

THE DECENTRALISATION AND LOCALISM BILL

The Government published the above Bill known as the “Localism Bill” on 13 December. The Bill aims to shift power from central government back into the hands of individuals, communities and councils. An essential guide to the Bill has also been produced setting out the thinking that underpins the Bill.

This Briefing summarises the main points of the Bill and the guide as it relates to local councils and communities. Since the formation of the Coalition Government in May, the National Association has been engaged in extensive activity to promote the interests of member local councils, particularly with regard the localism and Big Society agendas. As a direct result of representations made to Government Ministers and officials, the Bill provides greater recognition of the role of local (community, neighbourhood, parish, village and town) councils along with a range of new powers.

Executive Summary

Key points of the Localism Bill include:

- a new power for local people to approve or veto excessive council tax rises through a local referendum, but with the intention that the majority of local councils will fall below the level set by the Secretary of State;
- a right for local councils – as well as voluntary and community groups, social enterprises and local authority employees delivering a service – to challenge a local authority, by expressing an interest in running any service for which they are responsible;
- the chance for communities to develop a bid and raise the capital to buy a local community asset when it comes on the open market;
- measures to give people, councillors and councils the power to instigate a local referendum on any local issue;
- a new general power of competence to provide local authorities – including certain local councils – to enable them to do anything apart from that which is specifically prohibited;
- freeing up councillors to be able to campaign, to express views on issues and to vote on those matters, without fear of being unjustly accused of having a closed mind on a particular issue;
- the abolition of the Standards Board regime and a new duty on local authorities to promote and maintain high standards of conduct, including provision for the adoption of a voluntary code of conduct;
- changes to the Community Infrastructure Levy including provisions requiring some of these funds to be passed to neighbourhoods where the development has taken place;
- a new right for local councils to shape their local areas through neighbourhood plans which will enable communities to permit development – in full or in outline – without the need for planning applications;
- the power for communities to take forward development in their area without the need to apply for planning permission, subject to meeting certain safeguards and securing 50 per cent support of the community through a referendum.

Key points of the Essential Guide

The guide makes the case for a radical shift of power from the centralized state to local communities, and describes the six essential actions required to deliver decentralization down through every level of government to every citizen:

- **Lift the burden of bureaucracy** – by removing the cost and control of unnecessary red tape and regulation, whose effect is to restrict local action;
- **Empower communities to do things their way** – by creating rights for people to get involved with, and direct the development of, their communities;
- **Increase local control of public finance** – so that more of the decisions over how public money is spent and raised can be taken within communities;
- **Diversify the supply of public services** – by ending public sector monopolies, ensuring a level playing field for all suppliers, giving people more choice and a better standard of service;
- **Open up government to public scrutiny** – by releasing government information into the public domain, so that people can know how their money is spent, how it is used and to what effect;
- **Strengthen accountability to local people** – by giving every citizen the power to change services provided to them through participation, choice or the ballot box.

Key points of the Localism Bill

The Bill is split across five core themes of community empowerment, decentralisation and strengthening local democracy, reform of the planning system, social housing reform and London.

Community Empowerment

Right to veto excessive council tax rises

The public will be given the power to approve or veto excessive council tax rises – any local authority (including police and fire authorities) and larger parish councils setting an increase above a ceiling set by the Secretary of State and approved by the House of Commons will trigger a referendum of all registered electors in their area. It is designed to make local authorities much more transparent and much more accountable to local people. If councils want to increase council tax beyond a specified level, the intention is they will have to prove the case to the electorate. The Coalition Government expects greater transparency and accountability to help reduce wasteful expenditure. This will be the first time local people will have the power to decide for themselves if their council tax increase is too high rather than Government deciding through capping action.

Community Right to Challenge

A right for voluntary and community groups, social enterprises, parish councils and local authority employees delivering a service, to challenge a local authority, by expressing an interest in running any service for which they are responsible. A local authority must consider and respond to this challenge. The challenge may trigger a procurement exercise for that service in line with the relevant procedure, which the challenging organisation could then bid in, alongside others. The right is part of the Government's aim to create a Big Society.

