

Policy development guidelines for regulatory functions involving local government

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Questions and links to help you understand and apply these guidelines

<i>Question</i>	<i>Link to sections</i>
What are the guidelines all about? What prompted them?	Introduction – overview, purpose, background
Why should I think about whether local government should be involved in the policy development?	Policy considerations – overview, local autonomy and accountability, national outcomes and local autonomy
Is there a likely impact on local authorities in the development of the policy? e.g. implementation	Policy considerations - local discretion, local circumstances, information or resourcing synergies
Is this a national issue with local variations?	Policy considerations - local discretion, local circumstances, information or resourcing synergies
What issues or impacts need to be considered in developing policy relating to local government?	Policy considerations – overview, diversity, local autonomy and accountability, national outcomes and local autonomy, territorial authorities or regional councils, funding impacts on local authorities
Is local government implementation of the policy an option?	Policy considerations - local discretion, local circumstances, information or resourcing synergies
How can local government add value to the policy development?	Introduction – purpose
How do I involve local government in policy development? Who and how do I consult?	Involving local government – overview, mechanisms for involvement Policy considerations – territorial authorities or regional councils
What about capacity and capabilities issues for local government?	Policy considerations – diversity, local autonomy & accountability, local discretion, local circumstances, information or resourcing synergies
What about the funding impact on local authorities?	Policy considerations – funding impacts on local authorities, local discretion, local circumstances, information or resourcing synergies

Introduction

Overview

These guidelines have been prepared to prompt and assist central government agencies to identify and consider key issues that may arise where local authorities are, or are proposed to be, involved in the implementation of regulatory functions. There are two major objectives to the guidelines:

- To identify and discuss key issues to consider in developing regulatory policy, and/or formulating an implementation programme.
- To outline how local government sector representatives can be involved in policy development processes, to provide first hand, practical and contextual information and perspectives in considering these matters.

While the guidelines have been developed as part of a work programme focussing specifically on the development of policies involving local authorities in regulatory activities, they may also assist the development of policies involving local authorities in a service delivery role on behalf of central government.

Finally, it should be noted that neither reference to the guidelines nor involvement of local government sector representatives reduce the importance of consulting the Department of Internal Affairs in the development of policy proposals that may impact on local government. The Department is responsible for policy advice to the Minister of Local Government, it administers the Local Government Act 2002 and associated core local government legislation, and has responsibility for coordinating the central/local government interface.

Purpose

The purpose of these guidelines is to improve the quality of policy development where:

- a regulatory solution is among the preferred options to achieve desired outcomes
- local authorities will or may be involved in the administration or implementation of the regulatory framework
- existing local authority functions may be changed or removed through a policy option.

The guidelines have been developed to do this in two ways. Firstly, they indicate aspects and features of local government in New Zealand, and its relationship with central government, that may impact on assessing whether, and how, local authorities should be or should not be involved in the implementation of a particular regulatory regime.

They also assist the assessment of these matters through involving local authorities, or their representatives, early on in policy development processes. This recognises that local authorities and their officials can add value to policy development and implementation through first hand information and different perspectives relating to:

- clarifying problem definition and practical experience of problems at a local level
- identifying alternative options and possible solutions not identified by central government agencies
- cost-effective means of implementing policies
- possible unintended consequences
- cumulative costs and benefits with other initiatives

- political ramifications
- fit with existing local government systems and structures
- practicalities of proposals
- identifying local outcomes and interests versus national interest.

Background

In a paper presented to the Central Government/Local Government Forum^{*} in December 2003, *Local Government New Zealand* noted there had been a number of changes made in recent years to the regulatory responsibilities of local government. It argued it would be helpful to take stock and look ahead to consider how regulatory change is thought about in the future.

Ministers and the *Local Government New Zealand* National Council agreed to establish an officials group of central and local government representatives to follow up on these issues. The officials group provided an interim report to the meeting of the Forum in July 2004, which noted that:

- there appears to be some justification for central government policy-making to better incorporate into its analysis the effect of changes to regulatory responsibilities on local government; and
- there are currently a number of initiatives that offer the opportunity to incorporate into policy-making, consideration of the effect of proposals on local government.

In considering the report, the Forum agreed that the next steps were for the officials group to complete and refine its analysis and recommend what further work is necessary.

