



National Audit Office

Report

by the Comptroller
and Auditor General

Department for Communities and Local Government

Local government new burdens

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Report by the Comptroller and Auditor General

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Sir Amyas Morse KCB
Comptroller and Auditor General
National Audit Office

5 June 2015

We examined how well the government has applied the New Burdens Doctrine and followed its published guidance.

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Key facts

164

potential new burdens considered by the Department for Communities and Local Government since 2008: 50 of these were fully assessed by departments

27

new burden assessments completed (2011-12 to November 2014)

£11.5bn

our estimate of the value of new burdens funding (2011-12 to 2015-16, based on government data)

£8.2 billion

value of the new burden (2013-14 to 2015-16) from transferring public health responsibilities to local authorities: the largest assessed new burden

6

independent reviews of new burden assessments that the Department's guidance says would be done each year

0

new burden assessments reviewed after introducing the new requirements since 2009

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.

Part One

The new burdens regime

1.1 In 2011, the Department for Communities and Local Government (the Department) reaffirmed the government's commitment to assess and fund new requirements on local authorities through the New Burdens Doctrine (the Doctrine). It updated existing guidance to departments on how the Doctrine should be implemented. This part of our report describes:

- recent changes in local authority finances that give the background for government action on new burdens;
- the Doctrine's aim and scope; and
- how the Department has set out to manage the regime.

Local authority finances

Reducing income

1.2 Since 2010, local authorities have worked within financial constraints. Our reports on local authorities' financial sustainability analyse changes in income, and the impact on spending.^{3,4,5} Notably, central government will have reduced its funding to local authorities by 37% in real terms between 2010-11 and 2015-16, to help reduce the deficit.

1.3 As well as reducing its funding to local authorities, the government has tried to limit authorities' council tax increases by:

- offering extra 'freeze' grants from 2011-12 to authorities that froze or reduced council tax; and
- requiring authorities to hold a local referendum, from 2013, if they plan to increase council tax beyond a threshold which Parliament sets each year.

1.4 These measures contributed to a significant reduction in council tax increases from 2011-12 to 2014-15, when compared with 2006-07 to 2010-11 (**Figure 1** overleaf).

3 Comptroller and Auditor General, *Financial sustainability of local authorities*, Session 2012-13, HC 888, National Audit Office, January 2013.

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

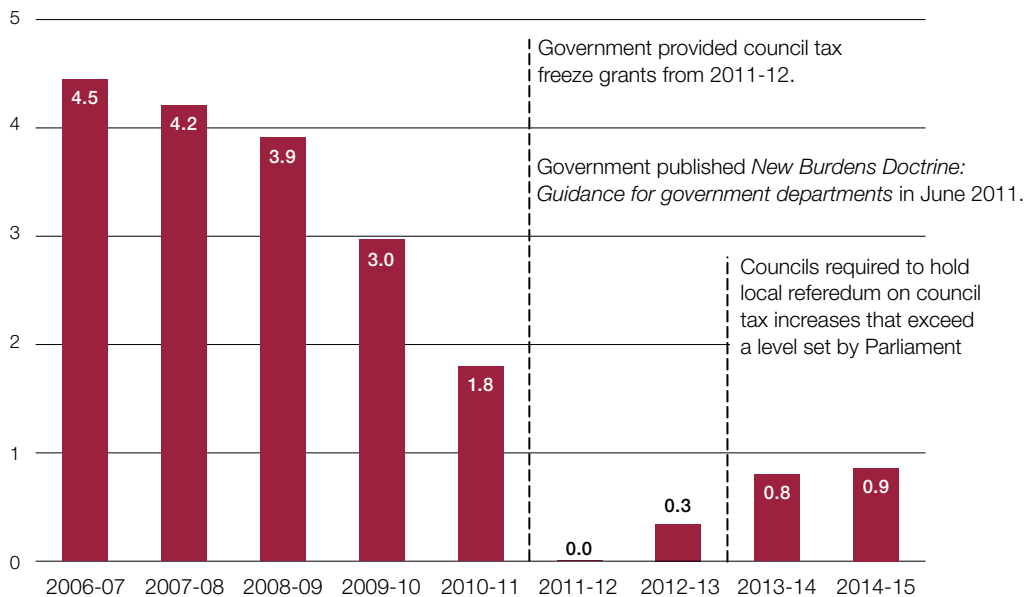
5 Comptroller and Auditor General, *The impact of funding reductions on local authorities*, National Audit Office, November 2014.

Figure 1

Annual change in average band D council tax, 2006-07 to 2014-15

Average increases have remained below 1% since 2011-12

Change in band D average council tax (including parish precepts) – %



Source: National Audit Office analysis of Department for Communities and Local Government, *Council tax levels set by local authorities in England 2014-15 (Revised)*, July 2014, Table 1

1.5 When funding reductions and council tax changes are considered together, we estimate that local authorities⁶ ‘spending power’⁷ will have reduced by 25% from 2010-11 to 2015-16 (**Figure 2**).

Local authority responses

1.6 Most local authorities have coped with income reductions since 2010-11. Many have increased financial reserves to protect against future funding pressures or uncertainty. They have achieved this by reducing their spending, particularly on staff.

1.7 With funding reducing and demand increasing in some services, local authorities have had to choose which services to provide. Local authorities must provide certain services, and choose to provide others depending on local needs and priorities. Generally, authorities have protected their spending on statutory services, such as for adults and children with social care needs. They have significantly reduced spending on services that are largely discretionary, such as planning and development.

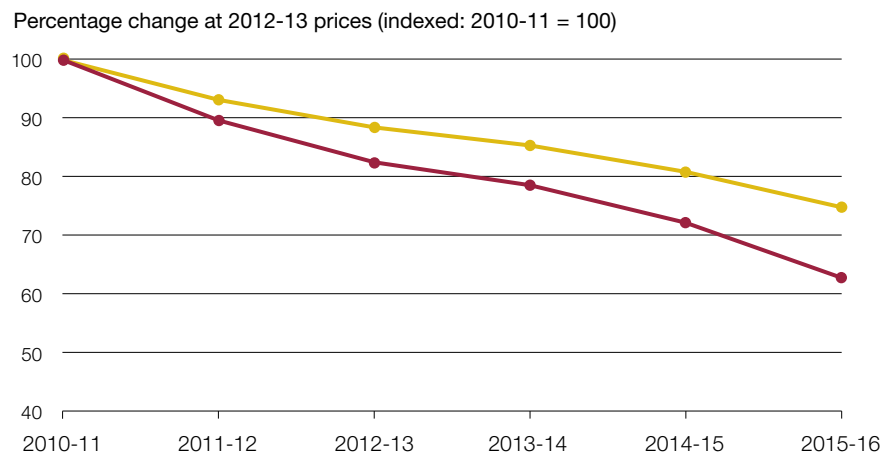
6 Comptroller and Auditor General, *Financial sustainability of local authorities 2014*, Session 2014-15, HC 783, National Audit Office, November 2014.

7 The Department’s indicator of the main streams of government funding to local authorities alongside council tax.

Figure 2

Change in spending power and government funding, 2010-11 to 2015-16

Increases in council tax have partially offset reductions in government funding



— Government funding	100	89.64	82.48	78.53	72.10	62.67
— Revenue spending power (government funding and council tax)	100	93.18	88.47	85.37	80.83	74.77

Note

1 Spending power includes both the core funding local authorities receive from central government and the council tax income they raise themselves.

Source: National Audit Office analysis of Department for Communities and Local Government data, from Comptroller and Auditor General, *Financial sustainability of local authorities 2014*, Session 2014-15, HC 783, National Audit Office, November 2014, p. 13

The New Burdens Doctrine

1.8 The government recognises that unfunded new requirements on local authorities require them to raise extra income (through council tax or charging) or cut spending on other activities. The government wants to control council tax increases so has committed, through the Doctrine, to ensure that new requirements on local authorities are “properly assessed and fully funded”.⁸

1.9 By giving local authorities adequate funding for new requirements departments reduce the risk of not meeting their policy objectives. Evidence suggests the lack, level and timing of resources strongly affects local delivery of policies or programmes (**Figure 3** overleaf).

⁸ Department for Communities and Local Government, *New Burdens Doctrine: Guidance for government departments*, June 2011, p. 4.

