THE LOCALISM ACT: AN LGIU GUIDE

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Contents

This guide to the Localism Act brings together a series of LGiU briefings on the Act published in November and December 2011. These briefings were written by Hilary Kitchin and Andrew Ross, LGiU associates. The guide also provides an update following the publication of the commencement order on 15 January 2012 where various provisions of the Act were brought into immediate force.

Introduction

On 15 November last year the Localism Act gained Royal Assent and was hailed by the Secretary of State in the following terms.

"Today marks the beginning of an historic shift of power from Whitehall to every community to take back control of their lives.

"The Localism Act pulls down the Whitehall barricades so it will no longer call the shots over communities – bug bears like housing targets and bin taxes are gone.

"For too long, local people were held back and ignored because Whitehall thought it knew best. That is changing for good. Councils have their General Power of Competence and residents have a real power over decisions like council tax, town hall pay, planning,community buildings or local services."

Some of the key measures included in the Act include a General Power of Competence for councils, changes to local authority governance arrangements and new rights for communities to challenge councils over the running of local services and to bid to take over assets of community value.

In many ways, the Act represents the legislative manifestation of the government's 'Big Society' Agenda. Predictably, it has drawn a range of reactions: some agree with the government about its transformative potential; others fear that it will be undermined by a lack of demand in communities; and many in local government have expressed anxieties about implementing the Act's provisions in a time of financial austerity.

At the same time there is an emerging consensus that many of the key challenges of our time demand a more localist response.

These issues remain to be teased out. This guide does not pretend to address, let alone resolve, all the questions raised by this substantial piece of legislation. What it does seek to do is to provide an accessible yet authoritative overview of the key features of the Localism Act, based on briefings that the LGiU has provided to its members.

We hope that a shared understanding of the Act's content will provide the basis for future debate and will help councils across the country to implement it in the months to come.

Jonathan Carr-West, Policy Director, LGiU

6 February 2012

Progress of the Act

The government's current estimate is that some parts of the Act will come into effect in April 2012, including the general power of competence and some planning reforms.

Other parts of the Act including the community rights to challenge and bid and neighbourhood planning will come into effect in October 2012.

Certain provisions came into effect immediately or through the first Commencement Order on 3 December 2011. The Second Commencement order came into effect on 15 January 2012, bringing into effect a number of new measures and powers. The second commencement order can be read in full here: www.legislation.gov.uk/uksi/2012/57/contents/made. An update on these orders is provided at the end of each section of this paper.

Powers and Governance

General Power of Competence

The general power of competence will replace the well-being power from April 2012, and is intended to provide local authorities - and parish councils that meet certain minimum standards - with the same capacity to act as an individual. Similar powers have been given to Fire and Rescue Authorities, Integrated Transport Authorities, Passenger Transport Executives, Combined Authorities and Economic Prosperity Boards.

The government's own impact assessment has emphasised that the intention is to:

- allow authorities to act in their own financial interest to generate efficiencies and secure value for money outcomes and to raise money by charging for discretionary services and trade in line with existing powers.
- allow authorities to engage in activities, ruled by the Court of Appeal in the 'London Authorities Mutual Ltd' (LAML) case, as outside the well-being power, such as providing certain indemnities and guarantees and engaging in speculative activities.

Tax, charging and commercial activities

Decisions will be subject to the general law, and governed by the existing regimes on taxation, precepting and borrowing (including Prudential Borrowing). Powers to charge and provide services on a commercial basis remain broadly as under the well-being power. When using the general power, charges must not exceed the cost of provision for each kind of service taking one financial year with another, while authorities are unable to do anything for a commercial purpose other than through a company. Anything which is a statutory obligation, or which they could not otherwise do using the power is also precluded.

Limits on the use of the power

Councils will also be required to act in accordance with any existing and future statutory limitations or restrictions on their powers. The Secretary of State will have a power to amend or repeal enactments that prevent or obstruct local authorities from using the power, and to remove overlapping powers.

The Secretary of State will be able to set conditions on use of the general power, an extension of central control in comparison with the well-being powers. This may be intended as a reserve power, to be available should any 'speculative activities' risk going too far. In any event, the Secretary of State will have a reserve power to intervene and place limits on what authorities can do (note that a similar power under the well-being power was not used during the ten-year period it was in force).