The officials group consulted officers from both local and central government on its analysis. This confirmed the potential benefits, in terms of both national and local outcomes, of a more consistent and coherent consideration of issues relating to the regulatory responsibilities to local government. A more consistent approach to these matters in policy development will enable more effective regulatory frameworks and better implementation programmes. At the same time, consideration of impacts on local government capacity and responsiveness, including those of cumulative impacts, should provide benefits across a broad range of national outcomes, as well as local ones. In particular, improved recognition of the key participation, accountability and funding relationships between local authorities and their communities is essential to ensuring better alignment with the purpose of local government as set out in the Local Government Act 2002.

The officials group's report to a meeting of the Central Government/Local Government Forum in December 2004 identified that an important contribution to improving the consistency and coherence of policy development, in respect of new and changed local government regulatory responsibilities, could be made by better information and guidance for policy agencies, including:

- which issues and impacts may need to be considered

^{*} The Central Government/Local Government Forum (the Forum) was initiated by the Government in 2000. The Forum is held approximately six monthly and chaired jointly by the Prime Minister and the President of Local Government New Zealand (LGNZ). It is attended by senior Ministers and LGNZ National Councillors and provides an opportunity to discuss issues of mutual concern and interest.

- how and when local government sector input should be sought to assist with this consideration
- practical implementation issues.

As a consequence the work programme agreed by the Forum agreed to the development of these guidelines.

Policy considerations involving local government

Overview

While local government is subject to national interest considerations, and reliant on Parliament for its existence and powers, the Government recognises that an effective partnership between central and local government is key to delivering national goals and priorities. It has also recognised, through the enactment of the Local Government Act 2002, that a system of effective and responsive local governance is crucial to improving social, economic, environmental, and cultural wellbeing across the country.

Partnership between central and local government occurs at the local and regional level, through central government's participation in identifying and promoting local community outcomes (and as key stakeholders in delivering "outcomes"). Involving local authorities in the exercise of regulatory responsibilities aimed at national outcomes is another aspect of the partnership.

The design of such collaborations, and their statutory framework, will be improved if it occurs in the context of a better understanding of local government, and in particular the following key issues:

- diversity of geography, communities and issues
- local autonomy and accountability
- national outcomes and local autonomy
- statutory decision-making, consultation and accountability requirements
- the different roles of territorial authorities and regional councils
- funding impacts on local authorities.

Diversity

A system of local government recognises that different communities of interest have different needs and preferences for the provision of public facilities and services. Such differences arise from a mixture of circumstances, aspirations and distinct community identity. The Local Government Act 2002 (section 10) provides that:

"The purpose of local government is-

(a) to enable democratic local decision-making and action by and on behalf of communities, and

(b) to promote the social, economic, environmental and cultural wellbeing of communities in the present and for the future. "

Territorial authorities (city and district councils) are formed largely around common social and economic communities of interest and identity. Although there was major reform of territorial authority boundaries in 1989, the overall pattern still partly reflects historical interactions and identities. As a consequence, territorial authority districts differ widely in size (both area and population), in character, and in economic wealth.

Regional councils are different in that regional boundaries were largely designed to embrace whole river catchments, reflecting their primary responsibilities for natural resource management and other environmental functions, including river and flood control. However the varied geography of New Zealand, as well as the fragmented settlement patterns, means that regional councils also vary widely from each other, and are quite different from territorial authorities.

Finally, it is important to note that four territorial authorities within New Zealand (Nelson City Council and Gisborne, Marlborough and Tasman District Councils) also exercise the role of a regional council within their boundaries. These are known as unitary authorities.

Councils range in population from 3,400 to 1.3 million inhabitants. The average territorial authority population size is 50,000; though more than a third (27) of local authorities have less than 20,000 inhabitants. They also vary considerably in population density, socio-economic and economic composition. The diversity means that different councils operate under very different circumstances and with different priorities and resources to address.

These variations in size and resources are one of the key factors to be taken into account in considering whether local authorities should have a role.

Local autonomy and accountability

Local authorities require autonomy to reflect and respond to the differing needs and aspirations of their various communities.

This autonomy is far from absolute – Parliament imposes limits on what councils/communities can choose to do, or not do, to safeguard individual rights and interests. More importantly, Parliament prescribes decision-making and consultation processes and principles, planning and reporting requirements, and democratic electoral arrangements, to implement and safeguard the accountability relationship between councils and the communities they serve.

