Local Government Association briefing, Enterprise Bill, House of Commons, Second Reading
2 February 2016

KEY MESSAGES

- The LGA supports the intention of the Enterprise Bill to promote economic growth. Councils can play a key role in this. We want to work closely with Government on proposals on the Primary Authority Scheme, apprenticeships, non-domestic rates and plans for a public sector exit payment cap to ensure these are workable and do not negatively impact on local authorities.

- **Clause 19:** The proposed extension of the Primary Authority Scheme to smaller businesses and to include other regulators is welcome. We are however calling for the Bill to be amended to enable a primary authority and business to negotiate an agreed fee to be charged for primary authority services. This would mean councils could charge at less or more than cost recovery rate as long as the fee was agreed with the business.

- This measure would also ensure councils were not forced to charge at less than the market rate for some of the services provided, as is the case at the moment. 45 per cent of businesses surveyed by the Better Regulation Delivery Office recognised that the level of service they received was worth more than the amount they paid for it[1].

- **Clause 20:** We do not support proposals in the Bill that would allow the Secretary of State to set mandatory apprenticeship targets for prescribed public bodies, including for local authorities. Central government should work closely with local government, through the LGA, to develop alternative routes to local authorities supporting central government's objectives.

- Many councils are having to reduce workforce numbers further over the next four years, some up to 40 per cent. This means councils may lack both the job opportunities or people to deliver a centrally determined target on apprentices.

- We are calling for the Bill to be amended to enable a prescribed public body to set apprenticeship targets for its subcontractors. If apprenticeship targets are imposed on councils we would like to work with Government to ensure that any apprenticeships created through councils contracts are included and accounted for in any apprenticeship targets set for councils.

- **Clause 25:** We support giving the Valuation Office Agency (VOA) the power to share data on non-domestic rates with councils, which is not currently possible. The Government has consulted on council tax collection ("*Improving efficiency of council tax collection*"[2]) and through our response to this we are calling for the VOA to also have the power to share council tax data to match that proposed by the Bill on sharing business rates data.

- **Clause 26:** We support Clause 26, alteration of non-domestic rating lists, which, if implemented, will allow for regulations to be introduced at a later date that would reform the business rates appeals process**.** There are currently around 300,000 appeals outstanding and councils are having to set aside around £1.75 billion to cover these potential costs.

- However, the Chancellor's announcement on local government retaining 100 per cent of business rates by the end of this Parliament means this £1.75 billion figure could potentially double for councils if no action is taken. We are calling on Government to

[1] Extending and Simplifying Primary Authority: Keeping the UK Competitive, 2015, Better Regulation Delivery Office, p16

[2] https://www.gov.uk/government/consultations/improving-efficiency-of-council-tax-collection

Briefing

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look urgently at reducing the risk for councils, for example through businesses self-assessing their rateable value at the time of business rates re-evaluation.

- **Clause 35:** We recognise the need to protect public funds but have a number of concerns about the proposal for a public sector payment cap as currently drafted. For example, it is vital the proposed exit cap is flexible and also updated on a regular basis to take into account differences in pay increases in separate areas of the public sector.

- Government should publish details on the implementation and scope of the cap as soon as possible in order to avoid negatively impacting on workplace restructuring processes in local authorities.

- Further, we are calling for immediate discussions between Government and stakeholders on technical considerations on the proposed exit cap; such as if the cap will include other means by which an individual can access an unreduced pension. For example, the Local Government Pension Scheme allows members to take some or all of their pension whilst still in employment, meaning a pensions strain cost may not become payable at the individual's point of exit, but beforehand.

- We also have concerns about how the proposed waiver process will apply in school settings where relevant governing bodies have their own decision making powers.

BACKGROUND INFORMATION

Extension of the Primary Authority Scheme

We support the proposed extension of the Primary Authority Scheme to smaller businesses and to include other regulators. The Scheme provides consistency for businesses operating in different areas and has a role to play in helping target reduced regulatory capacity across local government. We note that much of the detail of the expansion will be set out in regulations to be laid once the Bill has been passed. On this, it is important that there continues to be full consultation with businesses, councils and national regulators on the detailed proposals in advance of regulations and statutory guidance being introduced to ensure there is an appropriate opportunity to provide views on key issues.