Community Right to Buy

This will require local authorities to maintain a list of public or private assets of community value put forward for consideration by communities. **When listed assets come up for disposal (either the freehold or long leasehold), communities will be given the chance to develop a bid and raise the capital to buy the asset when it comes on the open market.** This is designed to help local communities to save sites which are important to the community, which will contribute to tackling social need and building up resources in their neighbourhood.

Local Referendums

This measure gives people, councillors and councils the power to instigate a local referendum on any local issue. Although these referendums will be non-binding, local authorities and other public authorities will be required to take the outcomes into account in decision making. The Government believes that local electors across England currently lack a general mechanism by which they can trigger a local referendum on issues of importance to them and through which to influence local decision making and make their views known. To address this issue and provide electors with such an opportunity to influence local decisions, the Government is committed to give residents the power to instigate local referendums on any local issue.

Decentralisation and strengthening local democracy

General Power of Competence

The general power of competence will provide local authorities, including certain parish councils, with all the same powers that an individual generally has, which will enable them to do anything apart from that which is specifically prohibited. This measure will mean that local councils will have new freedoms to run services free from Whitehall diktat. It is designed to give local authorities confidence in their legal capacity to act on behalf of their communities and to act in their own interest to generate efficiencies and savings. It will provide more freedom for councils to innovate and work together with others to drive down costs, as well as providing increased confidence to set up banks, develop property, run new services and own assets.

Local Authority Governance

These measures will allow principal authorities, regardless of their size to return to the committee system of governance, should they wish, and remove the existing limited choice and instead offer real choice for councils and local people to decide what is best for them.

Directly Elected Mayors

Almost every major city in the world has a strong and powerful executive mayor. The Bill will address this by giving areas the right to have a mayor. Mayors can give local citizens a powerful local leader and figure head for municipal government, better deliver local economic growth, boost local democratic engagement and enhance the prestige of a city. This Government is committed to creating directly elected mayors in 12 English cities. Following Royal Assent, the Government will make an Order, whereby the council leaders for Birmingham, Bradford, Bristol, Coventry, Leeds, Leicester, Liverpool, Manchester, Newcastle upon Tyne, Nottingham, Sheffield and Wakefield would become shadow mayors, and be given the powers available to existing council mayors. These cities and any other area that calls for a mayor will hold mayoral referendums on local Election Day in May 2012. For areas that vote in favour, mayoral elections would then be held on local Election Day in May 2013 using the Supplementary Vote system which is used for existing mayors, including London. Mayors will be elected for four year terms and have the status and power to make their city a success, the detail of which will be further explained during the course of the parliamentary process.

Predetermination

The Government believes councillors should be free to campaign, to express views on issues and to vote on those matters, without fear of being unjustly accused of having a closed mind on a particular issue because of it. Predetermination and bias have proved to be difficult and controversial issues for many local authority members in the past. The Bill will make it clear that the normal activities of a councillor – campaigning, talking with constituents, expressing views on local matters and seeking to gain support for those views – should not lead to an unjust accusation of having a closed mind on an issue that can lead to a legal challenge.

The Government believes the fear of being accused of bias and consequently having a decision challenged or overturned has prevented councillors from speaking up, denying the public their representation in council. The Bill gives councillors the assurance that they can campaign, discuss and vote on issues with confidence.

Standards Board

The abolition of the Standards Board regime will revoke the centralist model code of conduct for councillors, abolish the need for a local authority to have a statutory standards committee and abolish the Standards Board for England (which regulates local authority standards committees). The Government view is that the Standards Board regime was a vehicle for petty and vexatious complaints about councillors conduct that consumed councillors' time and councils' resources, as well as damaging confidence in democracy. The Government is committed to the highest standards of conduct by councillors, meaning that while the Standards Board regime is being abolished, they are legislating to make it a criminal offence to deliberately withhold or misrepresent a personal interest. This means that serious misconduct that can at present lead to censure by a local authority standards committee and having to make an apology will instead possibly result in a criminal conviction. A new duty on local authorities to promote and maintain high standards of conduct will be introduced, along with provision for the adoption of a voluntary code of conduct and the powers to revise, adopt and withdraw such a code.

