

Localism Bill: LG Group On the Day Briefing.

Date: 13 December 2010



Headlines

Powers and governance

- A General Power of Competence for local government and a wide ranging power for Fire and Rescue Authorities.
- Powers for the Secretary of State to put shadow elected mayors in place and to initiate a mayoral referendum. Powers for the Secretary of State to transfer to the elected mayors any function of any public body.

Finance

- Powers for the Secretary of State to order English councils to contribute to the UK's obligation to pay an EU fine.
- Automatic small business rate relief.
- Requirement for local authorities to hold a referendum if they seek to set a level of council tax that is above the threshold considered excessive by reference to regulations made by the Secretary of State.
- Reforms to the Housing Revenue Account Subsidy System; including the power to set the buy out for self financing. The bill also includes powers for the Secretary of State to reopen the buy out figure at a later date and set a borrowing limit.

Big Society

- A community right to buy requiring local councils to draw up and publish a list of assets of community value. This right provides a route for community groups to express an interest in bidding for assets.
- A community right to challenge, providing community groups, employees and parish councils with the right to bid to the council to take over the running of a service.

Planning and Housing

- Abolition of Regional Spatial Strategies.
- Transfer of national infrastructure decisions to the Secretary of State.
- Powers and processes for parishes and newly created neighbourhood forums to develop neighbourhood plans and neighbourhood development orders.
- Greater flexibility for councils to set policies on social housing allocations and tenancies locally, and to place homeless people in private sector accommodation.

LG Group Key Messages

- **With this bill, the government aims to significantly decentralise power and decision-making.** In particular we welcome the implementation of the General Power of Competence for councils which the LGA has lobbied for, the recognition of councils' central role in planning and the possibility of broad devolved powers for councils with directly-elected mayors.

Briefing

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- **The dismantling of the current complex, bureaucratic and inefficient housing finance system, following a long campaign by LGA, is very welcome.** The potential for micro-management contained in the detail of the reforms will however limit the impact of Ministers' policy. We will be working to ensure this important reform unlocks efficient management of housing operations and assets locally and gives local government the housing settlement the sector has campaigned for.
- **The Bill also reflects policies to help people at neighbourhood level take a greater role in public services and planning – these are ideas we support in principle.** However, the drafting demonstrates how challenging it has been for the Whitehall machine to translate Ministers' policies into legislation. We will work to improve the detail by supporting constructive amendments to ensure that the Bill fully reflects the Government's localist agenda and reduces, rather than adds to, the red tape and complex processes facing local people and councils.
- **It is clear that Whitehall still has some way to go in understanding and implementing the "post-bureaucratic age" so enthusiastically championed by Ministers.** We would encourage Parliament to scrutinise the many powers within the Bill for Ministers to make regulations and issue guidance, as we believe many of these are unnecessary and contrary to the spirit of localism.
- **We oppose any moves to order English councils to contribute to EU fines imposed on the UK government.** The EU treaty clearly states that only governments are liable for fines. This measure, which has been imposed without any consultation with the sector, imposes a new regime for the government to impose fines extra judicially, by executive action. It will result in significant and unjustified financial strain on local authorities that are already facing extremely testing circumstances.
- This briefing covers the key issues within the Bill and the LG Group responses. The Group will be undertaking further analysis of the contents of the Bill and will be producing a detailed briefing for the 2nd Reading debate, due to take place early in the New Year.
- All of the changes apply to local authorities in England and a number apply to Wales, please contact the LGA via the details below for more information.

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Localism Bill in detail

The bill consists of **405 pages, 208 clauses and 24 schedules.**

To accompany the bill the government has published 'Decentralisation and the Localism Bill: an essential guide'. This guide sets out six essential actions for localism and decentralisation¹. The actions are sound principles and we will work with government to ensure that they are reflected in the bill.

