

**The Localism Act:
Key Provisions**

Introduction

The Localism Act received the Royal Assent on 15 November 2011 and has 241 clauses, 24 schedules and over 483 pages. It is probably the most significant piece of legislation affecting local authorities, housing and planning for 20 years and empowering local communities.

The Act is particularly notable in three areas. Firstly, the key promises in the Coalition Government's programme are incorporated within the draft; secondly, there is genuine devolution of power from Whitehall to local authorities and thirdly, our town and parish councils have been anointed as the vehicles to promote localism within our communities. Indeed, such councils will be provided with all the powers of more senior authorities and be able to exercise some of the new rights in the Act on behalf of local people.

The Act is divided into ten separate parts broadly dealing with local government, community empowerment, planning, housing and governance of London. Unless otherwise mentioned, the provisions affect England only.

The provisions will be coming into force in April 2012 unless indicated within this document.

Part 1 – Local Government

Sections 1 to 8 contain the flagship provision enabling all local authorities to have a general power of competence “to do anything that individuals generally may do”. This power enables the local authority to exercise it anywhere in the United Kingdom or elsewhere, for a commercial purpose or otherwise, with or without charge and for the benefit (or otherwise) of the authority its area and persons resident or visiting the area. It does not enable a local authority to levy general taxes or undertake activities which are excluded in other legislation. In addition, there are some limits on charging for statutory services and commercial activities should be undertaken through a company or industrial and provident society reflecting the current best value arrangements.

This new power will give local authorities, which include county, district, London borough and parish council's significant powers to undertake many activities subject always to the general requirements as to reasonableness and financial rectitude. Sections 5 and 6 incorporates provisions whereby the Secretary of State could make regulations preventing local authorities from doing, in exercise of the general power, anything which is specified, or is of a description specified, in the order. Before any such order is implemented a consultation has to take place with local authorities and their representatives as appropriate.

After the general power comes into force in England only, Welsh local authorities will only be able to utilise the wellbeing powers in the Local Government Act 2000 which will have been repealed for England. There will be no requirement for Welsh authorities to take into account their Sustainable Community Strategies in exercising such power.

Sections 9 to 14 contain similar widened powers for a range of other bodies including fire and rescue authorities, integrated transport authorities and economic prosperity boards.

Sections 15 to 20 contain provisions enabling the Secretary to State to transfer a range of local public functions from Whitehall to local authorities or economic prosperity boards.

Governance

Sections 21 to 24 refer to significant amendments to the Local Government Act 2000 (2000 Act) in Schedule 2 of the Act and minor and consequential amendments in Schedule 3. In essence, these provisions provide local authorities with more flexibility as to how they undertake their governance and executive arrangements with detailed provisions relating to matters such as the return to a committee structure, sharing of services, joint exercise of functions and overview and scrutiny committees. So far as the latter is concerned, they are specifically required to review and scrutinise the exercise of risk management authorities of flood risk or coastal erosion risk

management functions. More controversially, greater powers are given to elected Mayors and the Secretary of State is given powers to require a local authority to undertake a referendum for the election of a Mayor and new Sections in the 2000 Act provide for Council leaders to act as shadow Mayors pending election of the substantive post holder. The Coalition Government programme indicated that England's 12 larger cities would be required to undertake a referendum probably in 2012.

Predetermination

The Coalition Government indicated that it would clarify the position concerning predetermination on the part of local authority elected members following a number of legal decisions most notably in *Condron -v- National Assembly for Wales [2007] LGR 87* and *R (Lewis) -v- Redcar & Cleveland BC [2007] EWHC 3166*. These decisions created considerable difficulty for elected members from taking an active role in local constituency campaigns and then being required to make decisions about the subject matter of such campaigns. Consequently, Section 25 of the Act makes it clear that a decision maker is not to be taken to have had, or to have appeared to have had, a closed mind simply because such person had done anything directly or indirectly about the subject matter and the matter was relevant to the decision required. The provision applies to all local authorities in England and Wales (including parish councils) but is still nevertheless subject to local authority's members assiduously

recording any interest in the appropriate register and declaring any such interest at the meeting in question. At the same time as the case law relating to bias remains intact elected members will still need to be made aware that they need to approach all decision-making with an open mind.