Conditions attached to removing restrictions on use of the power

Concerns were expressed in parliament about the scope of the delegated power to amend and repeal conflicting legislation, principally because it was feared that this might act as a back door through which to repeal protective legislation. In response, a set of conditions has been included in the Act, which are intended to ensure that the use of the provision is proportionate to the policy objective intended, that there is a fair balance between the public interest and the interests of any person adversely affected, that there is no removal of any necessary protection, that no person will be prevented from continuing to exercise any right or freedom that they might reasonably expect to exercise, and that any provision is not of constitutional significance.

The minister gave an assurance that, "The provision is about removing barriers to the legal capacity of authorities to act innovatively and in the best interests of their communities. It is not aimed at

removing duties, nor is it, nor could it be, a general-purpose tool to remove any legislation that places a burden on local authorities".

General power of competence - specific comment

The general power will be broader in scope than the well-being power. It being subject to constraints in other legislation should in principle prove less of a burden than might be feared from experience of the well-being power. It is disappointing that the government has not made a commitment to review existing legislation and weed out unnecessary restrictions. It will be up to councils to make applications to remove limits in other areas of local government law, and it is additionally unfortunate that the process for introducing changes to other legislation has been made quite onerous and therefore expensive of time for local authority officers and civil servants.

It will be an essential task for councillors and officers to assess how they can make the new power work for their council and the communities they represent. They will want to feel assured about their ability to tackle key local issues, and to know that they will be able to work confidently in an increasingly pressured political and economic environment, to respond to local priorities and to play a full role in local partnerships. The government has committed itself to a post implementation impact assessment of the new power, and will want to avoid a repetition of the situation where lack of awareness and confidence in a flagship provision means that it is underused – there is a responsibility on the DCLG and local government organisations to provide information and support in this area, as is occurring on other aspects of the Act.

Local authority governance arrangements

The Act introduces a further form of local authority governance: in addition to the leader and cabinet mayor and cabinet models. As promised by the Coalition government, councils now have the option of adopting a committee system. It will also be possible for councils to propose an alternative model which can be accepted by the Secretary of State if it meets certain criteria.

Committee system

Under the committee system, authorities will in the main be able to decide their own decision-making structures, and it will be possible for a full council to discharge all of its functions or to delegate certain functions to a committee, sub-committee or an officer. Authorities will be able to discharge their functions jointly with other authorities or to decide that certain functions will be discharged by another authority. The Secretary of State will use regulations to specify any functions which may not be delegated and which must be exercised by the full council.

Authorities operating the committee system are not required to operate a formal overview and scrutiny committee; where they do, the Secretary of State may prescribe by regulations how the system is to operate. Requirements for health, flooding, and community safety scrutiny will apply to committee system authorities – these may be the responsibility of a relevant committee or of a separate scrutiny committee.

A late amendment was agreed that makes it possible for councils to resolve to change their governance arrangements and implement those changes without waiting until after the next local election. It was accepted that the original plan to defer the change was problematic, involving considerable delay and potential uncertainty.

Contributors to debates in the Lords, while recalling positive features of the former committee system, acknowledged that changes had taken place which would influence implementation of the committee system under the Localism Act. During the passage of the Bill it was noted that in those authorities that had retained a committee system (for the most part, "fourth option" councils – district councils with a population of less than 85,000) a streamlined committee system has evolved since 2000. Similarly, it was expected that experience of scrutiny would have an impact on a restored committee system.

The Centre for Public Scrutiny has published a briefing giving its insights into changing to a committee system of governance, which considers the developments over the last ten years that are of relevance when considering changing and devising form of new model. In this paper, some references to the content of the Localism Bill have changed during the parliamentary process, but core issues will be of interest. The centre has also published a paper on scrutiny and the committee system.

Prescribed arrangements

The Act provides for the introduction of new forms of governance in the future, through a fourth option which makes it possible for councils (and others) to propose arrangements which may then be approved by the Secretary of State, and set out in regulations that would apply to all local authorities in England. While ministers accepted that most proposals for additional governance models will come from local authorities, it does appear that others, including representative bodies, may put forward proposals. The government may also introduce changes, but must consult local authorities in doing so.