For example; action 1 is to lift the burden on bureaucracy. The government has provided increased flexibility through the general power of competence. However **much of the detail and implementation of this bill will be taken forward through regulations, order making powers, duties, statutory guidance and requirements on local authorities. We have counted at least 142 such powers.** We want to work with government to ensure that the bill lives up to the aspirations of Ministers and provides genuine flexibility for local areas.

Part 1 Local Government (powers and governance)

General Power of Competence

- A **General Power of Competence** (GPC) for local government that provides local authorities with the 'power to do anything that individuals generally may do'.
- A power for the Secretary of State to remove limits to the GPC; but also to add limits to the power.
- A wide ranging power for Fire and Rescue Authorities 'for the purposes of carrying out any of its functions'.

LG Group View

- We strongly support the government's decision to set out in legislation a broad and clear general power of competence which we have lobbied for. The power means local councils and Fire and Rescue Authorities will be able to respond to local issues and priorities ambitiously, confident in their legal footing.

Local Government Standards

- A new duty on local authorities to **promote and maintain high standards of conduct.**
- Provision for the authority to adopt a voluntary code of conduct and the powers to revise, adopt and withdraw such a code.

Repeals and other key clauses

- Repeal of the **duty to respond to petitions, the duty to promote democracy.**
- Repeal of powers to pilot incentive charging for waste collection.
- **Providing councillors with clarity on the predetermination rules.** Councillors will have the freedom to participate in a discussion of the councils business on an issue on which the councillor has already expressed a view

¹ The six actions listed in the pamphlet are as follows 1. Lift the burden of bureaucracy. 2. Empower communities to do things their way. 3. Increase local control of public finance. 4. Diversify the supply of public services. 5. Open up Government to public scrutiny. 6. Strengthen accountability to local people.

LG Group View

- We are pleased that the government is taking steps to remove unnecessary specific duties on local authorities such as the requirement to respond to petitions and promote democracy. It is important that the overall burden of unnecessary duties and requirements on local authorities is reduced throughout this bill.

Mayors and governance

- Local authorities are able to **change governance arrangements** subject to endorsement via a referendum. The Secretary of State can prescribe additional permitted governance arrangements and can direct a local authority to hold a referendum on whether they should adopt particular governance arrangements.
- **The Secretary of State will have the power to put shadow elected mayors in place and to initiate a mayoral referendum.** The referendums will not be confirmatory. There will be a broad power for the Secretary of State to transfer to the Mayor any function of any public body.

LG Group View

- The system of governance in a local area should be a decision for the local authority and its residents, at their own initiative, rather than for the Secretary of State.
- The powers to transfer the functions of any public body to mayors where they exist potentially has huge significance. Public services need to put citizens in control of how public money is spent, either directly or through their locally elected representatives. This power could potentially support the delivery of increasingly accountable, cohesive and efficient public services.
- There is no detail on when the shadow elected mayors could come into effect and we are seeking clarification from CLG on this.

Local Government pay and remuneration

- Local authorities must publish a **senior pay** and policy statement which accords with seven mandated headings. This should be in place and voted on by council by 31 March 2012.

LG Group view

- Local councils are committed to transparency in the appointment and remuneration of staff. This is a matter for local discretion and the LG Group will work with the government to ensure that the requirements and guidance provide flexibility for councils to appoint and remunerate staff in a way that is locally appropriate.

Part 2 EU fines

- A general power for the Secretary of State to **order councils to contribute to the UK's obligation to pay a fine**, if an act or omission of the council can be shown to have contributed to the fine being imposed.

LG Group view

The EU Treaty clearly specifies that fines for failure to meet agreed targets are attributable to the member state. We are concerned that a clause placing local authorities at risk of paying EU imposed fines has been

inserted without any consultation and discussion with the sector. This measure therefore would set up a new regime within the UK for the government to fine councils, extra-judicially by executive action, in order to raise money to pay fines legally imposed on the government. The proposed clauses are unfair and unworkable, and it would be impossible to calculate fairly how to attribute any liability between the countries of the UK and between councils in England. We urge the Government instead to discuss with us how local and central government can work together to ensure the UK does not have to pay fines.

