

The Localism Bill 2010/11

Background

The Localism Bill is a Department for Communities and Local Government sponsored piece of legislation embodying and supporting many of the Coalition Government’s plans for localism and the Big Society.

The Bill was introduced against the backdrop of significant spending cuts: first in the Comprehensive Spending Review of 20 October 2010, and then by the local government settlement on 16 December. The Bill and its objectives should therefore be viewed in this context.

The previous government enacted a significant amount of legislation dealing with empowerment, engagement and community leadership whilst it was in power. Some of the themes in the Localism Bill build on, replace, or amend older legislation. Most relevant to the Localism Bill are:

- Local Government Act 2000
- Local Government and Public Involvement in Health Act 2007
- Local Democracy, Economic Development and Construction Act 2009

Some parts of these and other Acts are repealed or amended by the Localism Bill (“the Bill”).

The Bill deals with a wide range of issues, and embodies one of the main policy objectives of the Coalition Government, namely its commitment to localism. This also encompasses elements of the Big Society.

Much of the Bill is ‘enabling.’ This means that provisions within the Bill will provide discretionary regulation-making powers to the Secretary of State for Communities and Local Government and his Ministers. This is a regular feature of Acts of Parliament.

Progress through Parliament

At the time of writing the Localism Bill was at Commons Committee stage, having passed through its first and second Readings in the House of Commons. The Commons Committee stage is expected to end on 3 March.

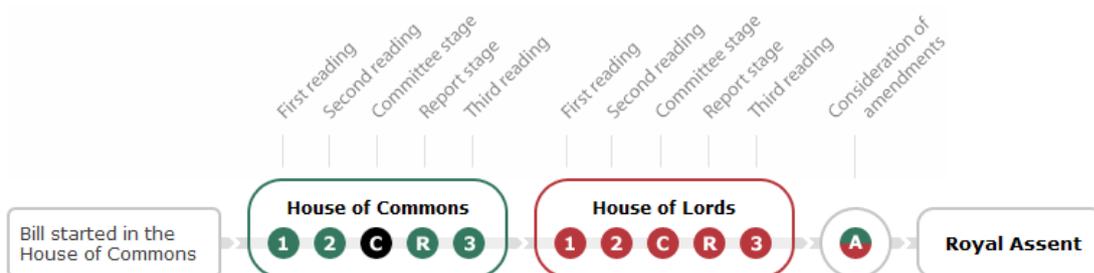


Figure 1: Progress of the Localism Bill – status at 17 February 2010

Full details of the Parliamentary progress of the Bill, including reports and summaries, can be found at: <http://services.parliament.uk/bills/2010-11/localism.html>

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Local Government

General Power of Competence

This power is intended to give local authorities the freedom to act in any way they believe is in the interests of their communities, so long as it does not contravene the law. In introducing the General Power, the Bill states that “A local authority has power to do anything that individuals generally may do.” ⁽¹⁾

It replaces the well-being powers of the Local Government Act 2000 (in England only). In Wales the well-being power remains in force.

This section of the Bill also empowers the Secretary of State changing or remove any obstacle in statute that may impede use of the General Power.⁽²⁾ This is an example of the enabling nature of the Bill, but is tempered by consultation requirements and Parliamentary oversight.

There is debate over whether the new power will be any more successful in driving innovation and responsiveness in local authorities. It is hoped that the new power will avoid problems that the well-being power experienced.⁽³⁾ Most often quoted is the case of several London councils using well-being powers to set up the London Authorities Mutual Ltd, but being prevented from doing so by a High Court Judgment on grounds of exceeding their powers.

Local authority governance

The Bill inserts a new part 1A into the *Local Government Act 2000*, and sets out new governance arrangements for English local authorities. This section of the Bill gives local authorities more options of governance than the current two: directly elected mayor with cabinet, and indirectly elected leader with cabinet.

This section of the Bill gives local authorities an additional option:

- Committee system: to re-establish the earlier, and for many elected Councillors preferred, committee-based decision-making structure.

