

Localism Bill - House of Lords Report Stage Briefing

2nd September 2011

The LGA's View of the Localism Bill

- During the Lords Committee Stage, LGA briefings praised the ideas behind the Localism Bill while supporting amendments designed to **clear out unnecessary bureaucracy and creeping centralisation** which is in stark opposition to the localist rhetoric of Ministers.
- There were some very positive moves from the Government during Committee Stage – scrapping the ‘shadow mayors’ provisions and deleting the power for the Secretary of State to decide what constitutes a “local matter” with regards to local referendums – and we strongly welcome these concessions.
- However, we are very disappointed that **the Bill continues to put forward a very centralist view of localism, in the belief that reams of Whitehall guidance and regulation are the best way to enhance public participation in local democracy and decision-making.** We believe this is the wrong approach to take, and that the Government should strive to be as hands off as possible, leaving local areas free to make their own decisions alongside their elected local councillors. This is fundamental to localism.
- **Many of the possible new regulations, such as dictating how a local authority sends letters to people, and how it advertises referendums, are wholly unnecessary** and threaten to create a “tick-box” culture that will strangle innovation and flexibility. We urge the Government to keep this guidance to an absolute minimum.
- Complexities will not only tie the hands of councils – **they could prevent communities and individuals getting involved**, as they won’t have the resources to deal with time-consuming guidance that will come with, for example, neighbourhood planning provisions. Further Henry VIII clauses, and wide powers for the Secretary of State to issue arbitrary new regulations, will create instability and the constant threat of continued unwarranted tinkering from the centre.
- **Whitehall should not force local areas to hold neighbourhood planning referendums if there is no local desire.** This is centralist and wasteful, and we propose an amendment which will see planning referendums only taking place if there is real local desire.
- **We strongly urge the Government to accept an amendment allowing local authorities to deal with vexatious town and village green applications** which threaten local growth.
- The Bill will only lead to increased house building and growth if it frees councils to invest. We continue to urge Government to **remove the power for Whitehall to cap councils’ borrowing to invest in social housing**, and to commit to allowing councils to keep 100% of Right-to-Buy receipts for reinvestment locally.



Briefing

- We welcome the work the Government has undertaken with the LGA to develop an **EU fines** policy that better safeguards councils. The statement of policy in the Lords Library sets out **our key principles for compromise**, including the need for closer working between local and central government, strong scrutiny by Parliament before a fine can be passed to a council, and the requirement for an independent panel to further scrutinise decisions. Further briefing on this issue is available on request.

This Briefing and Shortlist of Amendments We Would Like to See:

There are many areas of the Bill where we recommend minor amendments to delete unnecessary Whitehall interference and micro-management of localist policies. This briefing covers the **Marshall Amendments we are supporting** which will make the Bill a far more localist piece of legislation and give councils the flexibilities needed to ensure that all their policies are tailored for the individual needs of their communities. These amendments are:

On housing finance (Page 3)

- An amendment allowing councils to keep 100% of Right to Buy receipts - **Marshalled Amendment 41**.
- An amendment preventing Government from putting a cap on councils' borrowing to invest in social housing - **Marshalled Amendment 46**.

On Unnecessary Secretary of State Powers (Pages 3 - 5)

- Deletion of the power for the SoS to force places to hold mayoral referendums and of regulation-making powers to dictate how councils hold referendums on governance change, including how they issue publicity - **Marshalled Amendments 155, 158 and 159**
- Deletion of wide, non-specific regulation-making powers for the Secretary of State on the Community Right to Bid Policy - **Marshalled Amendment 198**.
- Deletion of the power for the SoS to dictate how a council holds a list of assets of community value, and how it can amend that list – **Marshalled Amendment 202**.
- Deletion of the power for the SoS to decree how councils write letters on assets of community value, and how they hold a list of unsuccessful nominations – **Marshalled Amendment 203**.
- Deletion of the power for the Secretary of State to dictate how councils cooperate – **Marshalled amendment 204**.

On planning (Pages 5 – 6)

- An amendment which will ensure that planning referendums only happen when locally wanted, not because Whitehall decrees it - **Marshalled Amendments 207*, 208*, 209* and 210***.
- A new clause allowing councils to deal with vexatious TVG applications – **Marshalled Amendment 232***.