Standards

The Standards Board for England and its appeal tribunal, together with the arrangements for individual local authority Standards Committees will be abolished under Sections 26 and 27 and Schedule 4 of the Act.

However, local authorities will be required to promote and maintain high standards of conduct under Nolan principles and are given power to adopt their own code of conduct as they think fit. Authorities will appoint at least one independent person who would adjudicate on any alleged breach of such code of conduct. The Secretary of State is given increased powers to dictate the content of a local authority register of interest. In addition, members will commit an offence if, without reasonable excuse, they fail to register a financial or other interest, or fail to disclose such an interest before taking part in a discussion or takes part in any local authority business to which an interest disclosed relates. The relevant court has the option to fine up to a Level 5 on the standards scale (currently £5,000) but also to disqualify the individual from being a local authority member for a period not exceeding 5 years.

Pay Accountability

Under Section 38, local authorities are obliged to prepare a senior pay policy statement for the financial year 2012/2013 and each subsequent financial year. This will set out each authority's policies relating to the remuneration for each chief officer including matters such as performance related pay and use of bonuses. The statement must be approved by the authority and all authorities should have regard to any guidance issued by the secretary of state with similar provisions for Wales involving Welsh Ministers.

In Sections 45 and 46, there are a number of miscellaneous repeals including Chapters 1 and 2 of Part 1 of the Local Democracy, Economic Development and Construction Act 2009 (2009 Act) relating to the promotion of democracy and petitions to local authorities. In addition, the so-called "bin tax" is repealed under Section 47.

Part 2 - EU Fines

Some unusual provisions in Sections 48 to 57 deal with any EU financial sanction imposed upon the Government with provisions obliging a local authority in England to contribute towards any such sanctions with similar provisions relating to Welsh authorities in **Part 3** Sections 58 to 67..

Part 4 – Non-domestic rates

Some minor changes in respect of NNDR are incorporated in Sections 68 to 71.

Part 5 - Community Empowerment

This part of the Act contains a number of the new community rights which, together with the planning empowerment proposals, represent the most significant transfer of power from Whitehall down to local authorities and to parish councils and communities. It will be apparent from the Act that parish and town councils are being vested with significant new powers to promote the localism agenda in that they will not only have the general power of competence (see above) but also be able to exercise a “right to challenge” to take over the services run by a senior local authority, the “community right to buy” and the “community right to build” developments which meet with the approval of local people – all of which are referred to below. However, intriguingly, whilst town and parish councils are found in predominantly rural areas, there are now strong powers in the Local Government and Public Involvement in Health Act 2007 enabling communities in, for example, London and the metropolitan districts to set up new town and parish councils where they are dissatisfied with the services being provided by the relevant unitary authority. Thus, neighbourhoods as diverse as Putney and Peckham might well seek to take over public services operated within their communities for the benefit of local people.

Council Tax

Sections 72 to 79 deal with council tax matters and incorporate in Schedule 5

referendums relating to excessive council tax increases. Whether or not such increase is to be regarded as excessive, must be decided in accordance with a set of principles to be determined by the Secretary of State for the year. This schedule sets out in considerable detail the arrangements to be followed and the provisions are inserted as a new Chapter 4ZA in Part 1 of the Local Government Finance Act 1992 (1992 Act).

Section 80 amends various provisions in the 1992 Act relating to council tax revaluations only applicable in Wales.

Community Right to Challenge

Sections 81 to 86 contain the important community right to challenge which has been heralded by the Prime Minister as an opportunity for public sector employees to become their own boss and takeover public services for which they are responsible as a cooperative. However, this right can be exercised by a range of bodies including:

- a voluntary or community body;
- a trust established for charitable purposes;
- a parish council;
- two or more employees;
- such other person or body as specified by the Secretary of State by regulations.