Pay Accountability

The Bill will improve transparency and local democratic accountability in how senior pay is set within local government. Provisions are included that will require principal authorities and fire and rescue authorities to approve and publish annually at Full Council (for FRAs, a meeting of members), a senior pay policy statement which authorities will be required to follow when setting senior pay. Where councils want to depart from the pay policy, these would need to be referred back to Full Council (or a meeting of members for FRAs) to vote on.

Scrapping Bin Taxes

So-called 'bin tax' schemes would have allowed local councils to charge residents for household rubbish collections or fine families for having a full bin. The Bill will repeal sections 71 to 75 of, and Schedule 5 to, the Climate Change Act 2008 thus stopping these schemes taking place. The Government believes bin taxes would have harmed the local environment by fuelling fly-tipping and backyard burning; they would also have allowed local councils to charge residents for rubbish collections, or fine families for having a full bin, on top of council tax bills which are at record levels. The Government believes the charge and submit system around bin taxation would have led to an increase in bureaucracy and the Government wants remove unnecessary red tape.

Reform of the Planning System

Abolition of Regional Strategies

The Bill will remove primary legislation which sets the basis for Regional Strategies. The Government view is that Regional Strategies and the top down targets did not work effectively and that the target-driven approach to development was undemocratic and added unnecessary bureaucracy to the planning system.

Community Infrastructure Levy

The Community Infrastructure Levy allows local authorities to set charges which developers must pay when bringing forward new development in order to contribute to new infrastructure. **The Bill introduces three changes to the Community Infrastructure Levy. Firstly, the Bill includes provisions to make regulations requiring some of these funds to be passed to neighbourhoods where the development has taken place.** Secondly, it makes clear that funds can be spent on the ongoing costs of infrastructure, as well as the initial costs of new infrastructure. Lastly, it gives local authorities greater control over setting their charging levels – while independent examiners will still consider whether the charging schedule is unreasonable, it will be for the authority to decide how to make it reasonable.

Local Plan Reform

The Government wants to give local authorities and communities greater choice and control by removing the ability of the Planning Inspectorate to re-write local plans – and by removing procedures on timetabling and monitoring, which in their view many authorities have found bureaucratic.

P18-10

13 December 2010

Planning inspectors will continue to assess local plans at a public examination, and authorities will only be able to adopt plans judged 'sound' by the inspector, but inspectors will only be able to suggest changes at the request of the local authority. Local authorities will be able to suggest changes during the examination and withdraw development plan documents before their adoption, without seeking clearance from central Government. Local authorities will also have to publish up to date information direct to the public on what planning documents they are preparing, while central government powers to direct changes will be more limited.

Neighbourhood Planning

The Bill will introduce a new right for communities to shape their local areas. Neighbourhood plans will enable communities to permit development – in full or in outline – without the need for planning applications. The Government believes that the current planning system is too centralised and bureaucratic, with this complexity making it inaccessible to communities. Top-down enforcement of housing targets has alienated communities and stoked up local opposition to development. New Neighbourhood Plans are designed to help lift the burden of centralised controls and give neighbourhoods and local areas the flexibility to innovate, be creative, access new resources and control their own futures. Reforms in the Bill are aimed at helping streamline decision-making and remove barriers to development.

Community Right to Build

This measure will give local communities the power to take forward development in their area without the need to apply for planning permission, subject to meeting certain safeguards and securing 50 per cent support of the community through a referendum. It will be for communities to identify suitable land, sources of finance and secure support for their proposals, but Government will put in place arrangements to provide help and guidance. This right aims to tackle the lack of development coming forward in rural areas where local planning authorities are resistant to development and consequently restrict expansion despite communities themselves expressing a wish to see new housing and other facilities built. Communities will be able to safeguard the future of rural villages for future generations by providing the framework to develop without being told that it does not fit with their local council's plans and should not go ahead.

Duty to cooperate

The Bill introduces a duty to cooperate to ensure that local authorities and public bodies cooperate with each other. The duty will be a key element of proposals for strategic working once Regional Strategies are abolished. Working alongside the incentives such as the New Home Bonus and Business Rates, it is designed to act as a strong driver to change the behaviour of local authorities.

Pre-application consultation

To strengthen the role of local communities in planning, the Bill introduces a new requirement for prospective developers to consult local communities before submitting planning applications for very large developments.