A local authority putting forward a proposal for regulations under this section would need to demonstrate that the proposal represents an improvement, is likely to ensure that decisions are taken in an efficient, transparent and accountable way, and that it is applicable to all authorities or particular description of authority. It would be necessary to describe the way functions of the authority would be discharged and/or delegated under the proposal.

Scrutiny

The Act replaces the relevant provisions in the 2000 Act in full and consolidates the main part of scrutiny legislation into a single place. The law will continue to be found in Part 1A and Schedule A1 of the 2000 Act. Provisions relating to crime and disorder remain in the Police and Justice Act 2006, and health provisions remain in the NHS Act 2006.

At a late stage in the Lords a group of amendments were agreed which:

- Remove prescription about matters which may be referred to scrutiny by councillors who are not members of a scrutiny committee
- Remove the link between local government scrutiny and local improvement targets in local area agreements
- Put the scrutiny committees in non-unitary district councils in an equivalent position to those of other authorities by allowing them to hold partner authorities to account.

A large number of unsuccessful amendments were rejected, many of which aimed to extend, strengthen and introduce consistency in scrutiny. A Lords amendment which would have significantly extended the scope of partner bodies that would be subject to scrutiny was put to the vote, but was rejected.

An attempt to extend the limits on information available on contractors was also unsuccessful. The amendment had proposed a new clause which would make provision for any contract for a sum over £1 million made by a relevant authority with any person to include a Freedom of Information provision.

Mayoral arrangements

The Secretary of State has considerable powers to trigger a mayoral referendum under the Localism Act. He will make immediate use of his ability to 'require every authority or a particular description of authority to hold a referendum on whether to adopt a particular form of governance', by making orders for mayoral referendums in the eleven largest English cities, Birmingham, Leeds, Sheffield, Bradford, Manchester, Liverpool, Bristol, Wakefield, Coventry, Nottingham and Newcastle-upon-Tyne. Leicester, originally included in a group of 12, has since elected a mayor.

Following strong and widely expressed objections, the government made considerable concessions on this part of the Bill, abandoning its proposal that existing council leaders be transformed into shadow mayors in the pre-referendum period. It also backed down on proposals that would have combined the roles of elected mayor and chief executive.

Transfer of powers to elected mayors using new general power of Secretary of State

A third regulatory power – making it possible to transfer local public service functions to an elected mayor - was abandoned, but the government is able to use another delegation power, introduced into the Act in the Lords, which gives the Secretary of State power to transfer local public functions to any local authority outside London, to promise power to the newly-appointed mayors. The government is currently consulting until 3 January 2012 in the 11 authority areas and in Leicester on this basis in an exercise entitled, What can a mayor do for your city?

Under the Act, proposals must promote economic development or wealth creation or increase local accountability in relation to the function. Separate negotiations with eight 'core cities', Birmingham, Bristol, Leeds, Liverpool, Manchester, Newcastle, Nottingham and Sheffield and their Local Enterprise Partnerships, between city representatives and the government, are also reported. No promises of delegation of powers are made in these negotiations, which will "culminate in both sides agreeing a deal about how best to deliver positive outcomes to take advantage of economic opportunities in the city regions".

Other aspects of Mayor and cabinet executives

Elected mayors will decide the number of councillors to appoint to the executive. The mayor will also appoint one of the executive members to be his or her deputy, who – subject to their holding office and retaining the confidence of the mayor - will hold office for the same period as the mayor. In the absence of the elected mayor and deputy, the executive, or a member of the executive, will act in their place.

Impact Assessment

The initial Impact Assessment (January 2011) based its estimate of costs on the Tower Hamlets mayoral referendum in the autumn of 2010. On this basis, and on assumption that 12 authorities would hold referendums costs to the authorities were estimated as £2.6m, with two cycles of mayoral elections over a ten-year period estimated as £9m. Should all original 12 referendums produce a yes

result, the total would be £15.9m. The Impact Assessment also considered potential savings from the

mayoral model, but did not fully consider the cost of support that would be required by an executive mayor. There was little evidence on which to base a reliable assessment of the effectiveness of the mayoral model in England. It is not known whether a further Impact Assessment will be considered necessary.