National outcomes and local autonomy

There is a tension between the fundamental role of local government, of autonomously responding to the needs and aspirations of each local community, and the involvement of local authorities in implementing policies determined at a national level to achieve national outcomes and objectives. While this tension can be overcome and managed, many of the difficulties experienced by the local government sector may be overcome or minimised if the nature of the tension is explicitly and transparently recognised and addressed in the development of Government policy.

Conversely, problems and difficulties in the implementation of regulatory frameworks by local authorities can be caused or exacerbated by the design of the policy framework and/or its implementation. It is important that these explicitly recognise the statutory independence and democratic mandate of local authorities, and the fact that their decision-making, accountability, and funding frameworks are designed to explicitly focus on local rather than national outcomes.

There are three broad reasons why it may be desirable to involve local authorities in the implementation of government regulatory policy. They are:

- Local discretion – to provide scope, within the overall national policy objectives, for local or regional communities to exercise choices concerning the nature and extent of the regulatory regime to be implemented in their district or region and to achieve outcomes of benefit to the district or region. i.e. where local governance contributes to equity, justice and public good elements associated with the issue under consideration and where social, economic, environmental and cultural wellbeing will be achieved.

- Local circumstances - where effectively attaining national policy objectives requires implementation that is tailored to particular circumstances that may vary between districts and regions.
- Information or resourcing synergies - with activities already undertaken by local authorities, such that local authority implementation is the most cost effective option.

Invariably, two, or even all, of the above factors may be involved in consideration of local authority implementation of regulatory policy. However each aspect has different policy implications and raises different issues, both for the underlying policy itself and for the design of implementation programmes.

Involving local government in policy development is key to finding the answers to these matters.

Local discretion

Policy issues

The policy issues that need to be explicitly addressed where local discretion is to be allowed are:

- Clarity about the extent and limits of local discretion and the manner in which it is to be exercised. In particular, it may not always be the case that local variations on objectives and outcomes will be best served by a regulatory approach, even where this is or appears appropriate from a national perspective.
- Clear accountability – if the local authority is involved in administering a regulatory regime that is partly prescribed by Government and partly determined by the council itself, it is highly desirable that the two components are transparently distinguished so that the council is accountable to the community for the latter.
- The separation of local accountability from prescribed elements may need to be reflected in different funding arrangements – with any public funding of national choices being met by the Government while local choices are funded locally. [see separate section on funding below],
- Decision-making and reporting processes in respect of the local component should utilise, and as far as possible be integrated with, the core processes required under the Local Government Act.
- Care needs to be taken in respect of Treaty of Waitangi issues in respect of both nationally prescribed standards or limits, and local discretion. The Crown cannot transfer Treaty obligations and responsibilities to local government as such, it is the Crown's responsibility to interpret its obligations under the Treaty and to translate these into policy and procedural requirements for local authorities.

Implementation issues

- The major implementation requirement where local authority policy discretion exists is to allow time, and provide appropriate information support for, the formal and informal consultation and decision-making processes that may be required.
 - Local authorities are required to prepare, every three years, long-term council community plans (LTCCPs), which set out their activities, expenditures and funding needs over at least the next ten years. These plans are subject to a formal consultative

process (the special consultative procedure), which must be completed by the start of the first financial year (1 July) that they cover.

- Local authorities are not wholly bound by LTCCPs, but major strategic decisions cannot be undertaken unless they are first consulted in a draft LTCCP or amendment to the LTCCP, which is subject to the special consultative procedure.
- There are two implications for the implementation of new regulatory responsibilities by local government:
 - It is generally desirable that significant changes to local government activities, including the commencement of new activities, correspond to the start of their financial year (1 July).
 - If formal consultation is required before the local authority commences the activity (either to determine the details of the local authority's policy decisions or to ensure adequate resourcing etc), local authorities will need full and final details of what is required of them early in the preceding February, but will need reasonable indicative information much earlier and certainly not later than November in the preceding year.

Local circumstances

Policy Issues

These may appear similar to the issues that arise where local policy choice is involved, and often both circumstances will coexist in a way that makes distinguishing them problematic. Nevertheless, this form of involvement of local authorities is conceptually quite different. Identification of this difference, where it exists, can assist in the development and design of appropriate regulatory frameworks.