Figure 3

Funding influences implementation

Availability of resources influences local action

Local economic growth	Our report on programmes to shift responsibility for economic growth to local bodies ¹ found that local enterprise partnerships' progress was hampered by limited resources and capacity.
Data transparency	The 2011 <i>Code of Recommended Practice for Local Authorities on Data Transparency</i> gave direction on improving transparency. But, in 2012, just 4% of authorities published asset registers and their other data releases did not meet all the Code's recommendations. ² A Local Government Association survey found the greatest barrier to transparency was limited resources to prepare and publish data. ³
Council tax support	In 2013-14 the government transferred responsibility for council tax support to local authorities, with funding equal to 90% of what it would have spent had council tax benefit continued. It offered a transitional grant to lessen the impact of new schemes on claimants. But this came too late for many authorities that had already consulted on schemes. ⁴ In the first year, 80% of authorities reduced support for working-age families, while 20% offset the funding reduction with spending cuts or council tax increases. ⁵
Highways maintenance	In 2014 we found that uncertain funding for highways authorities made it difficult to plan action and hindered them from getting value for money from their road maintenance spending. ⁶
Care services	Restricted local funding limited the government's success in reducing the number of people with learning disabilities cared for in hospitals, after the revelation of abuse at Winterbourne View. As funding did not follow patients on discharge from hospital, there was no financial incentive for local services commissioners to meet patients' needs in the community. ⁷

Notes

- 1 Comptroller and Auditor General, *Funding and structures for local economic growth*, Session 2013-14, HC 542, National Audit Office, December 2013.
- 2 Comptroller and Auditor General, *Implementing transparency*, Session 2010-2012, HC 1833, National Audit Office, April 2012.
- 3 Local Government Association, *Local Government Transparency Survey 2012*, December 2012.
- 4 Comptroller and Auditor General, *Council Tax support*, Session 2013-14, HC 882, National Audit Office, December 2013.
- 5 Stuart Adam, James Browne, William Jeffs, Robert Joyce, *Council Tax Support Schemes in England: What Did Local Authorities Choose, and with What Effects?*, IFS Report R90, Institute for Fiscal Studies, January 2014.
- 6 Comptroller and Auditor General, *Maintaining strategic infrastructure: roads*, Session 2014-15, HC 169, National Audit Office, June 2014.
- 7 Comptroller and Auditor General, *Care services for people with learning disabilities and challenging behaviour*, Session 2014-15, HC 1028, National Audit Office, February 2015.

Source: National Audit Office analysis of reports

Defining new burdens

1.10 The Department defines a new burden as a policy or initiative that increases the net cost of providing local authority services. This includes changes causing local authorities to lose income. A new burden may also arise when government removes or reduces funding associated with specific responsibilities. The guidance gives examples of changes the Doctrine covers (**Figure 4**).

Assessing new burdens

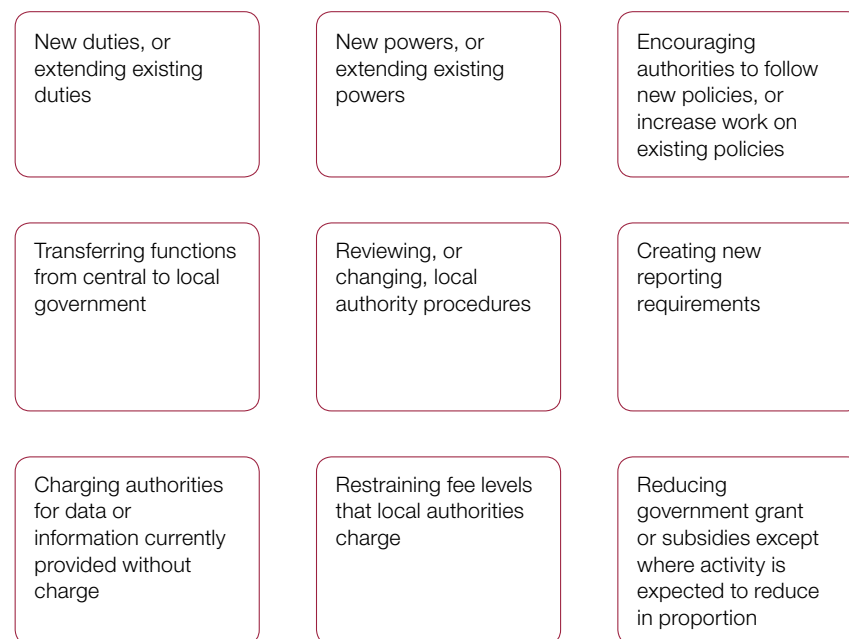
1.11 The government department that leads on the proposal introducing a change must assess potential new burdens. Having identified a potential new burden, there are four stages to the process (**Figure 5** overleaf):

- initial consideration;
- new burden assessment;
- departmental sign-off; and
- funding transfer, if necessary.

Figure 4

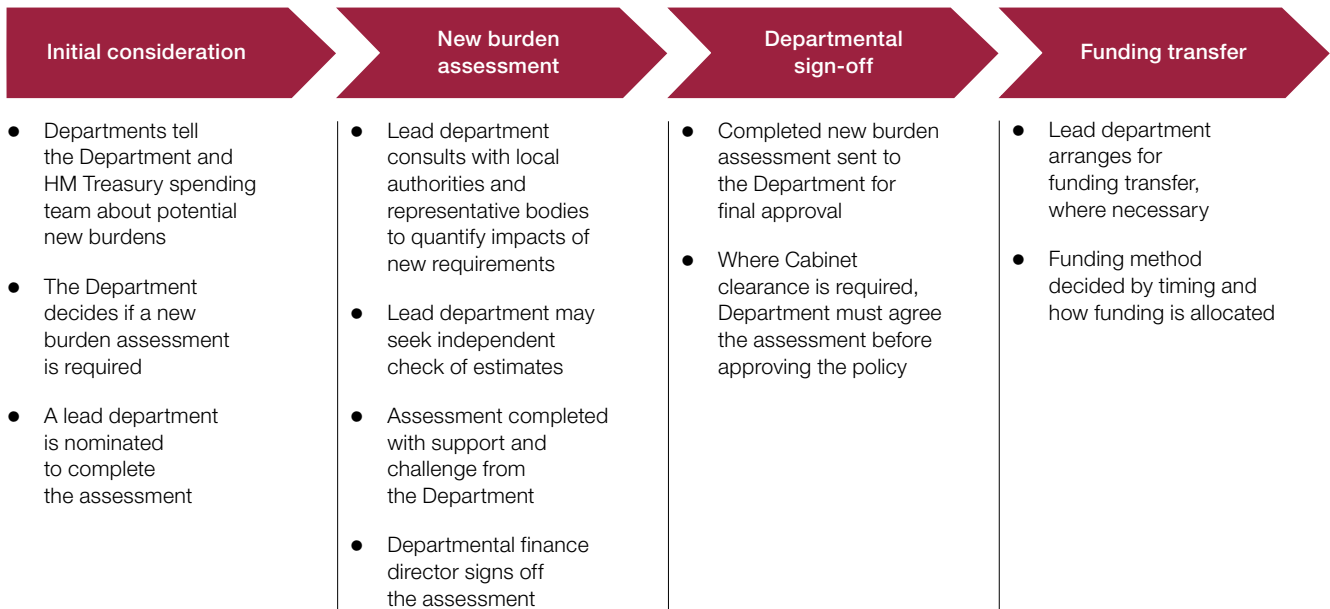
How the Department defines a new burden

A change that could increase council tax, without government funding



Source: National Audit Office based on Department for Communities and Local Government, *New Burdens Doctrine: Guidance for government departments*, June 2011

Figure 5
The new burden assessment process



Source: National Audit Office based on Department for Communities and Local Government, *New Burdens Doctrine: Guidance for government departments*, June 2011

1.12 The guidance includes a standard assessment form for departments to complete, describing:

- the new requirement’s objectives;
- how and when it will affect local authorities;
- the initial and recurring costs (or savings) from the change, broken down for at least the first 3 financial years;
- consultation with local authorities and their views; and
- funding for any new burden.

1.13 Where departments also need to do an impact assessment for new policies they should reference this in the new burden assessment. The new burden assessment, however, must have distinct information about the cost for local authorities of new policies and programmes.

Managing the regime

1.14 The new burdens team in the Department's local government revenue funding policy division oversees how government applies the Doctrine. The team includes two officers who work with departments on new burdens, as part of a portfolio of work on local government finance. The head of local government revenue policy supervises the team, and they, in turn, report to the deputy director, strategy, revenue and capital.