Expected timetable for introduction of elected mayors in 11 English cities

NB On 25 January Cities Minister Greg Clark published the timetable for the elections to mid November 2012 to coincide with the elections for the new police commissioners.

Nov 2011:	Localism Act received Royal assent
'shortly after'	Orders made in respect of the 11 cities
May 2012	Referendums held scheduled with local government elections and the London mayoral election
'shortly after'	Mayoral elections in any of 11 cities where there is a 'yes' vote - held via electoral system for existing mayors – supplementary vote
May 2012 onwards	Mayoral referendums may be held in other local authorities. Regulations will reduce the threshold for instigating mayoral referendums to 1 per cent of the electorate in large cities and conurbations.
To be confirmed	Government introduces recall mechanism for elected mayors alongside similar provisions for other public officials.

*LGiU estimates based on programme for implementation given in Impact Assessment Jan 2011, revisions to Bill and Plain English Guide to Localism Act Nov 2011

Mayoral arrangements – specific comment

In their final form the plans for mayoral referendums in the largest English cities will result in similar outcomes to previous referendum exercises. Yet despite the abandonment of the government's more radical plans it is unlikely that the future of elected mayoral arrangements can be considered as settled. This most recent legislation reflects a frustration on the part of central government (of all political parties) at the lack of take-up of local mayors. Much will depend on the outcome of the 11 referendums to be held in 2012: a high proportion of confirmatory decisions are likely to lead to a further round of compulsory referendums in other English cities. A low adoption of the mayoral model can be expected to lead to a further assessment of whether changes to the model will improve the prospects of increasing popular support.

Questions asked by the Institute for Government during research in 2011 included:

1) Will mayors have enough power to make a difference?

2) Will mayors 'fit' with current local authority institutions?

3) How will the transition to mayoral governance be managed?

Discussion generated by visits to 10 of the 11 authorities raised issues such as a move to a model

comparable with the London model, with the mayor able to appoint externally to key positions rather than 'grafting' a mayor onto what was described as a 'local government model'. It might be expected that numbers and role of councillors in mayoral authorities will come under increasing scrutiny, as will electoral changes. A general change to full council elections and a review of the electoral cycle to make councillor elections coterminous with the mayoral election are also possibilities.

The transition to mayoral governance must include a rigorous assessment of the council's scrutiny function. It will be particularly important that the scrutiny function is effective and well-supported and able to hold the mayor to account. Experience of scrutiny in councils with elected mayors should be particularly valuable.

Comment on powers of governance

The Localism Act both consolidates existing governance arrangements and makes some significant changes, particularly welcome to authorities wishing to restore a committee basis for responsibilities. It will be felt by many that more could have been done to strengthen accountability and transparency through improvements in scrutiny arrangements and extension of Freedom of Information provisions.

There will be widespread relief that shadow mayors and associated plans were shown the door, to the credit of those giving evidence and of parliamentarians challenging the provisions in the Commons and the Lords, and to ministers for accepting their arguments. There remains much to come, in terms of the various regulations that are expected in coming weeks and months, and in the medium to long term, further assessments of the effectiveness of the mayoral system, and an exploration of the extent of the new local authority powers. And it is not unrealistic to think that there must be an army of people at the DCLG at the moment, employed in writing regulations - it will be necessary to scrutinise these carefully as they are published.

Community rights

Many of the provisions in the Localism Act have been promoted as creating new rights for communities.

A raft of regulations, and in some instances guidance, is needed before various provisions come into force. The government has stated an intention that 'many major measures' will come into effect in April 2012. This picture is subject to change however, and the situation can be tracked on the DCLG website.

The provisions covering advice and assistance to those exercising the right to challenge and to nominate community assets are in force already, so that departmental initiatives may be along shortly. It should be noted that council tax referendums and the community right to challenge will apply in England only. Provisions for listing assets of community value will apply in England and Wales; English counties will need to comply with these requirements only where there are no district councils.