- The key aspect of this form of association is that local authorities are required to determine how best to achieve Government determined policy objectives or outcomes in the particular circumstances that pertain in that particular region. They do not have open-ended policy discretion, in terms of varying the objectives or outcomes, but they have management discretion concerning how they are to be attained.
- Outcomes and objectives to be attained must be clearly identified.
- In general terms, accountability for both the “management” decisions and the performance of each local authority in meeting the objectives and outcomes is to central government (which prescribed them) rather than to the local community.
- For a number of reasons, it is important that any public¹ funding for the activity is provided nationally. [see separate section on funding below]
- This situation can be regarded as a form of agency in which local authorities act as the agents of central government. While the relationship is more likely to be prescribed by legislation rather than an actual contract, the same principles apply to the statutory description of the relationship as would apply to a standard contract; the roles and responsibilities of the respective parties, performance standards and

¹ i.e. funding not derived directly from fees or charges for services, inspections, licenses etc or from fines or other forms of penalties

expectations, performance measurement and reporting arrangements, and dispute resolution processes should all be clearly set out.

Implementation issues

- If local authorities do not have policy discretion, a function will not necessarily require inclusion in each local authority's public consultation on their LTCCP. It will be necessary, however, to give the local authority time to gather and evaluate information needed to determine how it will undertake the function. This may vary significantly, but could be considerable in some instances.
- It will also be necessary to allow sufficient time for the implementation of the above decisions – which may require the appointment of staff, staff training, purchase of accommodation or equipment etc.

Information or resourcing synergies

Policy Issues

- In this form of instance too, the legislation or other instrument that involves the local authorities must include the level and sorts of details that would be expected of a contract. If, however, local authorities have neither policy nor management discretion concerning the activities and outputs they produce, then it should be those, rather than objectives and outcomes, that are specified, monitored and reported.
- If the proposed activity involves shared resources and costs with other activities that are discretionary (wholly or partly) for local government, consideration should be given to:
 - how the costs are to be shared between the two activities
 - how changes in the level or nature of the discretionary activity might impact on the proposed activity, and how this will be dealt with.

Implementation Issues

- While the proposed activity will not involve policy or service level decisions by the local authority, its impact in terms of the cost and cost-effectiveness of the other activity may need to be factored into local government planning and consultative processes.
- Again, sufficient time needs to be allowed for the employment and/or training of staff (if required) and acquisition of other resources before the activity commences.

Territorial Authorities or Regional Councils

A key issue that will often need early resolution is whether the regulatory responsibility will be better exercised at territorial authority or regional council level.

One set of key issues to consider in relation to this issue is the scale and nature of the matter to be regulated, the areas of benefit from particular activities and policies, and the area over which coordinated activities and enforcement will be most effective. As noted above, territorial authority boundaries tend to reflect communities of interest based on patterns of social and economic interaction. There are more of them, they have diverse characteristics, and are generally smaller than regions. Regional boundaries were set with regard to environmental and natural resource management responsibilities and, particularly, catchment management. They

therefore reflect physical, rather than social or economic, environments or collections of them.

The second set of key issues relates to synergies between the regulatory activity being considered, and existing functions, roles and activities at each level of local government. Historically, territorial authorities have tended to have responsibility for service delivery and for regulatory functions relating to the built environment, public health and safety, and the prevention of nuisance. Regional councils have tended to undertake more natural resource and environmentally focussed functions including some regulatory ones. The Resource Management Act itself, of course, allocates regulatory responsibilities and roles at both territorial and regional level.

The enactment of the Local Government Act 2002 has created greater flexibility for authorities at both levels to undertake new functions, including opportunities to transfer responsibilities from territorial to regional level, or vice versa, where both councils agree. It is therefore increasingly uncertain that the same pattern of functional allocation will be repeated throughout New Zealand. This provides another option for policy development or review – that of allowing councils to determine themselves whether the function should be undertaken at one or the other level.

Funding Impacts on Local Authorities

Funding and resourcing impacts are a key element of the concerns raised by local government at the number and manner of regulatory responsibilities “imposed” on them by central government. Funding methods are closely linked with local authority accountability and decision-making processes. Funding increased or amended regulatory responsibilities must be carefully considered, to preclude unintended and undesirable impacts on local authorities’ ability to achieve their core purpose, and enable the effective achievement of Government’s regulatory outcomes themselves.

