



11-67 The Localism Act

To all APSE main contacts in England, Wales, Scotland and Northern Ireland

Key issues;

- The new 'Localism Act' received Royal Assent in November and contains a number of measures that potentially impact upon frontline services
- APSE has already issued a series of briefings about some of the measures contained within the new Act and this briefing summarises the main elements
- There are a number of areas of uncertainty which are subject to either agreement on timescales for implementation or are subject to further statutory guidance.

1. Introduction

The Localism Bill was introduced to Parliament in December 2010 and has been subject to a number of amendments at various stages of the Bill. The Localism Bill received Royal Assent on 15 November 2011 becoming the 'Localism Act 2011'.

Most of the provisions extend to England only but there is some territorial application in Scotland, Wales and Northern Ireland. Notably as follows:

Scotland: Part 2 provisions relating to EU financial sanctions extend to Scotland. The abolition of the Infrastructure Planning Committee extends and applies to Scotland and certain taxation matters in section 233 and schedule 24 of the Act.

Wales: During the passage of the Localism Act through Parliament the powers of the Welsh Assembly Government increased significantly as a result of the Government of Wales Act 2006 coming into force on the 5 May 2011. Certain provisions within the Localism Act are therefore affected by these changes and APSE contacts are advised to refer to the full legislation including matters that relate to predetermination, EU financial sanctions, business rate supplements ballots and discretionary rate relief. Non-devolved matters in Wales that apply include standards for members of police authorities, the community infrastructure levy and nationally significant infrastructure projects.

Northern Ireland: Part 2 of the Act (EU financial sanctions) apply in Northern Ireland and the Act does not contain any specific provisions that require the consent of the Assembly.

2. The main provisions contained within the Act

The Localism Act has a wide impact on local government and a number of the key provisions have a specific impact on local councils. The following sections highlight areas of specific importance.

3. General Power of Competence

Section 1 provides a General Power of Competence for local authorities in England. It provides that local authorities can generally act in the same way as an individual and that the power may be used in innovative ways. The starting point is that there are no limits as to how the power can be used. For example the power does not need to be used to benefit any particular group or place. Consequential amendments to the Local Government Act 2000 means that the 'well-being' powers contained within Section 2 of that legislation no longer apply – as they are effectively covered by the new General Power of Competence.

There are however boundaries to the new General Power of Competence (GPC). For example if an existing power overlaps with the new GPC and that contains for example a specific procedure must be followed then in exercising the GPC you would still be required to follow that procedure. For new legislation restrictions would only apply where they are expressed to do so. This is a deliberate distinction between 'old' and 'new' legislation.

4. Charging and trading in the context of the General Power of Competence

4.1 Local authorities, charging and trading

Section 3 restricts the ability of local authorities to use the GPC and, in line with existing arrangements in section 93 of the Local Government Act 2003, cost recovery, for services provided on a discretionary basis, are generally permissible. There are no changes to commercial trading as a result of the Act which reflects the provisions of section 95 of the Local Government Act 2003 which (in the case of using the 2003 Act powers) requires trading through a company. However APSE would point out there is other legislation enabling trading other than through a 'section 95' company route under the 2003 Act.

4.2 Fire and rescue authorities and cost recovery

Fire and rescue authorities are given broad general powers to do anything 'related to their purposes' and in addition are given new cost recovery powers to charge for action, subject to local consultation, but are prevented from charging for 'core services'.

4.3 Other authorities, general powers and commercial trading

Integrated Transport Authorities are provided with a general broad power to do anything appropriate to its functions, anything incidental to its functions and anything indirectly incidental and anything connected to its functions. Powers to charge under section 93 of the LGA 2003 are unaffected and a new section 102 (c) requires commercial trading through a company or cooperative society. There are

similar restrictions in the new power based on existing statutes and express provision in new statutes.

Similar measures apply in respect of passenger transport executives and the new Act amends Section 95 (7) of the local government Act 2003 giving PTEs powers to do, for commercial purpose, things that they can do for non commercial purposes.

There are also new provisions which relate to economic prosperity boards and combined authorities.

5. Reserve powers to the Secretary of State.

There are numerous provisions which allow for the Secretary of State to add or remove provisions and intervene where necessary. Government views these provisions as a means to 'strike the right balance between public interest and the interest of the persons adversely affected by the order' including consideration of civil liberties, health and safety, the environment and national heritage.

6. Community empowerment

There are several provisions that relate to matters of 'community empowerment' including referendums relating to council tax increases, revaluations in Wales (now to be determined by Welsh Ministers) and calculations of council tax by precepting authorities, including specific provisions relating to the Greater London Authority.

There are two specific 'community empowerment' issues that potential impact upon frontline council services and these are 'The Community Right to Challenge' and 'Land of Community Value ('community right to buy')'. This briefing concentrates on these two specific areas for England.

6.1 The Community Right to Challenge

Section 81 of the Localism Act 2011 requires a relevant authority (county council, district council, London Borough) to consider an expression of interest submitted by a voluntary or community body, charity or parish council or employees of the authority in relation to providing or assisting in providing a service provided by or on behalf of the local authority. Section 82 of the new Act enables an authority to set out a period when an expression of interest may be submitted but where no period is specified an expression of interest may be submitted at any time.

Sections 83 and 84 require the local authority to consider and respond to an expression of interest either by rejecting, accepting or modifying the expression of interest and sets out requirements to agree modifications and notify the submitting body of outcomes. If an expression of interest is accepted or modified then a procurement exercise must take place. A submitting body can withdraw their expression of interest at anytime. Authorities should be mindful however that once a procurement exercise is embarked upon one party withdrawing from the process will not generally be good grounds to stop that procurement route alone.