The procedure is fairly simple in that an expression of interest in writing indicating a desire to provide or assist in providing a

relevant service on behalf of the authority must be served. There is a requirement that if the authority accepts the expression of interest “it must carry out a procurement exercise relating to the provision of such service”. In carrying out such procurement, the local authority must consider how it might promote or improve the social, economic or environmental well-being of its area. The authority may only reject an expression of interest on grounds to be specified by the Secretary of State by regulations.

These arrangements broadly reflect the provisions of the “right to request” adopted in the National Health Service for similar purposes. This NHS experience has, to date, not involved significant uptake but more recently the government has been actively publicising the opportunity among health employees. Undoubtedly, one of the concerns for employees, as well as their host local authority, will be the procurement issues. It would clearly be imposing significant additional costs, as well as creating uncertainty for the employees, if there has to be procurement following each and every request.

Community Right to Buy

This important new right is contained in Sections 87 to 108. Essentially, a local authority must maintain a list of land (and buildings) in its areas that are of “community value”. This arises from a “community nomination” in respect of any land, owned by an individual, corporate entity, local

authority or the Crown. The land or buildings can be nominated by a parish council in England or a community council in Wales or a person specified, or of a description specified, in regulations to be made by the Secretary of State or Welsh Ministers. The local authority also, incidentally, has to maintain a list of land or buildings following unsuccessful community nominations.

If the owner of land or buildings of community value included within the list wishes to sell, the local authority must be informed and there is a moratorium during which any community interest group can be treated as a potential bidder for the asset and arrangements are set out for compensation. Many details will need to be outlined in regulations but meanwhile, any land included on the list of assets of community value would be registered as a local land charge.

This right could, in conjunction with existing powers involving the public request to order disposal (PROD) in the Local Government, Planning and Land Act 1980, enable a local community to make better use of former publicly-owned land or buildings.

Part 6 – Planning

Many of the planning provisions were incorporated within a Conservative Party policy green paper prior to the election, **Open Source Planning**, which is referred to in the Coalition Government’s programme. The new planning provisions in the Act are radical and enhance the importance of

localism in the decision-making process.

Plans and Strategies

As highlighted by the Government, particularly in their response to the *Cala Homes* decision Section 109 repeals the requirements for regional strategies as outlined in the 2009 Act and the section introduces Schedule 8 to the Act containing a number of consequential amendments.

Section 110 contains a provision inserting a new Section 33A in the Planning and Compulsory Act 2004 requiring local planning authorities and others to co-operate in relation to the planning of sustainable development and this duty requires the parties to engage constructively, actively and on an ongoing basis in respect of all aspects of planning including local development plan preparation. This section came into force on 15 November 2011. There are a number of subsequent provisions in Sections 111 to 113 relating to approval of local development plans which will now be an important document for any future development, particularly as there are limitations upon the power of an Inspector to amend such plans.

Community Infrastructure Levy

The Community Infrastructure Levy (CIL) will be retained although the Act provides for a number of amendments to the Planning Act 2008 (2008 Act) which introduced CIL. The principal changes will still permit local authorities to decide whether they wish to

introduce CIL and Section 114 contains provisions whereby the authority needs to look at appropriate available evidence as to the amount of such levy through amendments to Section 211 of the 2008 Act.

The Government are intending that CIL, where levied, will more closely reflect local tariff rates introduced by some authorities and provisions in Section 115 of the Act add a new Clause 216A to the 2008 Act requires receipts from CIL used to fund infrastructure in support of the area to which the duty relates or any part of that area.

The Government are consulting upon changes to the CIL regime which may require charging authorities to assist with the funding of neighbourhood planning and be able to utilise CIL receipts for the provision of affordable housing.

Neighbourhood Planning

Section 116 of the Act introduces three important Schedules. Schedule 9 contains provisions relating to Neighbourhood Development Orders and Neighbourhood Development Plans, Schedule 10 incorporates a new Schedule 4B to the Town and Country Planning Act 1990 (1990 Act) outlining the process for the making of Neighbourhood Development Orders and Schedule 11 introduces a new Schedule 4C to the 1990 Act dealing with the community right to build. We deal with each in turn below.