Local authorities depend on property rates to raise revenue beyond that which is possible and appropriate to recover through fees, prices, fines etc. Unlike central government taxes, rates are set anew each year and are therefore theoretically zero-based in terms of justification of spending needs and priorities. In practice, however, public scrutiny and political sensitivity are focussed on increases in rates over those in previous years. This focus, coupled with the very high visibility of rates compared with most other forms of taxation (ratepayers generally receive detailed invoices from the council several times a year) mean that new responsibilities that add to rates revenue requirements are likely to be both highly unpopular and create significant distortions to the consultative process. This affects local authorities and their communities determining the levels and priorities for new expenditure. The imposition of regulatory responsibilities that are not accompanied by either government funding or cost recovery mechanisms, with the consequence of a net cost to the local authority, can detract from the core purpose of the local authority of responding effectively to the needs and preferences of its community.

Significant reliance on general or public funding by the local authority may also impact significantly on both the extent to which national consistency is achieved in the performance of the responsibility, and in the equity of its impact. Not only do local authorities vary extensively in size, but also in wealth. Reliance on local public funding to achieve national outcomes is likely to have uneven and inequitable impacts – the differing resource levels available in different districts may mean that some communities, and individuals within them, are required to make far greater sacrifices to meet the demands of funding any given service level.

These issues are practical manifestations of the principle that public activities and functions should be organised so that the costs, and the governance accountabilities for determining and implementing them, are distributed to coincide as closely as possible with the distribution of benefits from them. Within the constraints of the public choice mechanisms available, matching responsibilities for funding with the distribution of benefits should lead to a more accurate balance between the costs and benefits of the activity. The relatively high transparency and visibility of local government revenue mechanisms, in particular, will tend to lead to lower investment in activities where benefits are seen to accrue outside the district or region or over long periods of time.

Local Variations in Cost

A further important consideration is that the cost of many activities, including regulatory activities, may vary significantly between local authorities of differing size, population density, location and character. This has particular and obvious relevance where government funding is provided to meet the costs of implementing regulatory responsibilities. It is also an important consideration where the regulatory responsibility is accompanied by cost recovery mechanisms designed to enable the recovery of costs from users or direct beneficiaries of the activity. Such mechanisms may need to recognise, and provide, significantly different levels of fees etc if full cost recovery is to be achieved. This may, in turn, raise issues where equivalence and consistency of cost on a national basis is a government policy objective.

Involving local government in policy development
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Overview

Councils vary widely, and while they often share interests and concerns, this is not always the case. Councils can take different positions reflecting their political priorities, history, geography and population, community and socio-economic composition, and wealth and economic base. They differ from one another in their operating systems and organisational cultures, and resources available to respond to central government initiatives. They also have a tightly prescribed legislative framework to work in.

These characteristics underline the need when involving local government to:

- engage with local government at an early stage to allow officials and politicians to work through their different systems and statutory requirements
- ensure the range of councils are included, reflecting:
 - geographical differences and spread
 - metropolitan, regional and rural context
 - socio-economic and economic base
- recognise some councils are more able to participate in collaborative arrangements and working parties than others, while noting that some of the councils least able to participate may be most affected by a proposed policy
- recognise a unified local government position is not always possible, and a range of responses may need to be identified and addressed in the policy development process.

Mechanisms for involvement

The challenge for central government officials is to engage with local government officials and politicians to capture the concerns of all councils in a way that is both productive and timely. It is best to involve *Local Government New Zealand* (LGNZ) during the scoping of a project. LGNZ can provide advice on how best to involve local government.

In some instances, it may be worth the effort to engage with each council individually. In other cases, existing local government formal and informal networks can be used to engage with particular parts of the sector. Each has its own strengths and benefits:

- LGNZ is able to provide a political overview, as well as manage processes to tap into local government sector experience and expertise.
- New Zealand Society of Local Government Managers (SOLGM) is a management level group that provides technical advice, particularly on administration and finance.
- Individual councils (85) can be contacted through council visits and mail-outs to get a direct response.
- Zone and Regional meetings: LGNZ holds regional Zone Meetings, resourced from its Wellington office, attended by respective Mayors, Chairs and Chief Executives. Most regions also hold their own regional forums occasionally.
- Sector meetings: LGNZ organises meetings of the four local authority sector groups (representing the regional councils, metropolitan councils, provincial councils and rural councils). The regional and metro sectors meet quarterly and the rural and provincial sectors generally meet twice a year.
- Chief Executive or 2nd tier meetings allow direct contact with councils' senior management.