Council tax referendums

Local authorities will be required to hold a referendum if calculations based on principles determined annually by the Secretary of State result in a council tax for the financial year that is 'excessive'. A

parallel set of rules will apply to precepting authorities. The principles, which include a comparison with the previous year, must be approved by the House of Commons. The Secretary of State has the option of specifying an alternative amount for two or more authorities.

An authority that wishes to propose a council tax increase that exceeds that allowed by the principles set by the Secretary of State will be required to produce a substitute set of figures, which will apply if their main proposal is not approved in a referendum. If an authority fails to hold a referendum the substitute calculation will apply by default – an authority can in effect decide to forgo a referendum and adopt its substitute calculation.

Local authorities will be required to conduct referendums on behalf of precepting authorities, but be able to recover their costs. The Act provides for the timing of referendums. Publicity, limits on expenditure, conduct of members and staff of the authority regulations will be covered in regulations, broadly modelled on the existing rules, published in 2007. Those entitled to vote in local elections will be entitled to vote in a referendum.

Concerns were expressed that it would be necessary to avoid using the word 'excessive': Lords were told that ministers are taking advice from the Electoral Commission on the form of the referendum question.

The Act also allows for those rare circumstances where compliance with a calculation based on the annual principles would result in an authority being unable to meet its financial obligations or to discharge its functions. In these instances the requirement to hold a referendum will be lifted and the amount of council tax determined by the Secretary of State.

It is intended that the provisions will be effective from 2012-2013 onwards. The government have now published the thresholds for council tax increases that would trigger a referendum in 2012.

Council tax referendums - specific comment

Councils must comply with central objectives or put them to the electorate in a referendum. The referendum process creates the appearance of local democracy, but the central mechanism is for the Secretary of State to set the parameters for the amount of council tax annually, taking this responsibility away from local representatives. In effect, the referendum process will be used inversely to enforce a council tax framework based on principles set by central government.

In practical terms, councils will want to consider setting aside contingency funds against future referendums. It will also be necessary to take a critical look at the draft regulations when published.

Community Right to Challenge

Outline

This part of the Act opens the way for voluntary and community organisations, not-for-profits, charities and social enterprises to trigger a procurement process by expressing an interest in providing or assisting in the provision of council services. It will also be possible for two or more local authority employees to put forward an expression of interest.

On receipt of an application, the council will consider whether to accept or reject the proposal (with possible modifications). An application may only be rejected on specified grounds. In reaching a decision, it will be necessary to consider the social, economic or environmental implications of the

proposal. In the case of acceptance, the council will carry out a normal procurement exercise for the service - on a scale proportionate to the value and nature of the service - again taking account of its social, economic or environmental potential.

Councils will be responsible for setting the timetable, taking account of budgetary and decision-making requirements, though the factors to be considered will be covered in guidance. It will be a requirement to publish details of the local framework, and of certain stages in the process of an application.

Much of the detail of how the right to challenge will work in practice will be set out in regulations and guidance. In a policy statement in September 2011, following a public consultation process, the government indicated a number of changes to its original plans. These include changes to the information to be included in an expression of interest, and some minor changes to the grounds for rejecting an expression of interest. Respondents to the consultation were keen that the right to challenge be extended to other public bodies, and the government is currently considering

A number of changes were made following consultation and debate in the House of Lords. In particular, a series of amendments ensures that local authorities will be responsible for managing the application process, rather than complying with timetable requirements imposed by the Secretary of State. Initially this approach was rejected by the government, on the grounds that central controls were necessary to restrain councils that were "determined to thwart the exercise of the powers". However, the Secretary of State does have sufficient powers to introduce regulations if it emerges that the scheme is not working as the government intends.

At Commons Report stage a new clause was introduced, with agreement, which will allow the Secretary of State to provide advice and assistance to those taking part in application processes, procurement exercises, and service provision - assistance to include funding and training. A further change means that bids by employees or former employees are now included in the scheme. The government is considering what sort of support should be offered.

The Act does now includes a requirement that the more significant regulatory powers are subject to an affirmative parliamentary process, rather than going through on the nod, although the Henry VIII powers which would enable a future Secretary of State to rewrite the scope of the right to challenge remain in place.

