon. Therefore there is no realistic or reliable way of predicting costs and benefits as a result of enabling local authorities in this way.

The operation of these new wide powers may bring additional risks alongside the potential benefits. However given the difficulties in trying to predict specific local authority behaviour in their use of the power, we have sought to provide reassurance to the question; what assurance is there that local authorities will, in general, act both lawfully and with the overall effect of making net beneficial use of any public expenditure incurred as a result of exercising the power? A key component of this assurance is the wide ranging safeguards in place – detailed below – within which local authorities operate but especially with the regard to the range of safeguards in place concerning the financial control systems of local authorities: These include:

General Public Law constraints

Local authorities, as decision making public bodies, are subject to judicial review on public law grounds, such as the ‘reasonableness’ of decisions. The practical effect of potential challenge is that over time local authorities have adopted auditable practices which demonstrate not only the apparent robustness of decision making but which assist local authorities in acting on a sound footing through business case development, option appraisal etc.

Specific Legal Safeguards Concerning the Use of Financial Resources

These are:

- the duties on an authority's chief finance officer to report to the council or cabinet when some part of its decision making machinery has made, or is about to make, a decision that would contravene the law or incur unlawful expenditure (Part 8 of the Local Government Finance Act 1988 and Part 1 of the Local Government and Housing Act 1989), The decision maker is then barred from taking action to implement the decision until they have considered the report
- the duty of an authority to ensure that its financial management is adequate and effective, that it has a sound system of internal control which includes arrangements for the management of risk, to review the system of internal control at least annually and, based on the review, to approve a statement on internal control to be published with the annual statement of accounts (Accounts and Audit Regulations 2003)
- the duty to maintain an adequate and effective internal audit of the authority (Accounts and Audit Regulations 2003)
- the duty to balance the revenue budget annually (Local Government Finance Act 1992 and Part 2 of the Local Government Act 2003)
- under the Prudential System, the restriction of borrowing to what is affordable (Part 1 of the Local Government Act 2003).

External audit

In addition, the external auditor will be concerned about internal control systems, both as part of the audit of the statement of accounts and as part of the auditor's duty to assess arrangements for securing value for money and compliance with legal requirements. The auditor has a duty to make a public report when matters come to light that need to be brought to the attention of the authority or the public. The regular annual audit reports are also available to the public.

Best value regime

Best value authorities are required to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. This includes consulting representatives of: local tax payers, business rate payers, services users, and others with an interest in the area.

Other safeguards

Our proposals will not provide local authorities with any new power to raise tax or precepts, or to borrow. Neither will the proposals enable councils to set charges for mandatory services, impose fines or create offences or byelaws affecting the rights of others, over and above existing powers to do so. But it will be designed to allow councils to undertake innovative activity to drive efficiency and therefore will result in them – potentially – undertaking activity that presents some risk to the tax payer.

However, local authorities would continue to be obliged to follow the law of the land. As an example; our proposals will not enable local councillors to wage thermonuclear war due to existing preventative legislation including: the Nuclear Materials (Offences) Act 1983, the Nuclear Safeguards Act 2000 and the Environmental Permitting (England and Wales) Regulations 2010.

Finally, local authorities will also still need to abide by all relevant regulatory regimes – such as, for example, those governed by the Financial Services Authority if they were seeking to engage in financial services - as well as the specific rules applied to local government in relation to audit and related financial regimes mentioned above and, where trading is involved, company law. As stated above therefore, we believe that no separate competition or small business assessment is necessary.

In all, there is a complex system of checks and balances in place that help to prevent inappropriate risk taking that would lead to general misuse of public funds.

Local authority financial control - evidence

The existence of a legal and auditing framework does not mean that local authorities necessarily comply with such requirements. However, data from the Audit Commission concerning the financial management processes of local authorities suggest that in general local authorities have sound mechanisms in place to manage financial risks.

The Use of Resources block of the 2008 Comprehensive Performance Assessment (CPA) scored upper-tier local authorities from 0 to 4 across a range of financial governance related activities, with 4 being the best performing and 2 meaning that only minimum standards were being met. However, for each of the components making up the Use of Resources block, most local authorities score either a 3 or a 4, suggesting a relatively high degree of professional standards concerning the management of public funds.