Government should however update the basis on which councils can charge for the Primary Authority Scheme through the Enterprise Bill. Amending the legislation to enable this would ensure councils would be able to support their local economic development strategies by offering reduced primary authority fees to specific sectors or start-up businesses. It would also ensure that councils were not forced to charge at less than the market rate for some of the services provided, as is the case at the moment. 45 per cent of businesses surveyed by the Better Regulation Delivery Office recognised that the level of service they received was worth more than the amount they paid for it.

Public sector apprenticeship targets

We welcome the Government's recommendations to increase the number of apprenticeships available to young people. However, we do not support proposals in the Bill that would allow the Secretary of State to set apprenticeship targets for prescribed public bodies, including local government. Councils can support apprenticeship targets in other ways, such as through their varied role as local employers, commissioners and procurers of services, and their local and economic development functions working with employers. The Bill as currently drafted does not recognise this.

The local government workforce has steadily declined since 2010 and over six hundred thousand people have left the sector. This has led to reduced workforce capacity to support and deliver training and development, including for apprenticeships. Support for internal programmes has been reduced due to lack of funding, complex bureaucracy and lack of external support, and there is no longer any additional capacity in local government to run or manage apprenticeship programmes. Much of this decline in workforce numbers relates to jobs being lost or other agencies delivering council services.

Councils currently spend some £40 billion in revenue and a further £18 billion in capital contracting for goods, services and works. Local government wants to build long-term partnerships with suppliers that can help deliver significant local growth, while increasing skills and jobs. There is an opportunity for councils to use their buying power to work with suppliers to create apprenticeships, particularly in, but not limited to, the construction and care sectors (see example below). Should apprenticeship targets be imposed on councils we would like to work with Government to ensure that any apprenticeships created through councils contracts are included, and accounted for, in any apprenticeship targets set for councils.

- **Case study:** The LGA supports the Construction Industry Training Board (CITB) approach that recommends the creation of an employment and skills plan (ESP) for construction projects, and sets out a benchmark number of apprenticeships to be created in different types of construction. For example, the London Borough of Barking and Dagenham actively promotes training, employment and supply chain development through the CITB's National Skills Academy for Construction. The Borough embeds outcomes into the tender process for capital works. Contractors delivering capital works are required to produce ESP's and state in the tender process how this will be implemented.

The LGA is working with Whitehall departments to explore ways local government can contribute meaningfully to increasing apprenticeships, rather than by Government imposing targets. We will continue to make the case that if the Government is to set apprenticeship targets for local government then it must devolve funding for this area so councils can meet the needs of their residents and local employers.

Enforcement of statutory protection for apprenticeships

We note the proposal in the Bill to make local trading standards teams responsible for enforcing the protection of the term 'apprenticeships'. We understand from Government that it intends the Skills Funding Agency will take the lead in investigating inappropriate use of the 'apprenticeship brand'. It is expected that enforcement action by trading standards will be required in a limited number of cases only, and Government proposes to establish lead authority arrangements to oversee this. We welcome the fact that Government proposes to ensure new burdens funding directly supports those councils undertaking enforcement action in relation to apprenticeships, which will ensure that other trading standards services are not adversely affected by the new duty.

Non-Domestic Rating (business rates)

Clause 25 should lead to less duplication of effort and less business rates avoidance and is welcome. The Government recently consulted on improving the efficiency of council tax collection. Through this we called on the Government to also pass regulations to extend similar powers on data sharing for council tax, as currently this is permitted only for council tax support purposes. This would mean, for example, that councils could get an indication from the Valuation Office Agency (VAO) of those council tax payers entitled to the 50 per cent national discount for annexes meaning councils would not have to expend resources in identifying them.

We also support Clause 26, which will allow for regulations to be introduced at a later date that would reform the business rates appeals process. This would introduce changes including: ensuring steps that must be taken before a formal appeal; checking valuations with the VOA; and challenging any information used by the VOA for its accuracy and completeness. The VOA would also be able to fine anyone that submits false information in connection with a proposal to alter the list. The Department for Communities and Local Government consulted on the detailed design of the new appeals system, *Check, challenge, appeal: reforming business rates appeals* (2015). This closed on 4 January 2016.

Local authorities continue to identify business rates appeals as the main source of risk and uncertainty. Almost 300,000 appeals from the 2010 list are still outstanding and councils have to make provision for them. When the business rate retention system was introduced in April 2013, councils made provisions worth £1.75 billion in order to cover appeals, and the same level could be expected in 2017.

