

Localism Bill 2nd Reading Debate – Local Government Association Briefing

17th January 2011



LGA Key Messages

- The LGA welcomes the thrust of the Bill and the Government's aims to decentralise power and decision-making. **In particular we support a General Power of Competence for councils** and the possibility of broad devolved powers for councils with directly-elected mayors.
- **However, we oppose moves to force English councils to pay parts of fines imposed on the UK national government by the EU.** This policy is unfair, unworkable, dangerous and unconstitutional.
- The dismantling of the current complex, bureaucratic and inefficient housing finance system, following campaigning by the LGA, is very welcome. **However, we are concerned that powers for Whitehall to reopen what is supposed to be a clean break settlement would stop councils managing their housing assets for the benefit of local residents, and they should be reconsidered.**
- We strongly support the aim of helping people at neighbourhood level have greater control over public services and planning. However, in some areas the Bill text demonstrates how challenging it has been for the Whitehall machine to translate Ministers' policies into legislation. **We want to see a Bill that fully reflects the localist agenda Ministers have previously supported and reduces, rather than adds to, red tape and complex processes facing local people and councils.**
- Whitehall is clearly struggling to understand and implement the "post-bureaucratic age" so enthusiastically championed by Ministers. **The Localism Bill consists of 405 pages, 208 clauses, 24 schedules and at least 142 order and regulation-making powers – we believe this was not the intention of the Government when they set out their localism agenda.**
- This briefing deals with several of the key areas of concern for local authorities within the Bill. It sets out the problems the LGA sees with the drafting and suggests questions we would like the Government to address during the 2nd Reading debate.

This Briefing

This briefing is split into four sections:

- 1) Clauses which we fully welcome.
- 2) Clauses which we have questions about.
- 3) Clauses which require further work.
- 4) Clauses which should be deleted.

Briefing

1) Clauses Which We Fully Welcome

The Power of General Competence

Clauses 1 – 7 will give councils a broad General Power of Competence, allowing them to do “anything that individuals generally may do”.

LGA View - We strongly support a broad and clear General Power of Competence, something which we have lobbied for. The Power will mean local councils and Fire and Rescue Authorities will be able to respond to local issues and priorities ambitiously, confident in their legal footing.

Predetermination

Clause 13 will limit the cases in which charges of predetermination might apply to councillors.

LGA View – Scrapping the predetermination rules will increase councillors’ abilities to represent the views of their constituents in decision-making processes. Rules preventing councillors from being involved in decisions when they have a financial interest will remain in place.

Planning Reforms

Part 5 of the Bill contains reforms to the current planning system, including abolishing regional strategies, reforming Community Infrastructure Levy arrangements, and creating a neighbourhood planning system.

LGA View – We support councils having maximum freedom to make spatial plans which reflect the needs and wishes of their residents. Proposed new approaches to pre-application discussion and planning enforcement are also welcome. We do, however, have **significant concerns about the neighbourhood planning policies** which are covered below.

Ability for Councils to Return to the Committee System

Schedule 2, Part 1, 9B permits local authorities to operate a committee system.

LGA View – Decisions about local leadership should be taken at the local level, and we welcome this acknowledgement in the Bill.

2) Clauses Which We Have Questions About

New Powers for Elected Mayors

Schedule 2, Clause 9HF allows the Secretary of State to require the local public service function of any body to be conferred to an elected mayor.

LGA View - We welcome the possibility of broad new powers being delegated to elected mayors. This Clause could allow for community budgets, which the LGA has long campaigned for, to be managed by directly-elected mayors. This would reduce waste, cut bureaucracy, and place more decision-making power in the hands of directly-elected local politicians.

However, we would like details of **what functions CLG expects to delegate to elected mayors** to ensure this policy is as far-reaching as possible. **In our view these powers should have the potential to be exercised by any executive governance model.**

Business Rates

Clauses 35 – 38 make changes to business rate supplements and small business relief.

LGA View – We welcome changes that make small business rate relief automatic. **We want to work with the Government on its future plans to fully localise non-domestic rates and give local authorities increased financial certainty to plan for future growth, whilst ensuring finance.**

3) Clauses Which Require Further Work

The Localism Bill contains at least 142 powers for central government to lay down regulations, issue guidance and otherwise dictate how localism will work in local areas. This is contrary to the policies put forward by Ministers, and demonstrates the difficulty Whitehall has had in legislating for the “post-bureaucratic age” promised by the Government.

Referendums on any Local Issue

Clauses 39 – 55 lay the foundations for local referendums including the percentage of petitioners required to force referendums, what issues can be covered in a referendum, how the referendum will be run and actions to be taken following a referendum.

LGA View – This Chapter includes numerous powers for the Secretary of State to make regulations on how local referendums will operate, including a power for the Secretary of State to determine what constitutes a “local issue”. **These powers are contrary to the spirit of localism and should be deleted from the Bill.**

Council Tax Referendums

Clauses 56 – 65 and Schedules 4 & 5 lay out new requirements for local authorities to hold referendums in the event that their proposed council tax increase is deemed to be excessive based on regulations from the Secretary of State.