1.15 For larger policy areas, such as health and welfare reform, the Department has dedicated policy teams to work with departments. Where potential new burdens arise from these departments, the dedicated teams lead the Department's support and challenge on assessments, assisted by the new burdens team.

Part Two

Managing and overseeing the regime

2.1 The Department for Communities and Local Government (the Department) must manage the new burdens regime to reduce the risk that government puts unmanageable expectations on local authorities. This part of the report considers how the Department:

- learns of potential new burdens;
- decides what to do about potential new burdens;
- supports and challenges departments to assess potential new burdens;
- captures and shares learning from assessments; and
- manages and uses information from the new burdens regime to understand the financial pressures on local authorities.

Identifying new burdens

2.2 The Department has effective ways to find out about potential new burdens. These comprise:

- working with policy teams;
- meeting departmental finance directors;
- policy clearance processes; and
- consulting with local authorities and their representative bodies.

Interacting with policy teams

2.3 The Department has informal contact with policy teams across government to promote the regime and learn of changes that may affect local authorities. The Department said that it usually learns of potential new burdens through these contacts.

2.4 The new burdens guidance requires departments to tell the Department as soon as possible about proposals likely to put a new burden on local authorities. We found departments highlighting the New Burdens Doctrine (the Doctrine) in guidance to their officials (**Figure 6**).

Figure 6

How departments tell their officials about the Doctrine

Departmental guidance to officials refers to new burdens

Department	Advice and information for officials
Cabinet Office	Teams providing advice to colleagues on policy development and impact assessment prompt them to follow guidance available publicly and on the Cabinet Office intranet and work with the Department. For example, the better regulation unit refers teams to the <i>Better regulation of framework manual: Practical guidance for UK government officials July 2013</i> , which links to the new burdens guidance.
Department for Communities and Local Government	The intranet gives a link to the <i>Better regulation framework manual</i> , which directs officials to the new burdens guidance.
Department for Education	The Finance manual and Better Policy sections of the intranet say that staff must assess new burdens, and link to the new burdens guidance.
Department for Transport	The intranet gives a link to the <i>Better regulation framework manual</i> , which directs officials to the new burdens guidance.
Department for Work & Pensions	The intranet gives policy teams guidance with links to the new burdens guidance and assessment form.
Home Office	The policy-making section of the intranet gives links to the <i>Better regulation framework manual</i> ; <i>Guidance on the collective agreement process</i> ; and the <i>Guide to making legislation</i> . This refers to having to assess new burdens and gives links to the new burdens guidance.

Source: National Audit Office review of departmental data

Regular meetings with departmental finance directors

2.5 The new burdens guidance indicates the Department will meet twice yearly with departmental finance directors to discuss potential and current new burdens. The Department said it no longer meets finance directors specifically on new burdens. It does, however, meet them regularly to discuss local government finance matters.

Policy clearance processes

2.6 Well-established processes for getting Cabinet clearance for policy changes help the Department to identify potential new burdens that departments have not highlighted. The Department said that it sometimes only learns of potential new burdens at this stage, but these cases tend to be small or have no new burdens.

Consulting with local government

2.7 The Department is open to hearing local authorities' concerns about potential new burdens and other financial pressures. Its routine discussions with local authorities and their representatives give opportunities for them to raise concerns. The Department also consults formally each year on the local government finance settlement.

2.8 The Local Government Association (LGA) meets the Department regularly (typically monthly) to discuss local government finance. The Department also meets regularly with other sector representatives, for example treasurers' societies. The meetings allow two-way communication about new burdens.

Deciding when to assess

2.9 The Department's guidance says:

- "the new burdens procedure applies to all burdens regardless of cost except where departments place the same requirements on local authorities and private sector bodies";⁹ and
- "if the department's assessment of the new policy is that ... it does not place a net additional cost on [local authorities], this will still need to be confirmed and signed off by the relevant departmental finance director".¹⁰

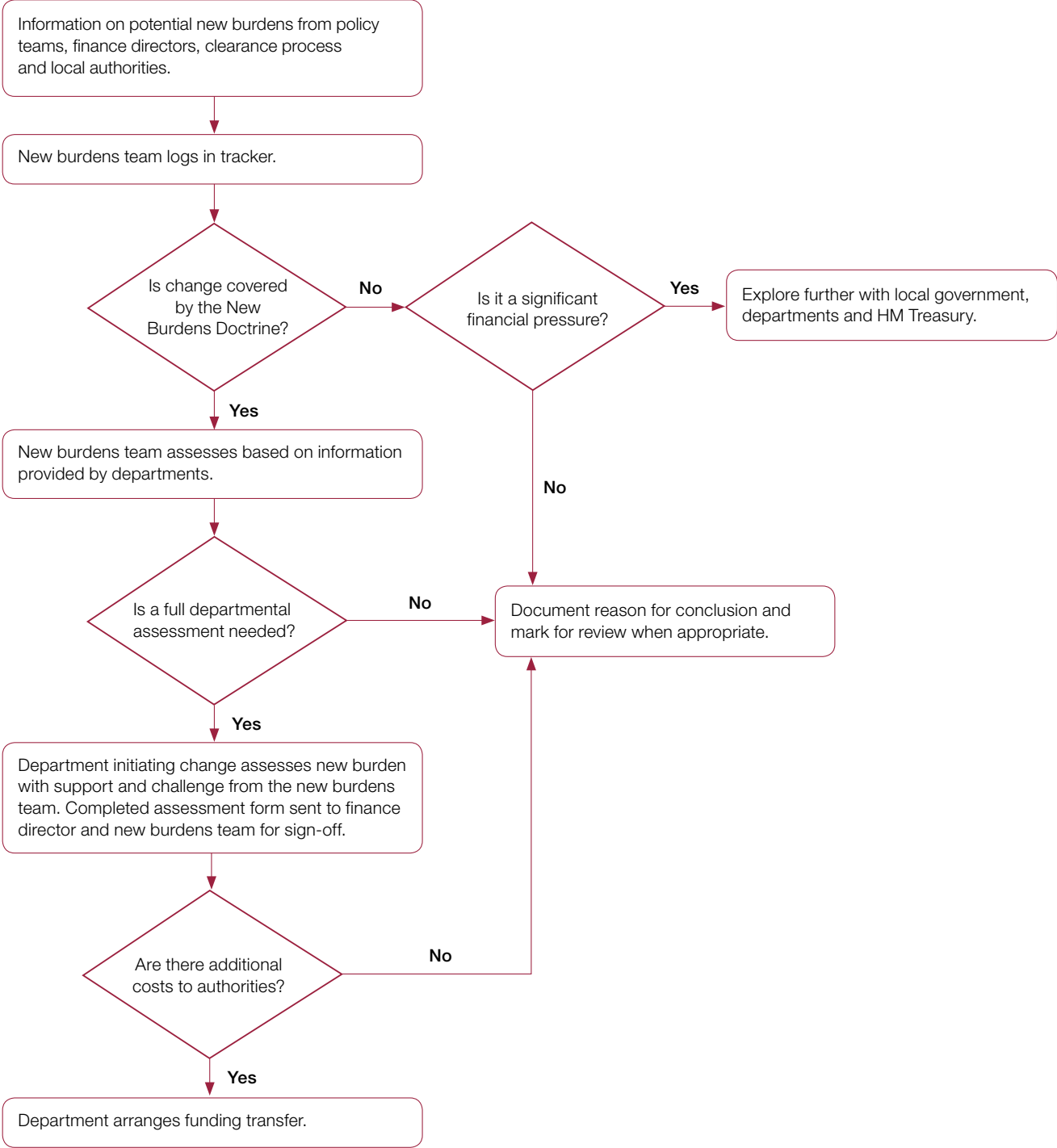
2.10 The new burdens team scrutinises potential new burdens it learns about. It uses information provided by departments to establish whether changes will result in net additional costs to authorities. It takes a 'proportionate approach' to decide when departments must complete a full new burden assessment to minimise the administrative burden on departments (**Figure 7**). Departments are more likely to be required to complete a full assessment in cases where:

- the proposed change is expected to be controversial;
- it is difficult to quantify the impacts on authorities; and
- there will clearly be significant additional costs to authorities.

⁹ Department for Communities and Local Government, *New Burdens Doctrine: Guidance for government departments*, June 2011, p. 8.

¹⁰ Department for Communities and Local Government, *New Burdens Doctrine: Guidance for government departments*, June 2011, p. 17.