Table 1

CPA Use of Resources Components	% of Scoring Authorities *			
	1	2	3	4
Financial Reporting	5	34	51	9
Financial Management	1	9	73	17
Financial Standing	1	8	68	23
Internal Control	1	17	67	16
Value for Money	0	22	65	13
Use of Resources	0	9	69	22

* Best performance is scored 4 and worst is 1.

Source: Comprehensive Performance Assessment – The Harder Test , 2008, Audit Commission

Notes:

'Financial Reporting' assess the quality and timeliness of financial reporting by councils;

'Financial Management' encompasses assessment of medium-term financial planning, budget management and asset management;

'Financial Standing' assesses how well a council manages its spending within available resources;

'Internal Control' assesses whether a council has effective arrangements to ensure proper use of public funds and manage its risks;
'Value for Money' assesses the extent to which councils achieve efficiencies and improve services through, for example, the use of innovation and collaborative working with other partners

Conclusion

Given the safeguards identified above, and the evidence of good financial management practice operated by local government and demonstrated through audit, we can be reasonably confident that this new power for local authorities will, through its use, produce benefits that significantly outweigh the identified risks that would accrue from increased innovative and entrepreneurial action. However, we are intending to monitor such residual risks through the action identified in the Post Implementation Review section.

Costs Benefits and Risks of the Options

Option 1: do nothing

Costs and benefits of the status quo

The well-being power remains a broad power and renewed use might be encouraged through publicising the power, perhaps with vanguard authorities and other councils who have asked for more power to act. However, the London Authorities Mutual Ltd court case and other challenges appear to have undermined wider take up of the existing power and highlighted its limitations.

Although there is a lack of recent information on precise take up, the message from local authority representative groups is that there has been a loss of confidence in the existing well-being provisions following the London Authorities Mutual Ltd case. It was this loss in confidence that has prompted calls for a general power of competence by the Local Government Association among others. It is argued that without any strengthening of the provision, local authorities would remain reluctant to use the existing power owing to the possibility of legal challenge and its associated costs.

Risks

The risks of using the power are reasonably bounded. However, the increased risk is now that local authorities could be doing something for their communities but not doing it on account of loss of confidence in the provision and increased likelihood of legal challenge. Local authorities are therefore now possibly more risk averse in respect of using the power of well-being than they were previously.

Option 2: amending the well-being powers

Costs and benefits

Whilst amendment of the existing well-being power may lead to increased take up by authorities, confidence in the breadth of the power has fallen and any amendment may not convince enough authorities to increase their exercise of the power or reduce the possibility of legal challenge to using the power. In effect, an amendment of the existing well-being power would not deliver the required cultural shift and increased confidence in local government of a bespoke general power of competence. Whilst an amendment to the well-being power would enable local authorities to act both on behalf of their communities and in their own interest to generate efficiencies and achieve value for money outcomes, as well as engage in mutual insurance arrangements, uncertainties would still remain about the breadth of the power and risk of legal challenge.

Risks

Concerns remain that the courts would still interpret this amendment as a power to achieve what they regard to be the 'proper objects' of a local authority, and - as these are not set down - they will continue to decide what those objects are. This, therefore, does not provide us with comfort that the London Authorities Mutual Ltd case mentioned above would have been decided differently under a broader power expressed in this way and would therefore not lead to the

cultural shift and increased confidence for local authorities of a bespoke general power of competence.

Option 3 - Provide local authorities with a general power of competence

Costs and benefits

Such a power will result in a fundamental change in the status of councils. Rather than looking for a specific power to act, they need only consider whether there are any restrictions that would stop them from doing what they want to, whereas amendment of the well-being power would not achieve this aim. Overall, net benefits would include increased confidence in acting through using the power. In addition, the ability to act in their own interest should be a key means by which local authorities develop innovative approaches through a new civic entrepreneurialism, delivering 'more for less', resulting in more efficient and effective service delivery that is better tailored to local circumstances, with the ability to help their communities in ways previously outside their remit.

The new power may also result in less use of costly legal resources by local authorities, given the breadth of the new power and therefore the reduced likelihood of legal challenge and associated costs in defending their actions. Whilst the general power of competence is an enabling power, and has been designed to change local authority behaviour, the deliberately broad definition makes it extremely hard to predict how it will be used. Therefore, whilst it is difficult to quantify either the costs or benefits of any option, the potential total net benefits delivered through option 3 are likely to be greater compared to either option 1 or 2.