For a **change** to be made in any local authority, agreement at a meeting of the Council is required. There are also requirements for referenda to take place if:

- The current form of governance was agreed by referendum
- A valid petition seeking a referendum on a particular form of governance has been received by the local authority
- A ministerial order or direction has been made to hold a referendum

The Bill therefore empowers local authorities to end overview and scrutiny arrangements. This is likely to be popular amongst many elected Councillors and council officers. There has been much debate over the value and effectiveness of scrutiny arrangements in local authorities, especially in the ‘holding decision-makers to account’ role.⁽⁴⁾

⁽¹⁾ Parliament.uk website, *Localism Bill 2010-11, Part 1, Chapter 1, Clause 1(1)*
<http://www.publications.parliament.uk/pa/cm201011/cmbills/126/11126.1-7.html#j631>

⁽²⁾ Ibid, *Part 1, Chapter 1, Clause 5*

⁽³⁾ Communities and Local Government, *Evaluation of the take-up and use of the well-being power, Research summary, 2008, pp1-2*

⁽⁴⁾ Committee on Standards in Public Life, *Local leadership and public trust: openness and accountability in local and London government*, June 2010, p3

Attitudes towards scrutiny arrangements tend to be driven by their effectiveness. The Committee on Standards in Public Life said that in many cases executive/cabinet arrangements provided clarity about the decision-making process, but that the scrutiny function in many local authorities did not work as intended.⁽⁵⁾

The Bill allows local authorities to freely choose their own system from the options available, except in the 12 largest English cities (see below). Change will not be swift in many cases. Where a change is to be made, a Council resolution must be made and (subject to any referendum requirements) the change will be made immediately after the next council election. Earliest opportunities for change are therefore:

- Non-metropolitan districts: 2011 if the Bill has received Royal Assent in time, otherwise 2015
- Counties: 2013
- Metropolitan districts and London Boroughs: 2014

There will be mandatory referendums in England's 12 largest cities⁽⁶⁾ on whether to move to a directly elected mayoral model. Referendums are likely to be held in May 2012 (although there is no specific provision in the Bill that will enshrine this in law) on whether to move to an elected mayor model.⁽⁷⁾

There are also provisions for elected mayors to take on management arrangements, making them the most senior officer of the authority exercising some of all of the functions of the head of paid service. Decision on these additional powers can be taken either by the local authority itself or by request to the Secretary of State.

Amongst others, the Society for Local Authority Chief Executives have expressed a view that the separation between political and managerial leadership should be maintained.⁽⁸⁾

Abolition of the Standards Board regime

The Bill proposes allow local authorities to choose their own voluntary standards, codes and committees.

To achieve this, this Bill will abolish the local authority standards regime for elected councillors, including the compulsory model code of conduct and statutory local authority standards committees. The Standards Board for England will also be abolished. The Bill also introduces a new criminal offense for elected Members: failing to register interests. Local authorities will still be required to maintain a Register of Member's Interests regardless of what standards regime they decide upon.

See [Abolition of the Standards Board Regime](#) for more information and transitional arrangements.

(5) *Ibid*

(6) Birmingham, Bradford, Bristol, Coventry, Leeds, Leicester, Liverpool, Manchester, Nottingham, Newcastle-upon-Tyne, Sheffield, Wakefield

(7) Communities and Local Government *Departmental Business Plan 2011-2015*, p7: available online <http://www.communities.gov.uk/publications/corporate/businessplan2010>

(8) Quoted in "Research Paper 11/02, Localism Bill: Local government and community empowerment", House of Commons Library, C. Sear & K. Parry, 2011" David Clark, Director General of SOLACE referring to the new Part 1A of the *Local Government Act 2000* inserted by Schedule 2 of the Bill

Pay accountability

The Bill proposes that local authorities publish a senior pay policy statement annually from 2012-13. The first statement must be produced before the end of March 2012.

The Secretary of State is also considering an amendment to the Bill to require Councils to approve any officer remuneration in excess of £100,000 per annum.⁽⁹⁾

Changes to the business rate regime

The Bill contains amendments to the [Business Rate Supplements Act 2009](#) (BRS). The amendments require all proposals for BRS to be subject to a mandatory ballot, instead of the 2009 Act requirement for a ballot only when more than one third of a project was to be funded through BRS.

On discretionary relief, the [Local Government Finance Act 1988](#) will replace the narrow circumstances under which a local authority has power to grant relief to local ratepayers with a broader power. This proposal is intended to give local authorities the freedom to encourage business growth in their area.