Figure 7
The Department decides which potential new burdens departments assess



Source: National Audit Office based on interview data

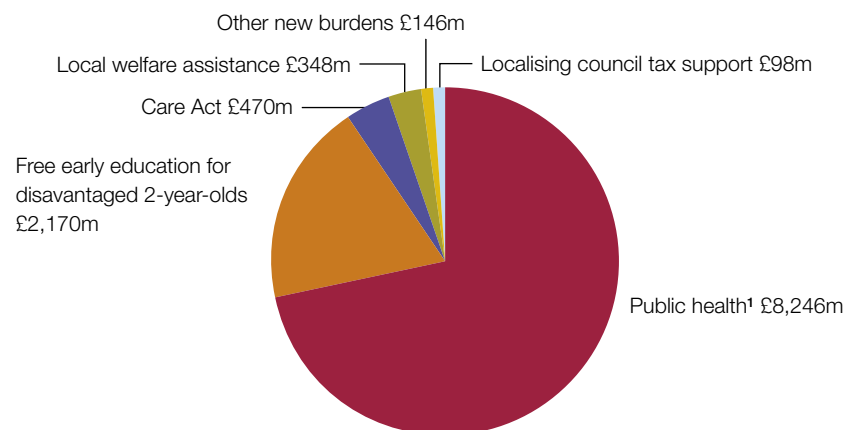
2.11 As a result of the Department's approach, a minority of potential new burdens are assessed by departments and signed off by their finance directors. The Department's records show that departments have completed full assessments for about one-third of the potential new burdens brought to its attention: 50 out of 164 since 2008. Of those assessed, a small number account for most of the additional costs to be funded from 2011-12 to 2015-16 (**Figure 8**).

2.12 The Department's approach ensures that departments scrutinise new burdens with significant potential impact on local authorities. But it risks departments insufficiently scrutinising new burdens that have a low impact overall but may disproportionately affect some local authorities.

Figure 8

Estimated value of agreed new burdens, 2011-12 to 2015-16

A few new burdens account for most of the additional costs to be funded



Note

¹ We examined funding to local authorities for public health in Comptroller and Auditor General, *Public Health England's grant to local authorities*, Session 2014-15, HC 888, National Audit Office, December 2014.

Source: National Audit Office analysis of data from government departments

Transparency of decisions

2.13 Although it has no reason not to, the Department does not routinely publish details of:

- potential new burdens it learns of;
- its decisions on whether departments do assessments; and
- completed new burden assessments. (Departments may also choose to publish these but the Department has not encouraged them to do so.)

2.14 This undermines the Department's efforts to consult with local government and creates uncertainty for local authorities over new burdens funding. For example, during our review local authorities expressed concerns about the substantial rise in costs associated with deprivation of liberty safeguards under the Mental Capacity Act 2005, after a legal ruling in March 2014. Authorities still do not know if the government will treat this as a new burden (**Figure 9**).

Figure 9

Lack of transparency in decisions on potential new burdens

Deprivation of liberty safeguards

The deprivation of liberty safeguards were introduced into the Mental Capacity Act 2005 to protect people who, in their own interests, are deprived of their liberty in hospitals or care homes. Care providers must apply to local authorities for authorisation to deprive individuals of their liberty. Local authorities must undertake best-interest assessments and apply, in relevant cases, to the Court of Protection.

A Supreme Court judgment in March 2014 led to a significant increase in the number of people eligible for assessment.¹ The Department of Health identified an 8.5-fold increase in applications in the six months after the judgment. The Association of Directors of Adult Social Services estimated in December 2014 that the increase would cost local authorities an extra £97 million in 2014-15.²

During our review the Department of Health had acted to help local authorities prioritise cases, to complete assessments more quickly, and to clarify what constitutes a deprivation of liberty. However, despite having considered the matter for several months, neither the Department of Health nor the Department had said publicly whether the increase in activity would be treated as a new burden. If it were, the government would need to assess and fund associated costs. The lack of clarity has caused significant uncertainty for local authorities over funding.

Notes

- 1 P v Cheshire West and Chester Council and another, Hilary Term 2014, UKSC 19.
- 2 Unpublished letter from David Pearson, President of the Association of Directors of Social Services and Cllr Izzi Seccombe, Chair, Community Wellbeing Board, Local Government Association to Norman Lamb MP, Minister of State for Care and Support, 2 December 2014.

Source: National Audit Office

Supporting and challenging other departments

Support

2.15 Departments have been mostly positive about the guidance designed to lead them through the new burden assessment process. In all but one case we examined, departments spoke favourably of the timely support from the new burdens team or the Department's policy teams.

2.16 HM Land Registry, however, felt the Department could have been more helpful in the early stages of assessing new burdens from transferring the Local Land Charges register, for example by encouraging local authorities to help it to understand the proposal's costs.

Challenge

2.17 The Department has challenged some departments on new burden assessments. Commonly this was about aspects of the process: for example, completing assessments at the right time, ensuring teams consulted with local authority representatives, or giving enough information in the assessment form.

2.18 The Department's challenge on assessments of costs has been mixed. In one case the Department's challenge was not directed on the main part of the new burden. In other cases the Department appears not to have challenged departments on significant aspects of their assessments that needed greater scrutiny to reduce the risk of underfunding (**Figure 10**).

Learning from review

2.19 The Department has not adequately encouraged departments to review and learn from their assessments. It does not have a method to capture learning in order to share this across departments. Review and learning are important to ensure the new burdens regime operates fairly for local authorities by reducing the risk of underfunding.

2.20 When assessing new burdens, departments estimate costs and savings based on the best information. Some assessments contain much uncertainty, for example where costs have been difficult to quantify or are based on assumptions. The Department acknowledges that costs may vary from those assessed, depending on how local authorities choose to carry out policies. Departments should therefore review uncertain assessments after introducing changes, to ensure authorities get the right funding for new requirements.

Figure 10

Case study examples: the Department's challenge

Care Act

The Department substantively challenged the deferred payments part of the act's new burden assessment. However, it did not challenge the scope of the assessment. The new burdens guidance says that assessments should consider all impacts in any financial year. But the Department of Health's assessment covered only 55% of the £470 million funding to local authorities in 2015-16. It did not include the funding provided in 2015-16 to prepare for the reforms being introduced in 2016-17. The Department of Health will assess the costs associated with the 2016-17 reforms separately in 2015.

Licensing Act guidance

The Home Office's new burden assessment for changes to the act's guidance states that any additional costs to authorities would be offset in part by them being able to set fees locally. The Department cleared the new burden assessment even though the regulations implementing locally set fees were not expected to be introduced until April 2013. (The government has since decided not to allow licensing authorities to set fees locally as it has insufficient evidence from authorities about their costs.)

Local welfare assistance

The Department for Work & Pensions assessed programme and administration funding for local welfare assistance for 2013-14 and 2014-15, and committed to a review to inform funding for 2015-16. A 2014 application for judicial review challenged the apparent removal of funding after the first two years without a review or consultation.¹ The Department did not ensure that the Department for Work & Pensions met its commitment to review set-up costs after implementation.

Note

¹ R (Christian Jump) v (1) Secretary of State for Work and Pensions and (2) Secretary of State for Communities and Local Government.

Source: National Audit Office review of new burden assessments

2.21 The Department said that it tells other departments which of their assessments should be reviewed after changes have been introduced. However, before November 2014, the Department's recording and follow-up of assessments it had identified for review was poor, although this is now improving. There is no evidence that a department has done a post-implementation review of a new burden assessment.

2.22 The new burdens guidance says that each year the Department would identify up to 6 new burden assessments to scrutinise following implementation. However, it has done no independent reviews of new burden assessments since 2009, when the Department last evaluated the assessment process.

Understanding the cumulative impact

2.23 The Department recognises the risks to local authorities of the cumulative impact of many, even low-value, new burdens. It knows it must understand new burdens alongside other pressures to help its discussions across government about the annual local government finance settlement and spending reviews. Its guidance says that it will keep a list of ‘live’ new burdens, which would help build its knowledge, but until November 2014 it does not appear to have done so.

2.24 At the start of our review the Department could not easily give us lists of live new burdens, or of completed new burden assessments. Neither could it quantify the value of new burdens funding by financial year. It had a weak method to log potential new burdens and other financial pressures it learned of, and to track action taken on these. Its document-based tracking system:

- captured limited data about potential new burdens and assessment outcomes;
- was poorly maintained, often making it unclear what action the Department or departments had taken on cases; and
- did not enable the Department to interrogate the data held to identify live new burdens or their cumulative financial impact.