Next Steps

The government estimates that this power should come into effect in October 2012. No date has yet been given for publication of regulations and guidance. A decision is pending on which if any services may be exempted from the scheme.

Comment on the right to challenge

Doubts were expressed during the passage of the Bill on the likelihood that exercise of the right to challenge would result in local organisations providing services, and an unsuccessful effort was made to restrict the process to local applicants. Similarly, concerns were expressed about the potential of the scheme to create advantages for commercial bodies. While ministers rejected this risk they confirmed that it is intended that national organisations should be in a position to make applications to carry out services in particular local authority areas.

It will be inevitable that larger-scale open procurement exercises will be triggered by the right to challenge. The provision has to be seen in the context of the Open Public Services White Paper which is intended to open up public services to private and third sector providers. Councils will need to

assess the implications for their processes and for accountability and democratic decision making, issues that also deserve to be addressed by local government representatives nationally.

Recent LGiU research has shown that more than nine out of ten councils had not conducted assessments of the risk and opportunities presented by the community right to challenge. LGiU is suggesting that councils prepare for the introduction of the right to challenge by considering:

What sort of relevant bodies are likely to make challenges in their area and on what services?

What sort of dialogue will enable and encourage this process to be positive rather than adversarial?

How will procurement strategies, contract management etc. enable community groups to come forward and take on services?

Community Assets

Outline

Parish and community councils and local voluntary and community organisations will be able to nominate local land or buildings to be included in a list of community assets maintained by local authorities. A property will be included where its current primary use furthers the social wellbeing or social interests of the local community, and where it is realistic to think that this use will continue. A property will also qualify when it has been in such use in the recent past, and this may realistically recur within the next five years (whether or not in the same way before). Regulations will exclude certain buildings or land – primarily wholly residential premises - and will allow the local authority to determine where the regulations apply to a particular property. Social interests include culture, recreation and sport.

The effect of inclusion will be to require the owner of the property to notify the local authority when intending to dispose of a listed asset, so triggering a moratorium period during which community interest groups can apply to be treated as potential bidders. The owner will be able to begin the sale process after an interim period of six weeks if no bidder has come forward, if a written intention to bid is received in that time then the full six month moratorium period will apply. An eighteen month protection period has also been created: if this expires before the property is sold the original notification process must start again.

Councils must publish the list of properties which comply with the regulatory framework, and will also need to maintain lists of properties where nominations have failed - though the latter is less prescribed than previously - in accordance with the five-year timetable. They will be responsible for notifying owners and occupiers of listings and receipt of notices, and for publicising the possible sale of a listed asset. It will be necessary for neighbouring councils to cooperate where a property falls in more than one local authority area.

The proposal involves considerable interference in private rights, which are protected to some degree by the owner of a listed property being able to request a review of the listing, and by the introduction of an interim moratorium period. A property will only remain on a list for five years, when a further application would need to be made. Listing will be recorded on the Land Registry. The Act provides rights of review and appeal on the listing of a property, and makes provision for compensation to be paid to landowners for losses arising from being involved in a lengthier sale period.

A number of amendments were made to the original Bill in the light of a consultation on community

assets and influenced by issues raised by MPs and Peers. Certain responsibilities that were initially left to be the subject of regulations are now dealt with in the Act itself. These include how land will be identified as being of community value, with local authorities responsible for determining whether a property qualifies for inclusion in a list. The processes to be followed when a landowner wishes to put a listed property up for sale are now explicit, including timetable and steps to be followed by the owner and local authority. The effect of these amendments is outlined below. Further amendments clarify protection of private interests in more detail. Some issues remain to be dealt with by regulations. There will be nationally based powers to provide advice and assistance, include funding and training, to those taking part in application processes in both England and Wales.

Next steps

Further plans outlined in a September policy statement include a revised Impact Assessment on which the cost of the compensation scheme and costs to authorities of maintaining the list and managing the scheme will be assessed. The DCLG has stated that these costs will be met by the department – careful attention will need to be given to how they are calculated.