The difference between Neighbourhood Development Plans and Neighbourhood

Development Orders is that the former articulates development policies and use of land for any area whereas the latter grants planning permission for specific development or classes of development which could incorporate the Community Right to Build Orders. In all cases these are binding upon the local planning authority and there are similar procedures leading to their adoption.

The new Neighbourhood Development Orders are introduced as a new Clause 61E in the 1990 Act and can be triggered by parish councils or an organisation or body designated as a neighbourhood forum. Under the provisions a local planning authority must make a Neighbourhood Development Order if more than half of those voting in a referendum under Schedule 4B vote in favour of such order. The effect of designation is that the parish council or neighbourhood forum will be able to dictate the nature of development within the area. There are certain requirements before a body other than the parish council is a designated organisation. These provisions require that the body is established for furthering the social, economic and environmental well-being of individuals living or wanting to live in the area, membership must be open to such individuals and at least five members of the organisation live in the neighbourhood area concerned. This would open the way for community land trusts (as defined in the Housing and Regeneration Act 2008) (2008 Housing Act) to take up this role. There are certain types of development which are

excluded, namely waste development, nationally significant infrastructure projects and those which are considered to be a county matter under the 1990 Act. The process for the making of Neighbourhood Development Orders sets out a range of provisions whereby the Secretary of State can make regulations and orders dealing with the process in detail which will involve independent examination of the draft development order and all arrangements for publicity and any oral clearing.

At present the provisions seem somewhat cumbersome and it is important that any regulations introduced by the Secretary of State simplify the procedure as this new right will be an important element of the localism agenda and ensuring sustainable communities, particularly in our rural areas.

The Community Right to Build Orders are incorporated in Schedule 11 to the Act and set out the nature of the community organisation able to implement the order and stipulating the limited areas where a local authority is not able to consider such a proposal.

More significantly, regulations will be made to limit the right of an enfranchisement on land developed following a Community Right to Build Order. This is a significant issue for any local community and thus will ensure, for example, that any affordable housing built through a community land trust or local housing trust will remain available for those living in the community in perpetuity.

Sections 117 to 120 contain various sections relating to charges and neighbourhood planning and Schedule 12 is introduced by Section 121 and contains consequential amendments.

Consultation

Section 122 introduces a new Section 61W and 61Y in the 1990 Act which contains requirements to carry out pre-application consultation in respect of developments to be specified in a development order. This is anticipated to relate to more significant developments anticipated to be plans for more 200 residential units or 4 hectares and 10,000 square metres or 2 hectares for commercial. The developer will be required to bring the proposed application to the attention of “a majority of the persons who live at, or otherwise occupy, premises in the vicinity of the land”. Many developers already carry out consultation of this nature but this will now become a mandatory requirement and, indeed, could assist the approval of potentially controversial development if the majority of residents affected assent to the proposals.

Sections 123 to 127 contain a number of amendments to enforcement provisions including a right for a local authority to decline to determine retrospective applications and extending the time limits in cases involving concealment plus a number of provisions relating to unauthorised advertisements.

Nationally Significant Infrastructure Projects

The Infrastructure Planning Commission is abolished under Schedule 13 to the Localism Act which incorporates consequential amendments. Sections 128 and 129 contain transitional provisions and Section 130 contains a provision whereby National Policy Statements will be required to be approved by the House of Commons through an amendment to the 2008 Act. There are a range of other provisions in subsequent sections dealing with such projects.

Section 143 contains a controversial provision which will require local planning authorities in England to treat development plans and local finance considerations as material issues when dealing with planning applications. This would include such matters as receipts from the new homes bonus or CIL.

Part 7 – Housing

Many of the changes to housing legislation were highlighted in two consultation papers. The first was published in October 2010 entitled **Review of Social Housing Regulation** and the second in November 2010 entitled **Local Decisions: A Fairer Future for Social Housing**. Both documents set out the planned changes and the Coalition Government thinking behind such changes.