This is intended to give local people a real chance to comment on proposed developments which may have an impact on them, and to collaborate on issues such as design at an early stage, when

Page 6 of 10

they still have a real chance to influence proposals before they are finalised. Developers will be required to have regard to any opinions raised during this consultation when deciding whether to make any changes before submitting their planning applications.

Enforcement

In order to engage in the planning system individuals and communities need to know that – where people try to flout the system – local planning authorities have the ability to take action. Proposals in the Bill will tackle abuses like making deliberately misleading planning applications and running retrospective planning applications and enforcement appeals simultaneously.

Nationally Significant Infrastructure Projects (abolition of the Infrastructure Planning Commission)

This measure will replace the Infrastructure Planning Commission with an efficient and democratically accountable system that provides a fast-track process for major infrastructure projects and ensures Parliamentary approval of National Policy Statements (National Policy Statements) before they can be designated. The Government believes the current system for consenting applications for major infrastructure projects is unaccountable and that these decisions should be taken by Ministers, who are democratically accountable, rather than by an unelected quango. The Government also wants to ensure that National Policy Statements are as robust as possible, and minimise the risk of successful judicial review. The Government will ensure that National Policy Statements are approved by Parliament to ensure the strongest possible democratic legitimacy.

Social Housing Reform

Social Housing Allocations reform

The Government wants to give back to local authorities the freedom to determine who should qualify to go on their housing waiting list. The rules on eligibility will continue to be set centrally but the Bill will make it easier for existing social tenants to move within the social sector, by removing transferring tenants who are not in housing need from the scope of the allocation rules – they will no longer have to compete with those on the waiting list in housing need. Under the current system local authorities must include on their waiting lists for social housing anyone who applies, with the exception of some foreign nationals and people guilty of serious unacceptable behaviour. As social housing is in great demand and priority is given to those most in need, many applicants have no realistic prospect of ever receiving a social home. The current arrangements encourage false expectations and long waiting lists (currently almost 1.8 million households). This measure will allow local authorities to set waiting list policies that are appropriate to their local area. By taking transferring tenants who are not in housing need out of the allocations rules, the Government will make it easier for them to move and easier for landlords to manage their stock sensibly.

Reform of Homelessness legislation

People who experience a homelessness crisis need somewhere suitable to live, but do not necessarily need social housing. But under the current legislation they can insist on being provided with expensive temporary accommodation, at taxpayer's expense, until social housing becomes available.

Around 70% of homelessness duties are ended with an offer of social housing – which results in around 20% of social lets being allocated to people owed the homelessness duty, at the expense of other people in need on the housing waiting list.

The Bill will give local authorities the flexibility to bring the homelessness duty to an end with an offer of suitable accommodation in the private rented sector without requiring the household's agreement. There will be safeguards: as now, an offer of private sector housing will only bring the duty to an end if the accommodation is suitable for the whole household. The private sector tenancy would need to be for a minimum fixed term of 12 months, and the duty would recur if, within 2 years, the applicant becomes homeless again through no fault of his or her own (and continues to be eligible for assistance).

Social Housing Tenure reform

Currently, social landlords are normally only able to grant lifetime tenancies. The provisions in the Bill will enable local authority landlords to grant tenancies for a fixed length (the minimum length being two years). These 'flexible' tenancies will give more freedom to local authority landlords, allowing them to manage their stock more effectively and ensure that the occupation of social housing better reflects actual need. Landlords will retain the power to grant lifetimes tenancies. Currently, the decision to allocate someone a social tenancy is taken on the basis of the situation of that person at a particular point in their life. As the tenancy is given for life, a landlord will not be able to review the person's occupation of the property even if subsequent changes, e.g. an increase in income, mean that the person's need turned out to be only short-term.

Reform of Council Housing Finance

This reform will replace the current annual centralised system for subsidising council housing and replace it with a locally run system. Under the new system, councils will keep their rental income and use it locally to maintain their homes. To achieve this, the Bill will enable a one-off payment between Government and each council. This will put all Local Authorities in a position where they can support their stock and housing debt from their own income in future. Reform of the Housing Revenue Account is a key plank of the Government's localism agenda, giving councils full control over a key area of spending and service provision, enabling better long term asset management and more transparency and accountability of landlords to tenants and addressing the structural under-funding in the current system.