A relevant body (the local authority) must have regard to any guidance issued by the Secretary of State in relation to the Community Right to Challenge and this is provided for under Section 85 of the Act. This provision allows the Secretary of State to issue further guidance about the process that must be followed by a relevant authority receiving an expression of interest. APSE contacts may note that this is similar to the mechanisms deployed during Compulsory Competitive Tendering (CCT) whereby guidance notes were issued to drive through specific policy aims; tightening processes where the Secretary of State deemed appropriate, to achieve policy objectives of Government.

6.2 Land of Community Value

Provisions which relate to 'Land of Community Value' have been previously described as 'community right to buy' suggesting that communities will be given the right to acquire land or buildings which are of value to the local community. For example a rural building that hosts the local village post office. However this is not reflected in the actual legislation. The provisions under Section 87 of the Act place a duty on the local authority to maintain a list of assets of community value and other provisions specify time periods when assets would be removed from the list.

Sections 95, 96 and 97 cover moratoriums on disposing of listed assets and these are subject to specific provisions and exemptions. It should be noted that the right is not equivalent to a community group right to CPO (compulsory purchase order) on land. It is a right of pre-emption, allowing community groups to bid, in a competitive open market. It should be noted that this would be against third parties.

There is no 'right' to purchase the land or buildings and indeed no duty on the owner of the land to sell. The decision as to whom any land should be sold ultimately rest with the owner of the land – not with the local authority.

There are also provisions allowing for the payment of compensation to land owners, local land charges and enforcement as well as on advice, cooperation and assistance.

Much of the detail is yet to be determined by guidance. However there are some concerns about the new burdens that this places on local authorities, in maintaining asset lists and introducing procedures to deal with 'land of community value' . There is also the potential for different policies across local authority boundaries, which could introduce almost a position of 'blight' on some premises / assets. Much is yet to be determined and local authorities need to be mindful of potential challenges.

7. Planning and neighbourhoods

There are substantial changes to planning made under the new Act. Section 109 provides for the abolition of the regional planning tier by repealing Part 5 of the Local Democracy, Economic Development and Construction Act 2009 which applies in relation to England only.

The Act provides for a statutory duty on local planning authorities, county councils and other bodies with statutory functions to co-operate with each other. There are more regulations due in relation to these provisions.

A significant change is that Section 111 on local development schemes provides that local development plans need no longer be submitted to the Secretary of State for approval (or London Mayor in the case of London) although the Secretary of State retains powers to direct changes.

71. Neighbourhood planning

Neighbourhood planning also changes significantly allowing for 'Community Right to Build Orders' to be made granting planning permission through neighbourhood development orders. These plans and orders will be made by local planning authorities on the initiative of parish councils or neighbourhood forums. The 'right to build' is, in essence, the right to develop without the need for planning permission, provided certain criteria are met including a referendum of those living in the area. There will also be further regulations issued to govern, for example, how large a development may be.

The planning sections of the Act also deal with matters of enforcement including defacement of premises and unauthorised advertisements. There are also new provisions in section 225C which allow for local authorities in England to take action on persistent fly-posting. This provides for an action notice against the owner of the premises and, if the local authority has to take the specified action itself, (in removing fly-posters) the provisions allow for money to be recovered from the owner or occupier of the premises.

8. Social Housing

8.1 Tenure reform and homelessness

The Act makes very significant changes to the law relating to the management and allocation of social housing. Sections 145, 146 and 147 consider matters of allocation and sections 148 and 149 deal with matters of homelessness.

Sections 150 -153 cover tenure reform and implement the government's policy that social housing need no longer provide a tenancy for life, introducing discretion for local authorities to offer fixed term flexible tenancies. This facilitates the use of fixed term assured short hold tenancies, by housing associations.

The Act imposes a requirement on local housing authorities to develop a tenancy strategy which Registered Providers must have regard to in the development of tenancy policies. It also amends rights of succession on secure tenancies and creates a new power to allow additional discretionary successions on both secure and assured tenancies.

Duties owed by local authorities to homeless applicants, are also amended which enables this duty to be discharged with an offer of private rented housing.

8.2 Housing finance

Housing finance is significantly amended and sections 167 to 175 deal with these changes. The most high profile change for housing finance is that the Housing Revenue Subsidy Account system will end and councils that operate a Housing Revenue Account will keep all of their rental income and use it to support their own housing stock.

Other matters include housing mobility (exchange of tenancies) transfer of certain functions to the Homes and Communities Agency, Regulation of Social Housing and housing complaints and abolition of Home Information Packs

APSE comment

Some parts of the Act are now in force, notably the duty between Councils to cooperate. However, given the significant amount of secondary implementing legislation, that the majority of provisions will require, most will not come into force until April 2012. These include the community right to build and most of the planning reforms.

Whilst many aspects of the new Act will be welcomed including the General Power of Competence there are some new policy developments and statutory requirements that will create new burdens on local authorities. These include dealing with processes to address the new 'community right to challenge' and 'land of community value' as well as the significant changes to housing and planning reform.

APSE will be considering how local authorities could look to develop responses to the new Right to Challenge, through our new advisory group which is the 'Service Delivery Models Group'. We will also be looking at these issues through the APSE 'Service Improvement and Performance Management Group'. For details of these new groups, which are free for member authorities to attend, please email Mo Baines on mbaines@apse.org.uk.

If any member authority is interested in a one-day training course on the new Localism Act, including preparing for the Community Right to Challenge and using the new General Power of Competence please email Jan Kennedy on JKennedy@apse.org.uk

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