2.25 The financial value of new burdens is relatively small in most cases. However, the Department must understand the total requirements government places on local government. The weaknesses we describe suggest the Department had limited information on new burdens to help government discussions about the cumulative pressures for local authorities. Our previous studies on local authorities’ financial sustainability identified similar weaknesses in how far the Department understands financial and service pressures from funding reductions.^{11,12}

2.26 Since November 2014, the Department has improved how it captures information on potential new burdens and other financial pressures on local authorities, and government’s response to these. It has developed a spreadsheet-based tracker to replace the old system. This allows the Department to interrogate its data. For the first time the Department can see the combined financial impact of agreed new burdens in each financial year. This is encouraging. However, the Department must record and monitor routinely if it is to have the information it needs for discussions during the next spending review.

11 Comptroller and Auditor General, *Financial sustainability of local authorities*, Session 2012-13, HC 888, National Audit Office, January 2013.

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

Part Three

Departments' new burden assessments

3.1 This part of the report describes the findings from our review of 6 new burden assessment case examples (**Figure 11** and Appendix Two). It considers how departments:

- assessed the costs of potential new burdens;
- consulted with the local government sector during new burden assessments;
- funded new burdens; and
- reviewed their assessments after introducing new burdens.

Figure 11

New burden assessment case examples

Subject of new burden assessment	Referred to in this report as	Lead department	Assessment completed
Changes to statutory guidance under section 182 of the Licensing Act 2003	Licensing guidance	Home Office	March 2012
Introducing a right to free early education for disadvantaged 2-year-olds	Early education	Department for Education	June 2012
Transferring funding for local welfare assistance	Local welfare	Department for Work & Pensions	July 2012
Requiring authorities to comply with some parts of the <i>Local Government Transparency Code</i>	Transparency Code	Department for Communities and Local Government	October 2014
New duties in 2015-16 introduced by the Care Act	Care Act	Department of Health	October 2014
Transferring the Local Land Charges register from local authorities to HM Land Registry	LLC register	HM Land Registry	In progress

Source: National Audit Office

Cost assessments

3.2 In assessing the cost of new burdens, departments must give the best estimate of all the costs and savings for local authorities from the new proposal. These include one-off implementation costs and recurring costs for at least the first three years. To do this, departments must make reasonable assumptions based on the best data.

Access to data

3.3 Departments must balance the costs and benefits of getting new data to support assessments with the costs and benefits of using available data. The former may put extra burdens on local authorities, while the latter may give a less accurate assessment of the likely costs. Departments use existing and newly generated data to support their cost assessments (**Figure 12**).

3.4 Some aspects of departments' assessments were hampered by a lack of data. Sometimes this was due to new requirements being something that authorities had no experience of doing or because authorities could take different approaches to meeting a new requirement. In other cases, the volume or cost of work were not separately identifiable within data returns. In these cases it was more difficult for authorities, and in turn departments, to identify the volume of work (or costs or savings) created by new requirements.

Uncertainty

3.5 Some data on the volume or cost of activities associated with new burdens was unavailable, limited, or of poor quality. In these cases, departments made assumptions for their assessments. These assumptions led to uncertainty in assessments, which increases the risk that local authorities will not be appropriately funded for new burdens (**Figure 13** on page 30).

3.6 Where it is not possible or cost-effective to generate better data for assessments, some uncertainty is inevitable. But departments rarely clarified the level of uncertainty in their new burden assessments. We noted this issue in our study on approaches to government forecasting.¹³ We found that fewer than half of the government impact assessments examined included sensitivity analysis showing how data limitations affected uncertainty. The assessment of new burdens for the Transparency Code is a good example of where uncertainty was made explicit (**Figure 14** on page 31).

¹³ Comptroller and Auditor General, *Forecasting in government to achieve value for money*, Session 2013-14, HC 969, National Audit Office, January 2014, p. 23.

Figure 12

Examples: data used in new burden assessments

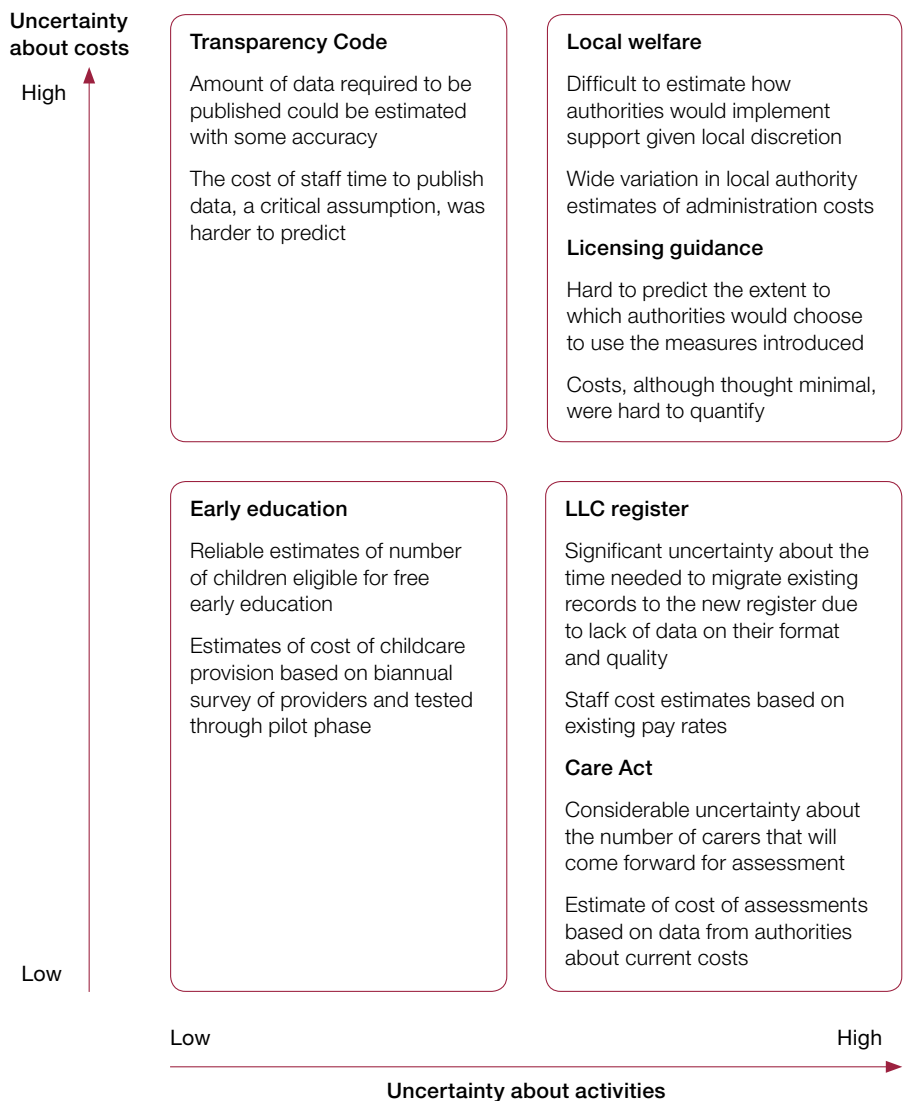
Departments used existing and new data

Case study	Using existing data	Generating new data
Licensing guidance		Collected estimates of the administrative cost of producing and revising licensing statements between 2005 and 2009 from 10 licensing authorities.
Early education	Used data from HM Revenue & Customs to estimate the number of children whose families were getting benefits that would entitle them to free early education. Used survey of childcare providers' rates to check provision costs.	Surveyed parents to support assumptions about the likely take-up of free early education. Consulted authorities on the time and costs of checking eligibility, administering payments and developing local childcare capacity.
Local welfare	Based programme funding on the amount HM Treasury allocated to the Department for the discretionary Social Fund.	Sought data from authorities on the likely cost of setting up and administering local welfare support.
Transparency Code	Used Ministry of Justice research, to estimate the cost of staff time.	Gathered data from 12 authorities on staff time and other costs to publish data to meet the mandatory requirements of the Code.
Care Act	Used data from a wide range of sources, including the Department for Work & Pensions, the Census, local authorities and surveys of the public, to model demand for assessments from carers in 3 different ways.	Asked local authorities to estimate likely demand for and cost of extra assessments for self-funders and carer assessments and support, using a model based on one developed by Lincolnshire County Council. The Department of Health made several adjustments to the data provided in assessing costs. Surveyed local authorities, with the Association of Directors of Adult Social Services (ADASS) and the National Association of Financial Assessment Officers, to identify differences between local authorities' existing deferred payment agreement rules and provision.
LLC register		Gathered data from authorities on the format of existing records, to estimate the effort needed to prepare and transfer data to the new register. Developed a pilot register to test time needed to make routine updates, to estimate ongoing maintenance costs.