The Bill also removes the legal requirement for a business rate payer to apply for relief under the Small Business Rate Relief scheme, and empowers the Secretary of State to prescribe conditions under which certain backdated non-domestic rates can be cancelled.

European Union fines

The Bill creates a power for the government to require local authorities and other public bodies to pay EU fines if found responsible for infringements of EU law. To do this the government must state which public body will pay the EU fine and how much of the fine that body will pay.

Promotion of local democracy

The Bill proposes to repeal parts of the [Local Democracy, Economic Development and Construction Act 2009](#) which requires local authorities to promote understanding of the democratic functions of local authorities and other public bodies, and some specific procedural issues relating to validity of petitions.

Domestic waste

The Bill proposes to remove powers of local authorities to introduce “pay as you throw” waste collection schemes. It should be noted that at the time of publication of the bill, no local authority had implemented such a scheme, and only one (Bristol City Council) had applied to the Department for Communities and Local Government to begin a pilot scheme; permission was refused.⁽¹⁰⁾

⁽⁹⁾ “Eric Pickles says councillors should vote on top pay” BBC News website 16/2/11
<http://www.bbc.co.uk/news/uk-12473979>

⁽¹⁰⁾ Defra, *Localism Bill to be used to end trial ‘pay-as-you-throw’ schemes*, in *Research Paper 11/02, Localism Bill*, p31

Community Empowerment

Local referendums

The Bill requires principal local authorities to hold local referendums if any of the following conditions are met:

- A valid petition from local people - over 5% of the local electors in the authority area although the Bill allows the Secretary of State to change this figure - local authorities can choose to hold a referendum regardless of the size of the petition
- A request from one or more councillors of the authority
- If the authority passes a resolution to hold a referendum

Council Tax referendums can also take place if a basic council tax requirement is considered excessive. "Excessive" is defined by specific amendments to the [Local Government Finance Act 1992](#) and levels determined by the Secretary of State on an annual basis. These principles also apply to major precepting authorities such as the Greater London Authority.

Community Right to Challenge

The Bill introduces a right for voluntary or community bodies, parish councils and employees of relevant authorities to challenge the services run by local authorities and propose to take them over. If an expression of interest is accepted by the authority a standard procurement exercise will be carried out, based on how the well-being of the area would be improved by the group expressing an interest. The Secretary of State will retain a right to exclude certain services from this right.

The potential of this policy to see widespread use has been challenged. Some have asked what level of motivation and ability there will be in a community to take over the running of some services.⁽¹¹⁾ However, the Government's policy is to open up this sort of opportunity to community groups and as such represents an example of 'Big Society' thinking.

Assets of community value – the Community Right to Buy

The Bill sets out how local authorities will be required to maintain and publish a list of community assets. These do not have to be council-owned assets. The Community Right to Buy aims to help community organisations bid to take over assets and facilities on the list. Provisions also include making additional time for these groups to prepare bids and secure funding. These elements of the Bill are detailed. The Bill's definition of a community asset, as well as information on the nomination process and the Community Right to Buy, can be found at:

<http://www.communities.gov.uk/documents/localgovernment/pdf/1835775.pdf>

Ending 'predetermination' of councillor decisions

Currently, where a councillor has previously expressed a view on an issue, he or she will not be able to vote at council meetings on business relating to that matter; the assumption being that the councillor has already decided ('predetermined') their view before arguments have been heard. This is most often an issue in planning matters but applies to all council business.

The Bill proposes to free councillors to make their views known and act upon them, but that such activities not constitute a 'closed mind' on that issue. As such, it specifies that predetermination is no longer a valid charge in council businesses. Requirements for councillors to register and disclose interests will remain.

(11) "The Localism Bill: the key points for councils" Guardian, 22/12/10, in Research Paper 11/02, Localism Bill, p31

Planning and Housing⁽¹²⁾

The remainder of this briefing provides a general overview of the planning and housing elements of the Bill. Unless otherwise stated, this section of this briefing is sourced from a detailed research paper on the planning and housing elements of the Bill which can be found at: <http://www.parliament.uk/briefingpapers/commons/lib/research/rp2011/RP11-003.pdf>

It provides a detailed analysis of the Bill which will be of use to planners and housing professionals.