LGA View - We believe that it is for local people to determine whether a proposed council tax rise is excessive. These Clauses give the Secretary of State a number of new powers, including creating alternative notional amounts (ANAs) for council tax rises, decreeing any new principles to

determine whether a council tax rise is excessive, and to decide when referendums are to take place. **This level of centralised control over local finances is unwarranted and in opposition to the local financial freedoms promised by Ministers.**

The Community Right to Challenge

Clauses 66 – 70 will require local authorities to consider a bid made by a local relevant body (including parish councils and voluntary or community bodies) to provide a local public service and undertake a procurement exercise if appropriate.

LGA View – Community bodies, and other “relevant bodies”, already have the right to bid to provide local public services. **Councils across the country are already undertaking outsourcing programmes emphasising the centrality of community groups, and five clauses of legislation on this are unnecessary in a post-bureaucratic age.** Powers for the Secretary of State to make any further regulations relating to this are further unnecessary and should be removed.

The Community Right to Buy

Clauses 71 – 88 will require local authorities to maintain a list of local assets of community value as nominated by the community. Any asset on the list can only be sold after a moratorium period has passed, allowing the community sufficient time to pull together a bid to purchase the asset.

LGA View – This Chapter seeks to enshrine an unduly complex series of procedures into law to regulate localism on the ground. This includes **ten powers for the Secretary of State to make regulations**, including on how long assets stay on the list, how owners of assets should be notified, and on what constitutes a “land of community value”. **These decisions should, in the spirit of localism, be made at the local level and these powers should be deleted from the Bill.**

Community Infrastructure Levy

Clause 94 reforms the Community Infrastructure Levy (CIL), detailing the role of the independent examiner in considering an authority’s charging schedule, how the CIL can be used, and creating a duty for charging authorities to pass on CIL funds when required by regulations.

LGA View – CIL is important as part of a wider package of measures designed to stimulate local growth. While we welcome the proposed removal of unnecessary national controls and complexity, we believe that decisions on how CIL is spent locally should be taken by democratically accountable local politicians, subject to the safeguard of independent examination. **Powers for Whitehall to determine how CIL funds are distributed locally are contrary to the spirit of localism** and we recommend that this Clause is amended.

Neighbourhood Planning

Clauses 96 – 101 and Schedules 9 – 11 set out new neighbourhood planning systems, allowing “relevant bodies”, including new “neighbourhood forums to apply to their local planning authority for neighbourhood development orders, neighbourhood development plans and Community Right to Build Orders.

LGA View - We support the principles behind neighbourhood planning. However, to make this a success, the Government must not impose rigid bureaucratic processes on local people and councils, which only serve to increase complexity and delay, and create opportunities for litigation. The Government’s current approach also risks putting too much power in the hands of people who are not elected or removable by a democratic process, without enough assurance of inclusiveness, transparency and financial probity. **The LGA believes there is a far simpler model for communities to work with councils on planning that will not require the 44 pages, 6 Clauses and 3 Schedules proposed in the Bill, and we want to work with the Government to help put this model into action.**

Housing Finance

Clauses 140 – 147 reform the housing finance system, abolishing the housing revenue account and setting out how settlement payments will be made. They also give the Secretary of State the power to change the settlement payment in the future and to determine how much housing debt a local authority is allowed to take on.

LGA View - The dismantling of the current complex, bureaucratic and inefficient housing finance system is very welcome. However, the power for the Secretary of State to revisit the settlement figure in the future, and potentially increase the amount councils have to pay to “buy out” of the scheme, is dangerous. **The reform of housing finance is designed to give councils independence and financial certainty, but as drafted the Bill gives them neither.**

4) Clauses Which Should be Deleted

Confirmatory Referenda for the Creation of Directly Elected Mayors

Schedule 2, Clauses 9N, 9NA & 9NB will allow the Secretary of State to require a local authority to begin operating an elected mayor and cabinet executive. Such local authorities will be required to have a “shadow mayor” prior to a local confirmatory referendum taking place.

LGA View – Moves to consider having an elected mayor should rest in the hands of local people. **Giving the Secretary of State the power to force a shadow mayor onto local areas, and subject that decision to confirmatory referendums, is wholly against the spirit of localism and we oppose it.**

EU Fines

Clauses 30 – 34 will allow Ministers to require that local authorities contribute to any fine passed down to the UK by the European Union

LGA View – These clauses are **unfair, unworkable, dangerous and unconstitutional**. They would require local authorities to pay parts of national fines passed down to the UK Government by the EU, despite this possibility never have been suggested to councils, or consulted upon. It would be impossible for the Government to accurately and fairly judge the proportion of a fine that a council should be forced to pay, with large, unfair fines on councils significantly threatening local public services. This proposal would also put in place an entirely new regime for the Government to impose fines on councils extra-judicially, which is fundamentally unconstitutional.

Localist Quotes from the Government

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.” (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)

Rt. Hon Michael Gove MP

“What Labour's bombardment of schools shows is not only an obsession with pointless bureaucracy but, actually more importantly, a total lack of trust in teachers... Because we believe in teachers, the coalition immediately reduced this bureaucracy from Whitehall and has taken further steps to lessen the bureaucratic burden on teachers.” (7th January 2011)

For more information, and case studies, please contact Greg Taylor, Public Affairs Manager, at greg.taylor@local.gov.uk or on 0207 664 3034