A series of regulations are required to put the community assets programme into effect; these include closer definition of local community interest groups, reviews of listing decisions and owner's appeals, excluded transactions and excluded properties, arrangements for compensation, and enforcement provisions. The September statement makes a commitment to introduce these 'as soon as possible'

Comment on community assets

The full range and impact of this proposal is not yet clear, though it may have some value in ensuring that such issues are dealt with locally without direct ministerial intervention as has occurred in the recent past. Difficulties in defining general criteria to be taken into account by local authorities in categorising assets as being of community value were acknowledged during the passage of the Bill. The criteria finally adopted are wide enough to allow considerable discretion on the part of decision-makers, but also indicate that for a nomination to be successful proposers must demonstrate significant social value in use of the property.

It remains to be seen what impact the scheme will have on the local environment and whether it will meet the expectations of its supporters. Many MPs reported concern in their constituencies over the retention of local pubs and other privately owned businesses, and the relevance of the provisions for the future of communities. The future of the high street was raised during the passage of the Bill. There were also queries as to whether the new legislation goes far enough in protecting assets of community value from being transferred to the private sector.

Councils will benefit from planning ahead for the implementation of these new provisions. It will be a particular challenge to manage expectations: the realities of competing locally to provide services or taking steps to protect a local social asset are likely to be less certain than suggested by the rhetoric which is accompanying the promotion of the Act.

In addition to the measures suggested above, LGiU is recommending that every council should be producing a simple guide to the Localism Act for its residents and stakeholders, which sets out what is possible in the context of the detail (much of which is as yet unspecified) of what will be involved . For example, a local community may wish to take over a closed post office, thinking they can do so and so save the service, and believing this is possible using the Localism Act. In reality this will be much harder to achieve, and there will be a risk that the council appears uncooperative. It will be important that councils are not perceived as obstructing these opportunities, but can provide a basis that will

enable local organisations to use the new provisions in a constructive rather than adversarial way.

Future use of the considerable regulatory powers created by the Localism Act needs to be kept under observation. The current set of regulations needs to be examined carefully when drafts are published, but it will also be necessary to be alert for future developments, should the Secretary of State decide the framework needs to be adjusted if the scheme is not meeting his objectives. Nor should it be forgotten that the community right to challenge is one aspect of a larger policy drive for changes in the provision of public services. The Secretary of State has considerable Henry VIII powers to change the scope of the scheme – this is a situation that needs to be kept under close observation.

The new standards framework

Abolition of current standards framework

The Act abolishes the Standards Board regime – the Standards Board for England, standards committees of local authorities, the jurisdiction of the First-tier Tribunal in relation to local government standards in England, and model codes of conduct for councillors. None of the functions of the Standards Board for England are preserved. The power for the Secretary of State to issue a model code of conduct and to specify principles to govern the conduct of members of relevant authorities is removed together with the requirement for relevant authorities to establish standards committees. The First-tier Tribunal loses its jurisdiction over councillor conduct issues.

Timetable

The Standards Board will cease functioning on 31 January and be abolished on 31 March 2012. No statement has been made at the time of this briefing, but it is believed that the government is planning to introduce the new standards framework from 1 April 2012 – it will be necessary to keep this under observation.

Immediate consequences of abolition of the Standards Board for England

The Board cannot provide advice on the new framework, and will be winding up existing cases. It is expected that the regulatory role of the Standards Board, in handling cases and issuing guidance, will end on 31 January 2012. A statement from the Board explains that from this point it will no longer have powers to accept new referrals from local standards committees or conduct investigations into allegations against members and that:

- any existing referrals or investigations will be transferred back to the relevant authority for completion
- any allegations which are being handled locally on that date will need to continue through to a conclusion
- any matters relating to completed investigations or appeals which have been referred to the First Tier Tribunal will continue to conclusion
- the Board will return any existing referrals or open investigations which it has been unable to complete by 31 January to local authorities. The monitoring officers in question have already been contacted and asked to agree hand over arrangements.

The Board has also warned that "while we can continue to receive referrals of new cases up to 31 January, and we will continue to assess whether it is in the public interest to take them on or not for

the short time remaining - it will become increasingly unlikely that we will feel in a position to take a case where the investigation is likely to go beyond the end of January".