Abolition of Regional Strategies

Regional Strategies set out where new development should take place in each part of the country. The Secretary of State has already informed local authorities that the Government intends to abolish Regional Strategies. The Bill confirms this.

Neighbourhood planning

The Bill will introduce a new right for communities to draw up a “neighbourhood development plan.”

Neighbourhood planning will allow people to come together through a local parish council or neighbourhood forum to say where they would like development to take place in their area. Local communities would also be able to grant full or outline planning permission in areas where they most want to see new homes and businesses. The objective of this part of the Bill is to make it easier and quicker for development to take place.

Provided a neighbourhood development plan is in line with national planning policy, with the strategic vision for the wider area set by the local authority, and with other legal requirements, local people will be able to vote on it in a referendum. If the plan is approved by a majority, then the local authority will be required to bring it into force. Local planning authorities will also be required to provide technical advice and support as neighbourhoods draw up their plans.

Community Right to Build

The Bill proposes to give groups of local people the freedom to build small developments. It envisages that the benefits of the development such as profit from letting the homes will stay within the community.

Requirement to consult communities before submitting very large planning applications

The Bill will introduce a new requirement for developers to consult local communities before submitting planning applications for very large developments, to give local people a chance to comment at an early stage of development.

(12) *Research Paper 11/03, Localism Bill: Planning and Housing*, House of Commons Library, C. Barclay & W. Wilson, 2011

Strengthening enforcement rules

The Bill will strengthen planning authorities' powers to tackle abuses of the planning system, such as making deliberately misleading planning applications.

Reforming the community infrastructure levy

The community infrastructure levy allows local authorities to obtain a financial contribution from developers to support development of new infrastructure such as roads and schools.

The Bill proposes changes to the levy. It will allow the money raised to be spent on maintaining infrastructure, as well as building new infrastructure. It will give local authorities greater freedom in setting the rate that developers should pay in different areas. The Bill will also give the government powers to require that some of the money raised is directed into the neighbourhoods where development takes place.

Reforming local plans

The Bill will limit the discretion of planning inspectors to insert wording into local plans. Rather than focusing on reporting plans' progress to central government, the Bill will require authorities to report progress to local communities.

Duty to cooperate on planning issues

This duty will require local authorities and other public bodies to work together on planning issues.

Nationally significant infrastructure projects

Currently, these decisions are taken by the Infrastructure Planning Commission. The Bill will abolish the Commission and pass responsibility for taking these decisions to Government Ministers. The Bill also proposes to ensure that National Policy Statements, which will be used to guide decisions, can be voted on by parliament. The Bill aims to make sure that major planning decisions are made under the new arrangements at least as quickly as under the present system.

Social housing tenure & allocations reform

The Bill will allow for more flexible arrangements for people entering social housing in the future. Social landlords will be able to grant tenancies for a fixed length of time. The minimum length of tenancy will be two years, with no upper limit on the length of tenancy. Councils will continue to be able to offer lifetime tenancies if they wish.

The Bill will give local authorities greater freedom to set their own policies about who qualifies to join the social housing waiting list in their area.

Taken together, these two parts of the Bill give local housing authorities in England the power to determine what classes of persons are, or are not, qualifying persons to be allocated social housing, although centrally determined rules will still define qualifying "persons from abroad" and the reasonable preference categories.

Reform of homelessness legislation

The Bill amends section 193 of the [Housing Act 1996](#) to enable local authorities in England and Wales to discharge their duty to homeless households by offering suitable private sector accommodation. Homeless households will no longer be required to give their specific consent to such an arrangement. Certain protections will apply.

The Bill ensures that where a local authority discharges its homelessness duty with an offer of a private sector rental, the duty will recur if the household becomes homeless again within two years, if there is no fault on the part of the tenant and the duty still applies. This provision creates additional protection for homeless households who are housed in the private rented sector.