National Homeswap Scheme

This measure will take a power to set, via the social housing regulator a standard on mutual exchange – a swap of accommodation between two or more tenants where each party moves permanently into their exchange partner's property. This would require landlords to participate in web-based mutual exchange services that enable tenants to see a wide range of properties across providers in England. Less than 5% of households move within the social housing sector each year compared to almost a quarter of private renters. Tenants who are overcrowded, who need to move to get a job or to be nearer to family for caring have to compete with households on the waiting list, one option for them is to seek a mutual exchange. In order to create more mobility within the social stock and give greater choice to tenants over where they live the Government proposes that a national scheme should enable tenants to see a wide range of properties across providers.

Reform of Social Housing Regulation

This measure will: make reforms to the regulatory system for social housing; abolish the Tenant Services Authority and transfer its remaining functions to the Homes and Communities Agency; and make changes to the Ombudsman regime applicable to social housing complaints. This will be enacted by making amendments to the Housing and Regeneration Act 2008, the Housing Act 1996 and the Local Government Act 1974. Abolishing the Tenant Services Authority will put local people in control of driving up standards of social housing management and resolving most failings. The regulator will be focused on the economic regulation of landlords and resolving serious failings that can't be resolved between landlord and tenant at the local level. Under the plans England's 8 million social housing tenants will receive stronger tools to hold landlords to account and there will be a greater role for locally elected representatives in resolving problems in their area. State intervention will be reduced. Housing associations will continue to be subject to robust economic regulation with a stronger focus on value for money, thereby maintaining lender confidence, protecting taxpayers and supporting the supply of social housing. The system of two separate ombudsmen handling social tenants' complaints will end. A single Ombudsman specialising in complaints about social housing will ensure consistency, and provide a common route of redress for all social housing tenants.

Facilitating moves out of the social rented sector

The Government is keen to see that support is given to help realise social tenants' ownership aspirations, which in turn can help to enable better housing outcomes for those in need through more effective use of social rented stock. The Bill will ensure that housing association tenants who are also members (e.g. share holders) of their landlord organisation are allowed to take up incentive schemes which facilitate moves out of the social rented sector into owner occupation. Current legislation does not allow this because it precludes the making of any gifts (including such an incentive payment) to tenant members or former members.

Home Information Packs

Home Information Packs were suspended on 21 May and all requirements relating to Home Information Packs have ceased to apply to responsible persons – either a seller or their estate agents and sellers, this measure will repeal Part 5 of the Housing Act 2004 thereby abolishing Home Information Packs. Energy performance certificates will still be required under separate legislation. On average, consumers have saved £78 from obtaining individual pieces of information during the process of buying and selling a home than paying for a Home Information Pack. This will result in an overall saving of some £870m over a ten year period. The abolition of Home Information Packs will formalise the position on this.

London

The Bill contains a range of powers intended to strengthen London's governance including:

- The devolution of executive powers over housing investment from the Homes and Communities Agency to the Greater London Authority so it can be fully aligned with the Mayor's own funding pot and the London Housing Strategy;

- The abolition of the London Development Agency, with its city-wide roles on regeneration and management of European funding to be transferred to the Greater London Authority so that the Mayor is directly accountable. The Government has already announced the end of the Government Office including London and the Regional Development Agencies;
- New powers for the Mayor of London to create Mayoral Development Corporations to focus regeneration where it's needed most, such as to help secure East London's Olympic legacy, in partnership with London Boroughs;
- Boroughs will be given control over more of the major local planning decisions that affect their local communities – the Mayor will only consider the largest planning applications in future;
- Streamlining consultation on Mayoral strategies, so there is a single environmental strategy – the Assembly will also gain a new power to reject the Mayor's final strategies by a two-thirds majority.

A copy of the Localism Bill can be found at:

<http://services.parliament.uk/bills/2010-11/localism/documents.html>

A copy of 'Decentralisation and the Localism Bill: an essential guide', can be found at:

<http://www.communities.gov.uk/publications/localgovernment/decentralisationguide>

The National Association's National Council is meeting on 14 December and will discuss the Bill further and additional briefings and analysis will be issued in due course.

This briefing was issued by Justin Griggs, Head of Policy and Development

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