Source: National Audit Office case study analysis

Figure 13
Uncertainty in new burden assessments

Departments faced uncertainty about the volume and cost of activities



Source: National Audit Office

Figure 14

Explicitly mentioning uncertainty about new burdens

The Department for Communities and Local Government (the Department) gave a detailed assessment of the set-up and ongoing costs for authorities for the Transparency Code in the impact assessment, published in October 2014. This was referenced in its new burden assessment. The Department identified and quantified the uncertainty in two aspects of the assessment:

- The range of local authority estimates of the time needed to publish required data.
- The cost of staff time, which could see total costs reduced by 40% or increased by 60% depending on the seniority of staff involved in the work.

Source: National Audit Office case study analysis

3.7 Given the uncertainty in the assessments we examined, the lack of evidence that departments have reviewed new burden assessments after introducing changes is concerning. Departments must review their new burden assessments where uncertainty is high. Departments should also consider reviewing assessments with lower levels of uncertainty, if they are for significant amounts of funding. For the Care Act, our analysis shows a 1% variation in the Department of Health's estimate of the number of carers or self-funders needing assessment would each result in a cost difference of more than £1 million.

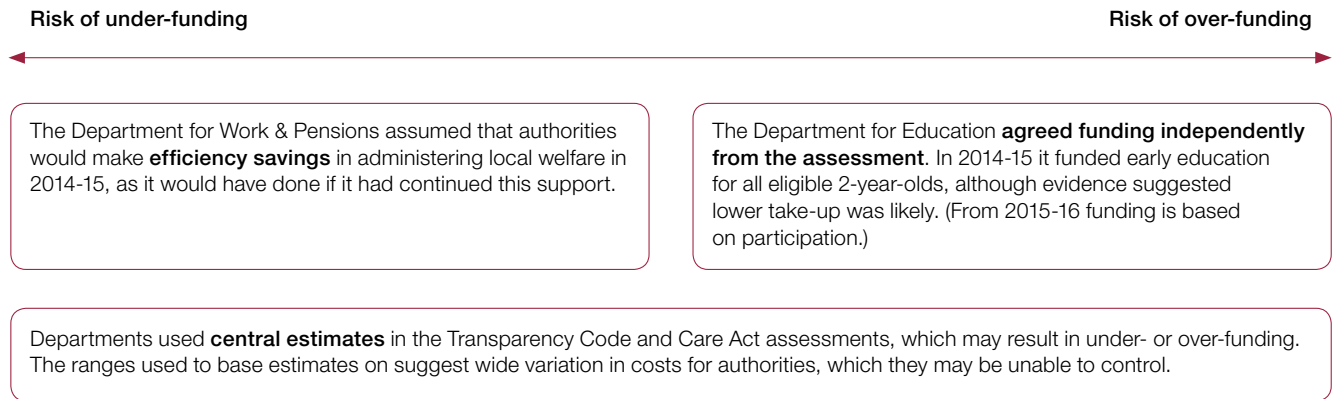
Other factors affecting cost assessments

3.8 Our case study review identified three further aspects of departments' assessments which risked them under- or over-funding new burdens:

- Making efficiency assumptions, rather than identifying specific savings as expected by the new burdens guidance.
- Using central cost estimates.
- Agreeing funding independently of assessments (**Figure 15** overleaf).

Figure 15

Risks of under- or over-funding new burdens



Source: National Audit Office case study analysis

Sector engagement

3.9 The new burdens guidance encourages departments to discuss their assessments with the local authorities affected and representative bodies such as the Local Government Association (LGA) and London Councils. Consultation is crucial to identify the impacts on local authorities of government requirements and to get data to support cost assessments.

3.10 The governing principle in the government’s guidance on consultation is “proportionality of the type and scale of consultation to the potential impacts of the proposal or decision being taken”. Traditional written consultation is just one way this engagement can take place.¹⁴

3.11 We have seen good evidence of departments consulting local authorities. Departments carried out written consultations for all 6 case studies. They also used other methods including workshops; national and regional events; data collection exercises; and specialist advisory panels with sector representatives (**Figure 16**).

¹⁴ Cabinet Office, *Consultation Principles*, July 2012, p. 1.

Figure 16

Examples: good sector engagement

Transparency Code

The Department:

- worked with the LGA to develop a methodology to gather authority estimates of costs to comply with the Code;
- followed up the survey with a 1- to 1.5-hour meeting with 12 local authorities to clarify details;
- ran 3 workshops attended by more than 60 organisations to discuss the Code; and
- shared final estimates with the LGA before publishing the impact assessment.

Care Act

The Department of Health formed a joint programme management office with the LGA and ADASS.

- The LGA was positive about this and felt involved throughout, including on implementation and monitoring decisions.
- Most local authorities we spoke to felt that the Department of Health had a positive consultative approach.

Early education

The Department for Education conducted 2 formal consultations on its proposals, and:

- gave authorities regular email updates while developing the policy;
- met regularly with local authorities and the Association of Directors of Children's Services;
- ran regional workshops from November 2011 to May 2012 to seek feedback on delivery challenges; and
- discussed the proposal at the early years sub-group of the Department for Education's schools and academies funding group, which included the LGA and local authority representatives.

Licensing guidance

The Home Office set up a small technical advisory group to assist with the drafting of the revised statutory guidance, including representatives of the licensed trade, police, licensing authorities and local government.

Source: National Audit Office analysis of new burden assessments, departmental interviews and interviews with local government sector bodies

3.12 However, the LGA and other local government representatives told us that departments' engagement on new burdens was not uniformly good. They also wanted more transparency from departments about how they had reached their final cost assessments.

3.13 The new burdens guidance states that assessments should link to impact assessments, which must be carried out for all policy changes. Impact assessments are published, but new burden assessments (which focus on specific implications for local authorities) are not. There is therefore less transparency for local authorities about how departments calculate new burdens funding.

Funding

3.14 The new burdens guidance sets out how departments should give authorities new burdens funding. If authorities cannot offset the costs of new burdens by charging, or stopping other work, then departments should provide them with funding. This should be unringfenced in all but exceptional circumstances. The Revenue Support Grant, an unringfenced grant which the Department manages for government, is the preferred method of transferring new burdens funding. It meets the government's policy to maximise flexibility and reduce reporting burdens on local authorities. However, as noted in our report *Local government funding: Assurance to Parliament*, less reporting means that departments cannot be confident of the impact of their funding.¹⁵

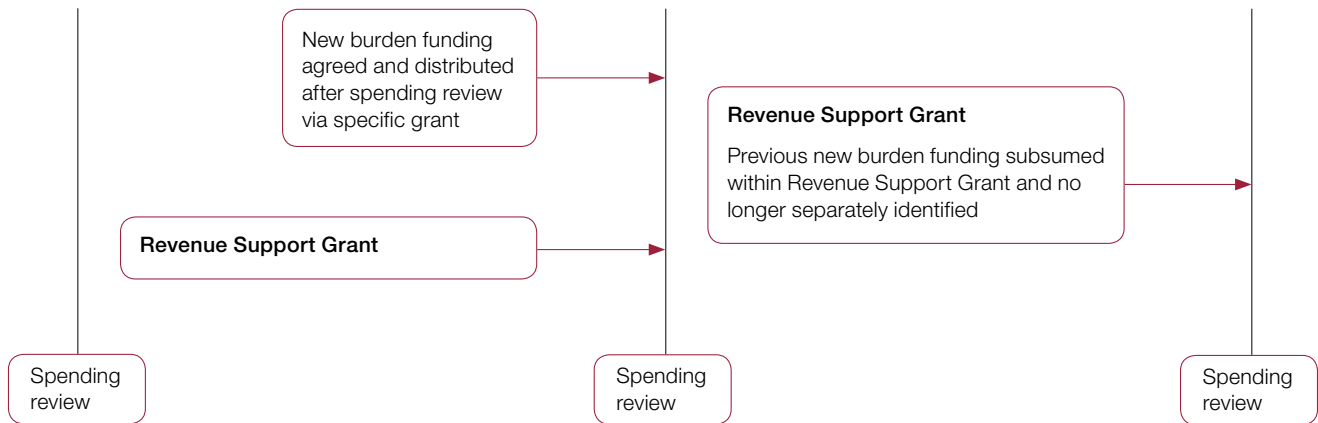
Transparency

3.15 When a new burden is funded via a specific grant local authorities know how much money they will get for the new burden. However, when, as part of a spending review, these grants are subsumed into Revenue Support Grant authorities cannot identify the new burdens funding they will get (**Figure 17**). New burdens funding also becomes open to overall annual reductions in government funding.