Risks

While use of the general power is likely to result in an increase in the number and scope of activities undertaken by local authorities, this in turn could lead to increased risk of project failure. However, it is arguable that acceptance of some risk is necessary if local authorities are to develop truly innovative and beneficial approaches. In any case, local authorities will continue to be obliged to follow the law of the land, which would prevent them from – for example, waging thermonuclear war – and the legal and audit framework bounding the activities of local authorities detailed above should ensure that the general power of competence yields overall net benefits and substantially so in comparison with the existing provisions.

Summary and preferred option with description of implementation plan

The preferred option is to replace the current 'well-being power' (section 2 of the *Local Government Act 2000*) with a new 'general power of competence' which will fundamentally change the way in which local government behaves, giving them the same capacity to act as an individual has to do anything other than that which is otherwise specifically prohibited. This power will fundamentally turn on its head the way in which local authorities have previously approached problems, enabling them to assume they have the power to act unless they are specifically prevented from doing so. This will result in greater innovation and a new more confident and entrepreneurial approach which will, in turn lead to greater efficiencies, improved partnership working and the ability to aid their communities in ways previously outside their remit.

The Department will look at how the impact of the policy can be monitored and evaluated through its programme of local government research.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A post implementation review should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. This should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences.

Basis of the review:

The policy objective is to provide councils with greater choice and flexibility when deciding on how best to discharge their functions. Therefore, the objective (or outputs) will be met once the Bill receives Royal Assent and the provisions have been implemented, and councils have an opportunity to act upon them.

Outputs reflect whether changes are introduced; outcomes reflect whether local authorities feel empowered by the choice provided, and able to act more effectively as a result. The proposed Post Implementation Review reflects this distinction. It is intended that longer-term outcomes emanating from the introduction of policies within the Localism Bill, will be measured through a possible panel of local authorities to review policies across the Bill.

Review objective:

The review is intended to be a proportionate check that legislation is operating as expected. A narrow monitoring exercise will allow an assessment of the extent to which local authorities chose to use the general power of competence; a wider cross-Localism Bill review of the outcomes will allow local authorities – and central government – to understand the impact of policies collectively upon their activities and approach.

Review approach and rationale:

The approach is two-fold, reflecting both the need for any Post Implementation Review to be proportionate, and also taking advantage of the opportunity to brigade monitoring across the wider Localism Bill, to reduce the resource implications (both time and money), but increasing the opportunity for local authorities to understand the collective impact of policies:

- (1) A narrow, proportionate, response to the specific policies around the application of the general power of competence which involves monitoring of local authority take up of the general power. It is envisaged that DCLG will take responsibility for identifying local authorities which have chosen to apply the power, in what circumstance and to what apparent effect.
- (2) A wider, but streamlined, approach to understanding the impact of the policies across the Localism Bill, and in particular in terms of use of the new power upon local authority perceptions of: their degree of freedom, on their capacity to act effectively, their accountability (and visibility) to the local electorate and the impact upon costs. A cost-effective way to identify these longer-term impacts might be through a panel of local authorities, convened possibly by DCLG or other third parties, whose purpose is to identify and share experiences and implications of implementing policies across the Localism Bill. Such a panel would seek to be representative of all authorities: geographically, structurally, politically and demographically, and foster shared understanding and learning about the implications of policies, and the opportunities they present to increase local authority effectiveness.

Over the coming months, further details of any proposed research and analysis will be considered by a Localism Bill review steering group, to ensure that the methods are appropriate, proportionate, and cross-cutting where possible, so that we collect only essential information/data at both the baseline and follow-up review stages.

Baseline:

The baseline would essentially be the local authorities' views on, and application of, the current well-being arrangements.

The impact of the policy is reflected both in the extent to which local authorities apply the general power (output) but also their increased sense of choice and confidence about how they wish to fulfil their functions (outcome).

Success criteria:

Local authority application of the general power is one, if partial, measure of success. However, success is probably more fully measured by the extent to which local authorities perceive that they have greater freedom and choice in acting – both on behalf of their local communities and in their own interest – in the most effective, efficient and accountable way.

Monitoring information arrangements:

Monitoring arrangements need to be proportionate, but also allow local authorities to understand the impact of policies upon themselves and others in the sector. The proposal for monitoring is two-fold:

- (a) Ongoing monitoring, by DCLG, of the take-up by local authorities of the General Power
- (b) Longer-term review, through a panel of local authorities, of the perceptions and impacts of policies across the Localism Bill.

Reasons for not planning a PIR: N/A