Part 3 Non Domestic Rates

- **Automatic small business rate relief.**
- Provisions requiring all **business rate supplements** to require a ballot.
- Specific power to cancel backdated rates by regulation.

LG Group view

- Moves to make small business rate relief automatic and the specific powers to cancel backdated rates are important flexibilities for the sector.
- The moves to require a ballot for all business rate supplements require the kind of mature partnership between councils and business reflected in the new local enterprise partnerships.

Part 4 Community Empowerment

Referendums

- A new duty on local councils to hold **local referendums**. The local authority must hold a referendum if it receives a petition signed by 5% of the electors and is a local matter (defined in legislation). The results of the referendum are non binding and can relate to issues outside of the council's direct control.
- The Secretary of State will set the principles for **excessive council tax**. The Billing Authority and Precepting Authorities will be required to hold a referendum on the council tax requirement if it is determined excessive.

Community right to buy and challenge

- **A community right to buy;** requiring local councils to draw up, hold and publish a list of assets of community value. A further requirement for the owner of the asset to abide by a moratorium on the sale of the asset if a community group express an interest in bidding for the asset (this applies to both public and privately owned assets).
- **A community right to challenge;** will allow voluntary and community bodies, employees of a relevant authority and parish councils to bid to a local authority to run a service where they feel that it could be run better.

LG Group view

- Many councils are already involved in moves to support local people, social enterprises and community organisations to take over the running of services and assets. The LG Group will wish to work with the government to ensure that the processes behind the right to challenge and right to buy do not stifle this good practice by imposing excessive process and regulation.

Part 5 Planning

Plans and Strategies

- Regional Spatial Strategies to be abolished.
- A new duty to cooperate on councils and other key partners. This will be subject to government guidance.
- Greater flexibility for councils to react to statutory examination of their development plans.
- Developers required to engage in pre-application consultation on major schemes (within a centrally determined threshold).

Community Infrastructure Levy (CIL)

- Reporting requirements in relation to local plans and CIL will be reduced.
- The Secretary of State will have the power to require local authorities to pass CIL on to other bodies.

Neighbourhood planning

- Any qualifying body (a town or parish council or a body designated as a neighbourhood forum) is entitled to initiate a process for the purpose of requiring the Local Planning Authority (LPA) to make a Neighbourhood Development Order (NDO). A NDO grants planning permission in relation to a particular neighbourhood area and for development specified and of any class specified. The NDO must be examined (in accordance with regulations) and subject to a referendum. The Secretary of State may revoke an NDO at any time; the LPA must obtain consent of the Secretary of State.
- LPAs can designate a body as a neighbourhood forum within centrally specified conditions. The designation lasts for five years and may not be withdrawn once given.
- LPAs will have the power to designate a neighbourhood area where a relevant body has applied to the LPA for the area to be designated. Regulations will specify procedures, form, content and requirements for LPAs in discharging this power.
- Any qualifying body may require a LPA to make a neighbourhood development plan. This sets out the policies in relation to the development and use of land in a neighbourhood. The plan must be subject to examination and a referendum.
- Neighbourhood Development Orders and Neighbourhood Plans should in general conform to the local plan.

Enforcement

- LPAs will have the power to decline retrospective planning applications once an enforcement order has been served.
- Applications for a planning control order can now be made up to six months after evidence of a breach is made available. Orders can only be made by a Magistrates Court and the maximum fine for a breach of condition will increase to a Level 4 fine.

Nationally significant infrastructure

- Transfer of national infrastructure decisions from Infrastructure Planning Commission to the Secretary of State.
- Requirements to consult planning authorities outside of the immediate vicinity reduced. Powers for planning authorities to submit a formal statement of their views reduced.