Reform of council housing finance

The Bill proposes to abolish the current Housing Revenue Account Subsidy funding arrangements in favour of another framework. This will require some authorities to make a payment to government whilst others may receive a payment. This is likely to be a positive outcome for many housing authorities who are currently in a situation where they surrender a portion of their rent and capital receipts to government as part of the current subsidy system.⁽¹³⁾

National Homeswap scheme

The Bill will pave the way for a national home swap scheme by amending the [Housing and Regeneration Act 2008](#). Amendments will empower the social housing regulator to create a standard for providers of housing who assist tenants with mutual exchanges.

Reform of social housing regulation

The Bill will reform the way that social housing is regulated by creating a stronger relationship between tenants and their landlords especially in how tenants can hold landlords to account. Landlords will be expected to support tenant panels and other similar bodies.

The Bill will abolish the Tenant Services Authority and transfer its remaining functions to the Homes and Communities Agency. The Bill will also change the way that complaints about social landlords are handled. To ensure greater consistency across the sector the Bill proposes that a single watchdog (the Independent Housing Ombudsman) will deal with complaints about social housing.

⁽¹³⁾ *Standard Note SN/SP/4311, The reform of Housing Revenue Account Subsidy*, House of Commons Library, 2010

London

A detailed briefing on the Localism Bill and how it relates to London can be found at:
<http://www.londoncouncils.gov.uk/London%20Councils/LocalismBillbriefing.pdf>

Additional powers for the London Mayor and Greater London Assembly

The Bill proposes to give additional powers to the Mayor of London and Greater London Assembly over:

- Housing
- Regeneration
- Economic development
- Olympic legacy
- EU funding and regeneration activities

The Bill contains instruments to specifically abolish the London Development Agency.

Greater oversight of Mayoral activities is also provided for. The London Assembly will have power to reject the Mayor's policies if it can achieve a two thirds majority.

Planning issues in London

The London boroughs will have greater powers to decide planning applications in their areas. The Mayor will retain responsibility for large planning applications.

External links

Details of the Bill and supporting documentation

Communities and Local Government introduction to decentralisation

<http://www.communities.gov.uk/localgovernment/decentralisation>

Communities and Local Government Localism Bill and all supporting documentation

<http://www.communities.gov.uk/localgovernment/decentralisation/localismbill>

Houses of Parliament Localism Bill webpages

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

Communities and Local Government – abolition of the Standards Board Regime

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

Community Right to Buy

<http://www.communities.gov.uk/documents/localgovernment/pdf/1835775.pdf>

Further information

Houses of Parliament Research Paper 11/02 - Localism Bill

(Local Government and Community Empowerment)

<http://www.parliament.uk/briefingpapers/commons/lib/research/rp2011/RP11-002.pdf>

Houses of Parliament Research Paper 11/03 - Localism Bill (Housing and Planning)

<http://www.parliament.uk/briefingpapers/commons/lib/research/rp2011/RP11-003.pdf>

Standard Note SN/SP/4311, reform of Housing Revenue Account Subsidy

<http://www.parliament.uk/briefingpapers/commons/lib/research/briefings/snsp-04341.pdf>

Communities and Local Government, "Evaluation of the take-up and use of the well-being power, Research summary"

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

Committee on Standards in Public Life, "Local leadership and public trust: openness and accountability in local and London government"

http://www.public-standards.gov.uk/OurWork/11th_Report.html

London Council on the Localism Bill (regularly updated)

<http://www.londoncouncils.gov.uk/policylobbying/londonmatters/devolution/localism>

Other legislation

Local Government Finance Act 1988

<http://www.legislation.gov.uk/ukpga/1988/41/contents>

Local Government Finance Act 1992

<http://www.legislation.gov.uk/ukpga/1992/14/contents>

Housing Act 1996

<http://www.legislation.gov.uk/ukpga/1996/52/contents>

Local Government Act 2000

<http://www.legislation.gov.uk/ukpga/2000/22/contents>

The Local Government and Public Involvement in Health Act 2007

<http://www.legislation.gov.uk/ukpga/2007/28/contents>

Housing and Regeneration Act 2008

<http://www.legislation.gov.uk/ukpga/2008/17/contents>

Business Rate Supplements Act 2009

<http://www.legislation.gov.uk/ukpga/2009/7/contents>

The Local Democracy, Economic Development and Construction Act 2009

<http://www.legislation.gov.uk/ukpga/2009/20/contents>