3.16 This lack of transparency is evident in funding for local welfare provision, which the Department for Work & Pensions first provided in 2013-14 (**Figure 18**).

¹⁵ Comptroller and Auditor General, *Local government funding: Assurance to Parliament*, Session 2014-15, HC 174, National Audit Office, June 2014, p. 9.

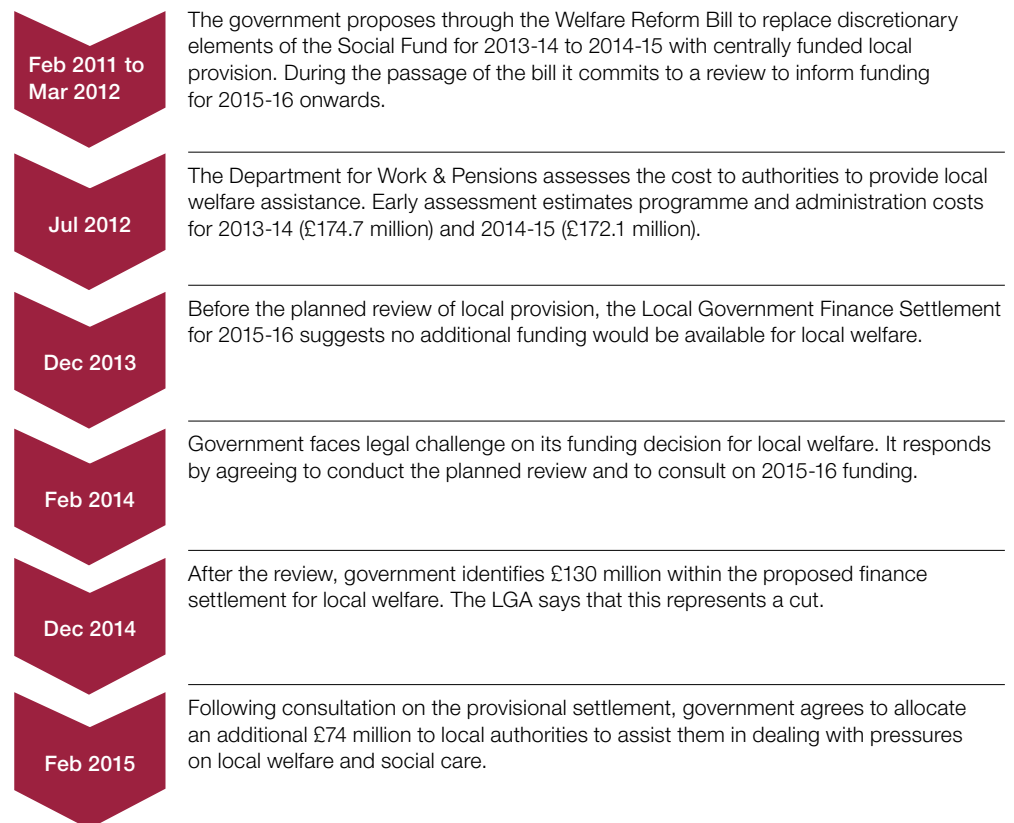
Figure 17
Funding transparency



Source: National Audit Office

Figure 18
Example: uncertainty about new burdens funding

Local welfare



Source: National Audit Office analysis of case study evidence

Risk of funding diversion

3.17 In 2 of our case studies, we also noted that funding for new burdens came through methods subject to local negotiation. This may result in funding being diverted from its intended purpose.

- **Care Act** – The Department of Health assumes that £174 million (40%) of Care Act funding will come through the Better Care Fund. Local areas had to confirm funding for the Care Act and explain how duties would be met in their Better Care Fund Plans. Plans were approved by local health and well-being boards, but funding for the Care Act is not being monitored nationally.
- **Early education** – From 2013-14 the Department for Education has included funding for early education in the Dedicated Schools Grant. Although protected for education purposes, this is subject to local negotiation with the Schools Forum.

Learning lessons

3.18 The new burdens guidance notes that it is good practice for policy-makers to review the impact of their policies once implemented. The guidance does not specify how departments might review a new burden assessment. However, it indicates that an independent review would scrutinise:

- the robustness of the department's assessment of estimated costs to local authorities and the underlying assumptions; and
- the department's compliance with the new burdens procedures.

3.19 We found limited evidence that departments had undertaken or planned reviews of their new burden assessments, although some departments had reviewed (or planned to review) the effectiveness of their policy changes (**Figure 19**). Without specifically reviewing their new burden assessments, departments will not test whether their initial assessments of financial impact were accurate in the light of experience. They will also miss the opportunity to reflect on what went well and what did not go well with the process, to apply and share learning for future assessments.

Figure 19

Departmental reviews of new burden assessments

Reviews, where planned, commonly focus on policies, not the new burden assessment

Case study	Plans for review
Licensing guidance	The Home Office is required by law to review in 2017 the licensing reforms introduced in 2012. At the same time, it also intends to review the additional measures introduced by the statutory guidance covered by the new burden assessment.
Early education	The Department for Education has no plans yet for a review of the new burden assessment but regularly monitors take-up and seeks feedback from authorities on implementation of the policy. It is also conducting a long-term evaluation of the policy on children's outcomes.
Local welfare	The Department for Work & Pensions initially failed to conduct the review of provision, planned for 2014, that would inform the government's decision on funding for 2015-16 onwards. It eventually conducted the review after a judicial review was launched.
Transparency Code	The Department expects to undertake a review in 2016, at which point local authorities will have published 5 quarterly and 2 annual data sets.
Care Act	The Department of Health plans to monitor activity and costs associated with the new burdens in the act on a quarterly basis from April 2015. This will help to test the assumptions in the new burden assessment.
LLC register	HM Land Registry plans to conduct an operations and benefits realisation review in June 2018, 8 months after the Local Land Charges register goes live.