LG Group view

- We support the principles behind neighbourhood planning. We agree

with the Government that local planning should be in the hands of councils, individually and working together; and that planning should be simpler, quicker and provide more certainty and transparency for local people and developers.

- We agree that people should be able to shape the places where they live and that important decisions about the future of places remain in the hands of elected and accountable local politicians.
- To make this a success it is vital that the government does not impose rigid bureaucratic processes on local people and councils, which only serves to increase complexity, delay and opportunities for litigation.
- We will be looking carefully at the very extensive and complex measures in the Bill on neighbourhood planning and proposing amendments to improve them based on the successful front line experience of councils working with their communities.
- Greater freedom and flexibility for councils to be able to work together to plan strategically for growth, without top down targets and strategies is welcome. We would question the need for central government to issue guidance to councils and their partners at the local level on how to co-operate
- Community Infrastructure Levy is important as part of a wider package of incentives and measures including the New Homes Bonus and Tax Increment Financing to stimulate and encourage growth locally. We welcome the proposed removal of unnecessary national controls and complexity, but decisions on how CIL is spent locally should be taken by democratically accountable local politicians, subject to the safeguard of independent examination.
- The decisions taken by the Secretary of State with regard to nationally significant infrastructure should be informed by evidence and understanding of the impact on local communities and this should be resourced appropriately.
- The stronger planning enforcement powers detailed in the bill will allow local authorities to discharge their duties more effectively.

Part 6 Housing

Allocation and homelessness

- Powers for local authorities to handle existing tenants' requests for transfer through separate rules and criteria from those applying to people who are not tenants.
- Greater flexibility for councils to develop their own allocations policies; subject to regulations.
- Councils permitted to discharge their homelessness obligation via a private sector tenancy; this no longer requires express permission of the tenant.
- Councils will be required to produce a tenancy strategy within 12 months of enactment. Social landlords must be consulted on the strategy and will have to set tenancies in line with the strategy.

Social housing and tenure reform

- Flexibility for social landlords to introduce fixed tenancies of two or more years in place of the current lifetime tenancy, and to limit succession rights to a spouse or partner.
- Requirement on councils to introduce a local tenancy strategy.

Housing finance

- Powers for the Secretary of State to set the buy-out to enable self financing.
- Powers for the Secretary of State to reopen the buy-out figure at a later

date.

- Powers for the Secretary of State to set the borrowing limit.

Housing mobility

Proposals to make it easier for social tenants to move to a new home.

Social housing regulation

- Tenant Services Authority to be abolished and replaced by a statutory committee of the Homes and Communities Agency. Regulator to set a tenancy standard for local landlords.

LG Group view

- In principle, greater flexibility for councils and landlords on allocation and management should bring about better outcomes for existing tenants and people in need of social housing. It is helpful that the Government is not imposing changes like fixed term tenancies on councils which do not consider them appropriate.
- However, these changes are taking place against the background of very significant changes to housing benefit rules and a very big reduction in funding for new social homes. No one should be under any illusion, therefore, that councils and social landlords will be in a position to meet the legitimate housing aspirations of all local people
- The dismantling of the current complex, bureaucratic and inefficient housing finance system, following a long campaign by LGA, is very welcome. However, it is vital that the Government drops proposed powers for the Secretary of State to re-open the buy out figure and set a limited on borrowing, and allows councils to retain all receipts from sale. Only by embracing genuine devolution will the Government enable this important reform to unlock efficient management of housing operations and assets locally.

Part 7 London

- The GLA will be able to incur expense for the provision of housing and have the ability to sponsor academies.
- The Secretary of State can authorise the GLA to undertake compulsory purchase of land.
- The social housing functions of the HRA will transfer to the GLA and the Secretary of State will be able to transfer these functions to any London borough council or person as he sees fit.
- The London Development Agency is abolished.
- The Mayor may specify Mayoral Development Areas (MDA) and the Secretary of State must establish a Mayoral Development Corporation (MDC) for each MDA.