The LGA has further briefing notes on other specific areas of the Bill on an issue-by-issue basis. Please contact us for more information.

On Housing Finance

LGA View of Housing Finance Reforms in the Localism Bill

Part 6, Chapter 3 of the Bill reforms the housing finance system with the aim of allowing councils to self-finance investment in their social housing stock. Clause 158 allows the Secretary of State to impose a cap on the amount of debt a local authority can take on for investment in social housing. The LGA welcomes the abolition of the HRA subsidy system in favour of with self-financing. However, there are still **real threats to investment in social housing**, and we are supporting amendments which will give local authorities more flexibility to invest in social housing locally by **allowing them to keep 100% of Right to Buy receipts for reinvestment and deleting the suggested arbitrary borrowing cap.**

On Right to Buy Receipts

The Government proposes that 75% of net receipts from any RTB sales continue to be sent to the Treasury. This is at odds with a localist approach to self-financing, and prevents sensible asset management. We know that RTB receipts are to be factored into the HRA settlement payment, though we believe the estimates should be taken out of the settlement entirely. If councils are to operate a viable business plan they must be able to use the full proceeds of a sale of any asset to pay off debt or replace the asset. **We therefore support Marshalled Amendment 41, tabled by Lords Best and McKenzie, which will allow councils to keep 100% of Right to Buy receipts.**

On the Creation of an Arbitrary Borrowing Cap

Clause 158 will allow the Secretary of State to impose limits on councils' housing finance borrowing. The sector already has a well-established and effective approach to managing borrowing – the Prudential Code – so this provision is unnecessary, and fundamentally in opposition to the principles of self-financing. Some councils will be unable to finance necessary housing stock improvements themselves, as the Government expects, if they can only borrow enough to finance the HRA buyout. **We therefore support Marshalled Amendment 46, tabled by Lords Whitty and Best, which will delete Clause 158.**

Unnecessary Secretary of State Powers

LGA View on the Regulations and Bureaucracies in the Localism Bill

Local authorities are legally competent bodies and are fully capable of delivering the localism agenda without the need for reams of statutory guidance and regulation from Whitehall. Local flexibility to deliver schemes, such as the Community Right to Bid and Assets of Community Value, is vital if they are to work successfully and reflect local priorities. Policies that are relevant for central Manchester will in many cases not be suitable for the rural Cotswolds. **Having Whitehall create bureaucratic frameworks and regulations will inhibit innovation, limit variation and act as a barrier to engagement, participation and growth.**

Further powers for Whitehall to decree in minute detail how local authorities go about their day-to-day work, such as how to write letters, how to publicise referendums, and how to co-operate with one another, are completely in opposition to the localist rhetoric we have heard from Ministers and demonstrate a lack of trust in councils. This lack of trust is unwarranted, and threatens to create a tick-box mentality that frustrates innovation and local diversity – the very opposite of the announced intentions of the Bill.

We are supporting a small number of amendments, tabled by Lord Jenkin, which seek to limit unnecessary and unwarranted and burdensome regulations. These are listed below.

LGA-Supported Amendments to Delete Unwarranted Regulations and Bureaucracy

Marshalled Amendments 155, 158 and 159 will delete the power for the Secretary of State to force an area to hold a referendum on changing its governance arrangements, including on changing to an elected mayoral model. They also delete all the micro-management on referendums, including what action a local authority may take on a referendum, what date a referendum must be held on, how votes are counted etc. There is already a process in place to allow local places to petition to hold a referendum on whether they want to have an elected mayor. Whitehall should not be pre-empting these local movements by forcing expensive referendums when there is no local desire. Councils also do not need reams of regulation telling them how to hold referendums – they are perfectly capable of making these decisions with their residents.

Marshalled Amendment 198 seeks to delete wide, non-specific regulation-making powers for the Secretary of State on the Community Right to Challenge policy. **Creating a situation in which the Secretary of State can continually tinker with this policy and issue new decrees as they see fit will create unnecessary uncertainty amongst councils, community groups and businesses.**

Marshalled Amendment 202 seeks to delete the regulation-making powers for the Secretary of State to dictate how a local authority holds a list of assets of community value, what a list looks like, how it modifies the list, how it removes entries, and how it might combine a list with another one. **These regulations are completely redundant** – councils are more than capable of holding lists and working out, with their residents, the most appropriate way of involving them. Localist policies should allow for local variation, dependent on the specific wants and needs of an area. Forcing a rigid process onto every area limits innovation and creates a tick-box culture which we believe is not the intention of Ministers.