Allocation and Homelessness

Section 145 and 146 deal with amendments to the Housing Act 1996 which were introduced by the Homelessness Act 2002. The Act will enable local authorities to have the freedom to determine which categories of applicants should qualify to join the waiting list which hitherto has been open for any applicants wherever they may live and regardless of their relative housing need. Accordingly the amendments will permit authorities either to maintain open waiting lists or impose residency criteria or exclude applicants with a poor tenancy record. The Secretary of State is given power under Section 122(A) to prescribe classes of persons or criteria by regulations. Section 147 incorporates a new section 166A in the Housing Act 1996 relating to each housing authority having an allocation scheme and requiring that the authority's policy and priorities are made clear for any applicant.

There are two sections dealing with homelessness which apply to both England and Wales. The first, Section 148, contains provisions whereby a local authority's duty to re-house those in priority need who are not intentionally homeless and would be satisfied if suitable accommodation in the private rental sector was offered. Such rent tenancy agreements should be for a minimum fixed term of 12 months. In addition, the homelessness duty would arise again if the offer of accommodation in the private sector is ended through no fault of the tenant.

Social Housing Tenure Reform

One of the more controversial provisions in the Act relates to tenure reform and there are a number of areas which apply to England alone.

Tenancy Strategies

Each local authority under Section 150 is obliged to prepare and publish a tenancy strategy setting out matters in respect of which registered providers of social housing, which would include the local authority if it still owned its housing stock, and such strategy must set out policies in respect of the types of tenancy and allied issues. There are certain requirements as to consultation by authorities on their strategies but in respect of a London Borough Council they must consult with the Mayor of London. In drawing up their strategies authorities must have regard to their current allocation scheme, homeless strategy and, in the case of a London Borough Council, the London housing strategy.

Tenancies

In the consultation paper the Coalition Government referred not only to flexible tenancies, incorporated in the Act, but also the planned "Affordable Rent Tenancies" to be made available by housing associations. It is planned that they will be shorter term tenancies at a rent that was up to a maximum of 80% of local market rents. It is intended that the tenancies would be shorter term and that, as indicated in the consultation paper, they will be the basis of

a new funding model for affordable housing through generating additional capacity and maximising the provider contribution through efficiencies, use of cross-subsidies and Section 106 contributions. These arrangements can be introduced under the existing legislation.

Flexible tenancies, on the other hand, are introduced in Section 154 of the Act which inserts a new Sections 107(A) to 107(E) in the Housing Act 1985. These tenancies will be made available to local authorities for new tenants on the basis that the tenancy will be granted for a period of not less than two years and for any period which the local authority decreed. Further sections incorporate provisions relating to rights attaching to such tenancies and confirm, in particular, that there are the same protections from evictions as a secure tenant and the right to buy will be extended to include flexible tenants. Provisions are also inserted (which will equally apply to housing associations) enabling both local authorities and associations to grant additional succession rights if they so wished. In addition an introductory tenancy or a demoted tenancy could become a flexible tenancy at the behest of the local authority.

Section 158 and 159 contain a number of provisions to encourage greater mobility within social housing by removing from the allocation framework most existing tenants seeking a move. It is thought that this will facilitate the operation of chain lettings where, for example, an under occupied

property is released and then reserved for existing overcrowded social rented tenants, leaving a void for a waiting list applicant at the end of the chain.

Housing Finance

The Act (Schedule 15) and Sections 167 to 175 abolishes the Housing Revenue Account subsidy. It is anticipated that council housing finance will be on a self-financing basis and implemented through a one-off settlement payment between each local authority and central government, which will be determined by evaluation of each local authority's social housing business.

As outlined in the paper "self-financing" will:

- end the centralised subsidy system where annual decisions have encouraged a patch-and-mend mentality
- fully devolved local financing to local government – rents are kept and used locally to maintain homes for current and future tenants
- provide greater transparency for tenants and a stronger relationship between them and the local authority
- encourage better long term asset management

The new arrangements should also enable local authorities to build new homes for rent and on a shared ownership or market sale basis taking into account the new general power of competence.

Housing Mobility

Section 176 contains two minor changes to the 2008 Housing Act which places housing mobility on a statutory basis. Firstly, the housing regulator (the Homes and Communities Agency (HCA) with effect from 2012) can set a mandatory standard for registered providers as to methods of assisting tenants to exchange tenancies and secondly, the Secretary of State can give directions to the regulator on such matters.