- Staff technical groups: professional staff of many regional and district councils hold regular regional and/or national meetings and some run Email lists for circulating and discussing technical issues.
- Websites and List-servers: Quality Planning website (www.qualityplanning.org.nz) and list-serve. Local Government Online website (www.localgovt.co.nz) and list-serves.
- Road shows, workshops and working documents circulated for comment are all suitable, depending on the significance of the topic and its likely impacts on local government.

Local Government New Zealand (LGNZ) www.lgnz.co.nz:

LGNZ is a membership organisation, of which all councils are members. It is governed by its board (the national council) consisting of local government politicians drawn from across the country (from both the six zones and four sector groups).

LGNZ has a focus on the political aspects of policy initiatives, and can provide an indication of political acceptability. It responds to requests from central government agencies for submissions from local government, coordinating individual councils' responses and providing a single local government view where it considers this is appropriate. This is not always possible where member councils hold substantively different views.

LGNZ holds quarterly Zone and Sector meetings across New Zealand, resourced from its Wellington office. These are attended by Zone Mayors, Chairs and Chief Executives and provide a forum for identifying and discussing key issues and opportunities.

LGNZ has a range of reference groups and project teams comprising key people from within local authorities. These groups have been set up to work on specific issues and topic areas. They may be useful groups for central government agencies to work with.

LGNZ also has a range of mechanisms for reaching councils:

- Mailouts
 - LGNZ has a weekly mailout to all councils
- Meetings
 - LGNZ facilitates a number of sector meetings including: zone meetings, sector meetings, metro mayors, metro chief executives, regional affairs committee and regional chief executives meetings
- Workshops
 - LGNZ facilitates workshops on key policy initiatives and other issues affecting the local government sector
- Conference
 - LGNZ's annual conference takes place in July and is attended by politicians, chief executives and some council technical staff. There may be opportunities to present to conference sessions or workshops
- LG Newz
 - LG Newz is the organisation's quarterly newsletter, distributed to approximately 2,500 people within councils, including chief executives and politicians. Depending on space, items of up to 100 words can be included
- E Newz
 - E Newz is the organisation's monthly, electronic newsletter. It is distributed to approximately 2,500 people within councils, including chief executives and

politicians. Short paragraphs can be included in the newsletter with a link to an external website, document or contact details for further information

- Website
 - Items and links about policy, initiatives or submissions can be uploaded to LGNZ's website (www.lgnz.co.nz). The site has a 'current projects' section where councils can find out about new and ongoing projects and work areas that relate to the local government sector.

New Zealand Society of Local Government Managers (SOLGM) www.solgm.org.nz: is an officers' level organisation. Members have considerable experience in local government and are able to provide technical advice on administration and finance matters.

Senior management forums: local government Chief Executives and 2nd tier managers meet regularly, providing a senior management perspective and indication of political sensitivities.

Staff technical groups: professional staff of many regional and district councils hold regular regional and/or national meetings and some run Email lists and newsletters for circulating and discussing technical issues. These can be very good for addressing practical implementation matters, but members may not be aware of wider political context.

Technical information can be obtained by including local government in the policy development process at an early stage. This takes the relationship with local government beyond one of consultation to one of partnership. This information can be expected to improve the technical quality of the policy advice, but is an adjunct to rather than replacement for consultation.

Commonly used mechanisms include:

- workshops with council technical and professional groups
- working parties with joint central and local government officials' memberships
- reference groups where local government representatives respond to drafts
- peer review.

Membership needs to be sufficiently inclusive to take account of the range of councils and the variety of issues they face. Also geographic spread should be considered. Historically, local government officials near Wellington have often been used on working groups. This risks overloading a few individuals while excluding views and experience of more distant staff from councils that may suffer disproportionately from implementation. It is also important for the costs of involving local authority staff working on central government working parties, etc, to be covered by the central government agency (e.g., travel costs).