Marshalled amendment 203 seeks to delete the regulation-making powers for the Secretary of State to dictate how a local authority writes letters to people on the inclusion or removal of land from the register of community assets, and how these letters are to be sent. **It is patronising and centralist to suggest that councils are incapable of writing letters to inform their residents without Whitehall regulation to guide them.**

Marshalled Amendment 204 seeks to delete the power, within the Duty to Cooperate, for the Secretary of State to issue guidance on how local authorities must co-operate with each other. While we support the principle of the duty to cooperate, **there is no need for the Secretary of State to decree in precise terms how this co-operation will take place.** Councils are already working together across areas to plan strategically for growth. They do this not because of a duty or centrally imposed requirement but because councillors recognise the pressing needs of their areas and are willing to work together to tackle joint priorities.

On Planning

On Neighbourhood Planning Referendums

Referendums should be used in a proportionate way. Forcing a referendum for all neighbourhood plans would be wasteful, time-consuming, and unnecessary if local people agree with what is in the plan or order. **We therefore support Marshalled Amendments 207*, 208*, 209* and 210***, tabled by Lord Best, which will ensure a referendum is only held if a ward councillor objects, a local petition is submitted, or if the local authority thinks a referendum is worthwhile in relation to a plan or order. ACRE has estimated that the cost of parish polls ranges from £300 to £8,000. We agree and estimate the costs of running a referendum on a neighbourhood plan to be in the region of £5,000¹. This level of public expenditure must be avoided unless expressly required.

On Town and Village Green Legislation

Town and Village Green legislation is too often used by opponents of particular schemes to stall or block development by seeking to register land that would not normally be considered 'green'. Although applications to register land as a town or village green are often refused, they can **delay legitimate schemes for years.** The current financial climate makes the resolution of this issue more urgent than ever, as such delays can render schemes unviable, stalling badly-needed regeneration and growth projects.

We are pleased that the Government is seeking to tackle these problems and look forward to working with them on this. However, in the interim, registration authorities are left in a position whereby they cannot easily reject frivolous and vexatious applications, nor applications that are made after planning permission has been granted. **We therefore support, alongside the NHF, BPF and HBF, Marshalled Amendment 232***, tabled by Lord Best, which will provide local authorities with the power and flexibility to reject frivolous applications, especially if a raft of applications are submitted to pre-empt changes the Government may make in the future.

¹ Stoke on Trent City Council estimate that the October 2008 referendum on maintaining a Mayoral system costs in the region of the £150,000, equivalent to the cost of running a local election. On top of this the additional communications and publicity work required to encourage participation and turnout in the referendum was up to £90,000. When these costs are scaled down to a neighbourhood level we estimate a referendum of around 5,000 people would cost in the region of £5,000.

Key Quotes on Localism

Rt. Hon. David Cameron MP

“Everyone can see that the old, top down, big government solutions aren't working... We shouldn't always think that the answer to every problem is some detailed policy or bureaucratic scheme.”

“It's about using every non-bureaucratic method at our disposal to galvanise, encourage and influence people to do the right thing. It's nothing less than a national call-to-arms - stimulating enterprise, initiative and personal responsibility.” (22nd February 2010).

Rt. Hon. Francis Maude MP

“...local areas are bound by the rules and targets imposed by central government, squeezing out room for local understanding and the judgment of those much better placed to understand the complexities and particular context of local problems.” (9th June 2010)

Rt. Hon. Eric Pickles MP

“The years of government interference and micromanagement are over. Instead, we're starting an era of genuine local leadership... This is all part of my campaign to replace the command and control approach to local government with genuine localism.” (15th October 2010)

Professor George Jones, LSE

“The Bill should not be called a Localism Bill, and the Government know that. It is a centralism Bill, because it confers many powers on the Secretary of State to issue regulations and orders to interfere in local affairs.” (25th January 2011)

For a more detailed briefing on any of the issues above please contact Greg Taylor, Public Affairs Manager, at greg.taylor@local.gov.uk or on 0207 664 3034