Source: National Audit Office

Appendix One

Our audit approach

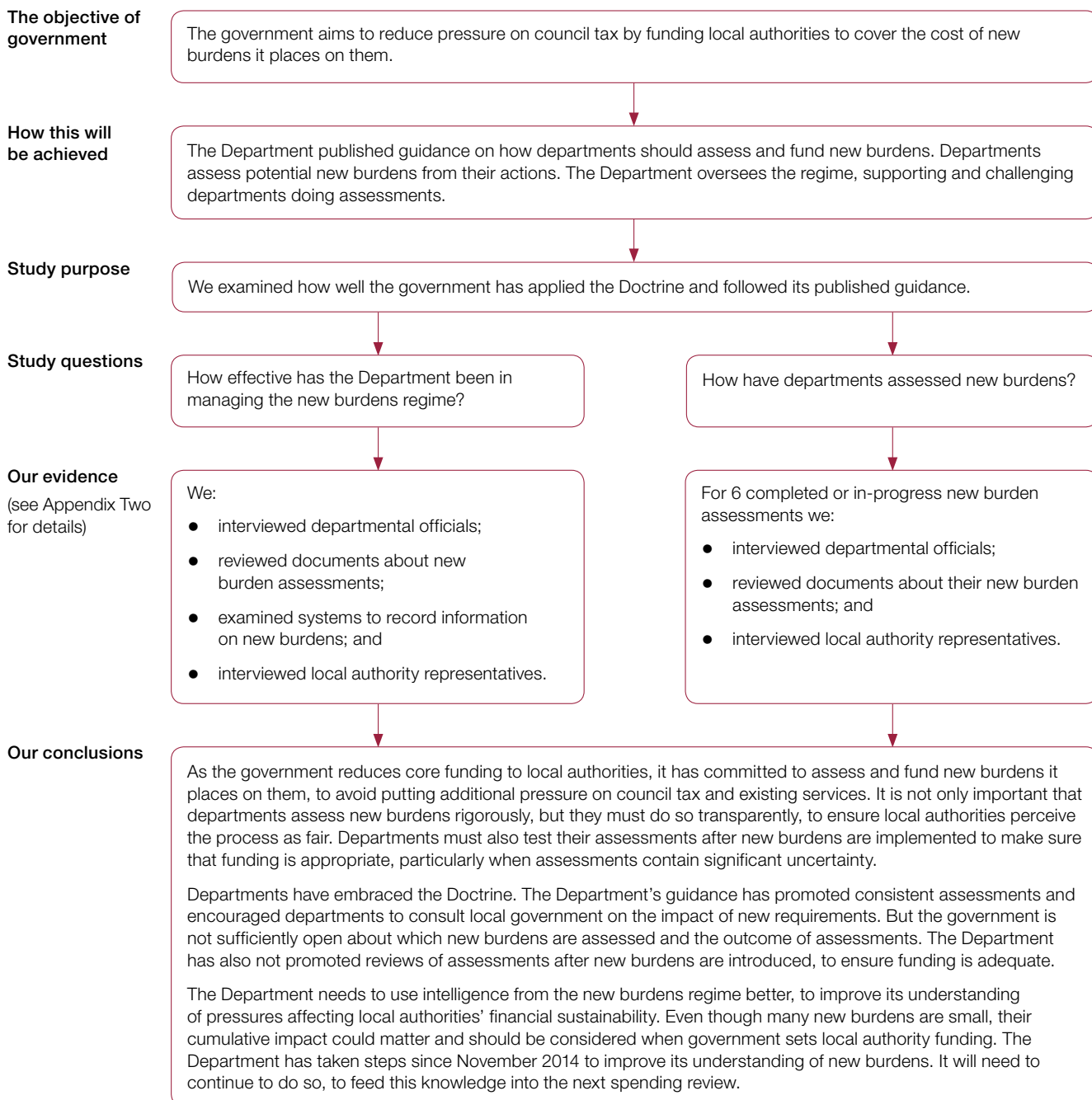
1 In 2011, the Department for Communities and Local Government (the Department) reaffirmed its commitment to assessing and funding new burdens on local authorities in the New Burdens Doctrine (the Doctrine). By applying the Doctrine it hopes to keep down pressure on council tax. The Department's guidance shows how departments should assess potential new burdens and how it would evaluate implementation. This report examines how well the Department runs the new burdens regime and how departments have applied the Doctrine.

2 There were two main elements to our work:

- How the Department oversees the new burdens regime to make sure that potential new burdens are assessed and, where identified, funded.
- How departments had applied the new burdens guidance, evaluated through 6 case studies. This included analysing new burden assessments, where completed, and interviewing departmental officials and local authority representatives.

3 Our audit approach is in **Figure 20**. Our evidence is summarised in Appendix Two, which includes information on the 6 case studies.

Figure 20
Our audit approach



Appendix Two

Our evidence base

1 We reached our independent conclusions on how the government applies the New Burdens Doctrine (the Doctrine) after analysing evidence collected between October 2014 and February 2015. Our audit approach is in Appendix One.

2 We interviewed officials from the Department for Communities and Local Government (the Department). These interviews focused on:

- how the Department learns of potential new burdens;
- the support and challenge it gives departments about new burden assessments;
- its systems for recording and using information on potential new burdens; and
- how it captures and shares learning from the new burdens regime.

3 We reviewed information the Department provided. This included the information it uses to track action on potential new burdens, and correspondence between the Department and the other departments about specific new burden assessments.

4 We examined how departments had assessed, or were assessing, potential new burdens on local authorities. We selected 6 case studies to cover a range of departments, different types and value of new burden, and to span the period since the Department's guidance was published in 2011. We used these case studies to understand how departments have assessed new burdens. **Figure 21** on pages 42 and 43 gives more information on the cases we examined.

5 We interviewed officials from the lead departments for each case study. These interviews focused on how the departments:

- assessed the costs of new burdens;
- consulted local authorities;
- worked with the Department;
- funded new burdens; and
- reviewed their assessments following implementation of the new requirement.

6 We spoke with local government representatives. We spoke with representatives from local authorities, the Local Government Association, London Councils and professional associations. These conversations helped us to select case studies. They also helped us understand the impact of government requirements on local authorities and how central government had consulted with local authorities on new burdens.

7 We reviewed our own research and external literature. We focused on our recent research, which covered the financial sustainability of local authorities and council tax support. We also did background research for each case study to understand the impacts of the new burdens on local authorities.

Figure 21

New burden assessment case studies

Department	Subject of assessment (Date completed)	Value (where agreed)	Summary
Home Office	Changes to statutory guidance issued under section 182 of the Licensing Act 2003 (March 2012)	No additional funding provided	<p>After consultation on reforms to the Licensing Act 2003, legislative changes were made in the Police Reform and Social Responsibility Act (PRSRA) 2011. The section 182 guidance was changed to reflect these. Six other changes were made to the guidance, which were the subject of a new burden assessment.</p> <p>These were:</p> <ul style="list-style-type: none"> ● cumulative impact policies can include all licensed premises; ● licensing authorities have more freedom to determine opening hours; ● licensing authorities review licences where persistent under-age selling is occurring; ● licensing authorities should accept all reasonable police representations; ● licence applicants should give greater consideration to the local area; and ● removal of bureaucracy of planning and licensing functions.
Department for Education	Introducing an entitlement to free early education for disadvantaged 2-year-olds (June 2012)	2011-12 – £64 million 2012-13 – £296 million 2013-14 – £525 million 2014-15 – £755 million 2015-16 – £530 million (estimate – actual funding based on participation)	<p>This policy introduces an entitlement to 570 hours of free early education for 2-year-old children who meet eligibility criteria associated with disadvantage. It places a legal duty on local authorities to secure free early education places for eligible children.</p> <p>The entitlement was introduced in two phases:</p> <ul style="list-style-type: none"> ● from September 2013 for c. 20% of 2-year-olds; and ● from September 2014 for c. 40% of 2-year olds. <p>Authorities incur costs in administering local schemes, to secure free places as required, and to develop capacity in the local childcare market.</p>

Figure 21 *Continued*

New burden assessment case studies

Department	Subject of assessment (Date completed)	Value (where agreed)	Summary
Department for Work & Pensions	Funding for local welfare assistance (July 2012)	2012-13 – £1.4 million (implementation grant) 2013-14 – £174.7 million 2014-15 – £172.1 million	In 2011, the government decided to end certain elements of the discretionary Social Fund. Local authorities would provide new local support aligned with existing strategies and duties. The Department for Work & Pensions would provide unringfenced funding for 2013-14 and 2014-15. The government would review funding for 2015-16. No legal duty was placed on local authorities to provide support.
Department for Communities and Local Government	The requirement to comply with the <i>Local Government Transparency Code</i> (October 2014)	2014-15 – £2.5 million (part year) 2015-16 – £4.0 million (subject to HM Treasury approval) 2016-17 – £4.0 million (subject to HM Treasury approval)	The <i>Local Government Transparency Code</i> specifies the minimum level of data that local authorities should publish to meet the government's aim of making public services more accountable to local citizens. Legislation enacted in 2014 made compliance with the mandatory elements of the Code a legal requirement for local authorities from 31 October that year. In 2014-15, authorities were required to publish 2 quarterly returns and 1 annual return.
Department of Health	Implementing the Care Act in 2015-16 (October 2014)	2015-16 – £257 million (although £470 million funding provided)	The Care Act introduces significant new duties on local authorities for delivering care and support. Most of the Care Act merges existing obligations on local authorities. Major changes include: <ul style="list-style-type: none"> ● provision of support for carers; ● new eligibility criteria; ● rights to deferred payment agreements; ● enhancing adult safeguarding boards; ● clarifying local authority responsibilities for prisoners with social care needs; and ● placing a duty on local authorities to meet the needs of care and support for users and their carers who move into their areas, from the day of arrival until they undertake a new assessment.
HM Land Registry	Transferring the Local Land Charges (LLC) register from local authorities to HM Land Registry (not yet completed)		The Infrastructure Act 2015 makes HM Land Registry the sole registering authority for LLC. This will result in a standardised national fee for the service of conducting an LLC search. Local authority LLC records will have to be digitised and migrated to a central register. This is significant undertaking and is unlikely to be completed until after 2020. After creating a central register, local authorities will update it to reflect any changes in their area. However, as they will no longer carry out LLC searches they will be unable to charge to cover their costs.

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