The Chancellor's announcement earlier this year on local government retaining 100 per cent of business rates by the end of this Parliament means that this £1.75 billion figure could potentially double if no action is taken. Further to this announcement, we would like to see Government take more steps to reform the appeals system and have called for businesses to be given the right to self-assess their own business rates valuation, which is currently determined by the VOA. We are in discussions with the VOA about the proposal, which would mean businesses would only be able to challenge their bill for three months once it is finalised, and would also ensure businesses pay a rate they think is fair and could still challenge their bill. It would also hand councils greater certainty about income and reduce the risk of refunds, cut down on government red tape and bring business rates in line with other self-assessment taxes, such as VAT.

Public sector employment: Restrictions on exit payments

Part 8 of the Bill contains proposals to put in place an exit payment cap in the public sector. This would apply where 'exit payments' made to or on behalf of an individual leaving a public sector employment total more than £95,000. Under the proposals, the Government has stated that exit payments would include cash lump sums, early access to unreduced pensions and payments in lieu of notice, as well as 'non-financial and other benefits'. We recognise the need to protect public funds in general, but have a number of concerns about this proposal as currently drafted.

Local government has made significant efficiency savings since 2010 and recognises the need for continuing financial restraint in the public sector. This includes ensuring adequate controls are in place to ensure public funds are protected. Further, the instances of exit payments made by local authorities totalling in excess of £95,000 are already rare, and those that do take place will have been subject to a business case to justify the cost.

The introduction of a cap may also make future workplace restructuring in councils more difficult as individuals may be less likely to take voluntary redundancy if it is possible that their pension may be reduced as a consequence of them leaving their employment. We note and welcome, however, that the Government plans to include provisions that will allow Full Council of local authorities (a full public meeting of the council) to waive the cap in certain circumstances of their choosing.

We understand that HM Treasury plan to issue guidance, which local authorities would be required to follow, setting out the circumstances in which the waiver process may be utilised. It is important that such guidance allows for sufficient flexibility so that, in reasonable circumstances where waiving the cap would result in outcomes representing value for money to taxpayers, this mechanism can be used. We would welcome the opportunity to comment on a draft of the guidance as soon as this is available.

Impact of policy on long-serving staff with relatively modest incomes
In considering the scope and impact of the policy, it is important to note that the proposal to make this cap effective at £95,000 means that this will not just impact on higher paid senior managers in councils. Estimates taking into account pensions strain costs suggest that this policy will impact long-serving mid-ranking officials. For example:

- An individual with 30 years of service and a pay at leaving of £39,000 would be caught by the cap when taking into account pensions strain costs and statutory redundancy payments.

- An individual with 35 years of service and a pay at leaving of £50,000 would be caught by the cap in terms of the pensions strain cost payable alone.

The above effect will be worsened in the event that measures are not put in place to revalue the cap regularly in line with an appropriate methodology.

Technical issues requiring urgent clarification
There are also a number of technical issues associated with the introduction of an exit payment cap that must be considered by the Government before the cap is introduced. While some of these technical considerations may not necessarily need to be clarified within the Bill, it is important for them to be addressed now so that the cap works at a practical level and does not cause unforeseen knock-on consequences. These include:

- If other means via which an individual could access an unreduced pension will be included in the cap. For example, in certain circumstances, the Local Government Pension Scheme allows members to take flexible retirement, meaning that they can take some or all of their pension while still in their employment. In such cases, a pensions strain cost may not become payable at the point the individual exits their employment, but beforehand.

- How the waiver process proposed by the Government will apply in school settings where relevant governing bodies have their own decision making powers

We welcome the publication of the draft Public Sector Exit Payment Regulations 2016. However, there are a number of issues covered in the draft instrument that we believe need to be clarified, and we would like immediate discussions between Government and stakeholders on these issues.

Timescales for implementation
The Government has not yet announced a planned timescale for the implementation of the proposed cap on public sector exit payments. We are calling for this to be confirmed as soon as possible in order to ensure that councils and employees are able to plan ahead with certainty. Workplace restructuring plans for 2016 and beyond will already be underway in local authorities and any further delay on this will restrict councils from taking important decisions. We welcome the Minister's confirmation during House of Lords Committee Stage that restructuring agreements that have already been reached should not be affected by the implementation of the cap. We are now calling for further detail from Government on how this process will work in practice.