Regulation of Social Housing

Sections 178 and 179 of the Act introduce Schedule 16 dealing with transfer of functions from the TSA to the HCA and Schedule 17 dealing with the regulation of social housing generally. There are obviously many amendments to the 2008 Housing Act with many sections repealed.

In essence, the regulatory function of the TSA is passed to a Regulation Committee of the HCA whose members are appointed by the Secretary of State and new clauses 92(A) to 92(K) are inserted in the 2008 Act and this sets out the contribution, terms of appointment and other details in respect of the Committee. Most importantly, new Section 92(K) in the 2008 Act sets out the two principal functions of the new Committee dealing with its economic regulation and consumer regulation objectives. The new section sets out the criteria for both regulation objectives and stresses that it must exercise its function in a way that minimises interference and (so far as is possible) is proportionate,

consistent, transparent and accountable. This aim was highlighted in the October 2010 review. In other respects there is no change to the regulatory arrangements in the 2008 Housing Act.

Other Housing Matters

The principal issues raised in Sections 180 to 182 of the Act relate to the Housing Ombudsman and housing complaints. In particular, the new proposals for handling complaints at local level are incorporated by amendment to the Housing Act 1996. The new arrangements are that tenant panels will be created at local level which are likely to consist of both tenants of local authorities and housing associations together with elected members. These panels will have the power to deal with any complaints from social landlord tenants. If, however, they were either unable to deal with the complaint or it was of such seriousness they could then refer the matter to the Housing Ombudsman. Such referrals could also be dealt with by a Member of Parliament or an elected member of the local housing authority for the area concerned. The amendments in the Act provide that the Housing Ombudsman will be responsible for complaints both in respect of housing associations and local authorities in their capacity as registered providers of social housing. The latter has been transferred from the Audit Commission (destined for abolition in the Public Bodies Act 2011)

Home Information Packs

As already intimated by the Secretary of State, Part 5 of the Housing Act 2004 dealing with Home Information Packs is repealed under Section 183 and a few consequential amendments are contained in Schedule 18. Energy Performance Certificates will continue to be required on disposal of residential property.

Part 8 - London

Sections 186 to 231 contain a large number of amendments to the powers of the Mayor of London and the Greater London Authority. The most important issues are:

- The GLA will have powers to provide housing, including all those exercised by the HCA under the 2008 Housing Act with such powers being incorporated in the Greater London Authority Act 1999 mutatis mutandi.
- The London Development Agency is abolished but in substitution the Mayor may designate any area of land in Greater London as a Mayoral Development Area with its own development corporation. This latter body can only be created after extensive consultation with a wide range of bodies and individuals. The new corporation would have wide powers akin to those contained in the 2008 Housing Act. Schedule 21 to the Act contains full details about these MDCs. Schedule 22 contains a number of consequential and other amendments.

- There are provisions in Section 223 for the Secretary of State to delegate any powers to the Mayor to such an extent and subject to such conditions as the Secretary of State thinks fit.
- A new Clause 351(A) to the Greater London Authority Act 1999 requires the Mayor to prepare and publish a London Environment Strategy to cover issues such as bio-diversity, waste management, climate change, air quality and noise.

Part 9 – Compensation for Compulsory Acquisition

Section 232 incorporates substitute Sections 14 to 18 in the Land Compensation Act 1901 relating to valuation of land and taking account of actual or prospective planning permission.

Part 10 – General

The remaining part of the Act deals with the powers of the Secretary of State to make orders or regulations contained in Section 235 and the familiar Henry VIII provisions in Section 236. In Section 240 are listed those clauses which come into effect at the end of two months beginning on the date of enactment and arrangements for the remaining sections to come into force either on enactment and as and when appropriate regulations are made.

Conclusion

The Localism Act has the potential for a significant transfer of responsibility for community services to our towns and villages. The rights and powers available to parish and town councils, coupled with the encouragement given to co-operatives, charities and community organisations, could catalyse local activists seeking to adopt the Big Society ethos in their neighbourhoods.

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