New standards requirements

The new regime applies to local authorities and a number of other public authorities in England, including parish councils. All will be under a duty to 'promote and maintain high standards of conduct by members and co-opted members of the authority'. 'Co-opted members' are those who are entitled to vote in committees and sub-committees – this paper only refers to members, but both are subject to the same requirements.

The duty will include an authority:

- Adopting a code of conduct which applies to members when they are acting in their capacity as members. An authority may revise its existing code or adopt a code to replace its existing code. Codes must be consistent with the Nolan principles, which are set out in the Act, and include a requirement for members to register and disclose pecuniary and non-pecuniary interests.
- Having in place arrangements for the investigation of allegations (which must be made in writing) and for making decisions.
- Appointing at least one independent person whose views must be sought by the authority before it makes a decision following an investigation, and who is also available to any individual whose conduct is under investigation. The Act places restrictions on who may be appointed as an independent person.
- Publicising the adoption of its code of conduct, and advertising for independent people to put themselves forward for appointment.

Sanctions for failure to comply with the code are a matter for the authority, which is responsible for deciding whether to take action, and what action to take.

Principal local authorities will be responsible for administering the standards regimes of parish councils in their areas – parish councils will be required to adopt their own code of conduct

According to the Act, a decision will not be invalidated simply because it involved a breach of the code on the part of a member – of course such a decision may fail other tests.

Monitoring officers are required to maintain the register of pecuniary and non-pecuniary interests. The requirements of the register and provision for the protection of sensitive interests – such as risk a member or person connected with them being subject to violence or intimidation – are included. Members who fail to comply with the disclosure requirements will commit a criminal offence.

The new requirements in practice

Baroness Hanham introduced the changes to the Bill. She made a number of observations on how ministers see the new requirements working in practice, and gave explanations for the inclusions of particular provisions.

Arrangements for investigation and decision-making

"We are not going to dictate [to authorities] what those arrangements should be. They could, for example, continue to have a voluntary standards committee or they could adopt an alternative approach". Later in the same debate she said that it seemed inescapable that authorities would have some sort of committee structure to deal with complaints.

Role of independent person

The minister emphasised the need for a strong independent element in the arrangements: "whatever the system and whether local authorities have independent members in that committee structure, they will still be required to have a further independent member who will act outside the committee system and will have to be referred to".

The independent person "should be appointed through a transparent process and... where a local authority has investigated an allegation, it must seek the independent person's view before reaching a decision about the allegation. It must then have regard to that view. We believe that this will ensure that there is a check on vexatious or politically motivated complaints".

She continued, "In addition, we have provided that a person against whom a complaint is made may also seek the views of the independent person. This will ensure that if a councillor feels victimised or pressured by a member or members of the council or the authority, he or she can have access to the independent person for a view".

Sanctions

It will be particularly important to have clarity about the sanctions available to an authority where a member is found to have breached the code of conduct. Given that no sanctions are provided in the legislation, it was significant that the Minister outlined those sanctions which the government believes are already available:

"In an investigation, where a complaint was dismissed, that would be the end of the matter. Where a complaint was upheld, a council would then have a number of options open to it under existing provisions. These are not there by amendment; they are existing provisions. In relatively minor cases, the council might conclude that a formal letter or other form of recording the matter was appropriate. Where a case involved a bigger breach of the rules, a council might conclude that formal censure-for example, through a motion on the floor of the council-was required. In more serious cases of misconduct, the council might go further and use its existing powers to remove the member from the committee or committees for a time. We believe that this approach provides effective and robust sanctions, ensuring that the high standards of conduct in public life can be maintained, while avoiding the unnecessary bureaucracy of the standards board regime".

Authorities will be expected to deal with the whole process transparently. It is clear that ministers see the elections as providing an ultimate sanction: "Each step must be open to comment and it must be dealt with openly. If there is a complaint that results in a warning or a letter, that must be clear so that local people who have elected these councillors know exactly what has happened or can find out. Some of the sanction will therefore be imposed by the electorate. They will know that somebody has transgressed or offended before they chose to re-elect him".

Observations by other speakers in the Lords

These changes and remarks were on the whole welcomed by members of the Lords, although with some reservations. Useful observations from speakers – several of whom have council responsibilities and experience – included the following:

- Although authorities will be required to have a code, there will be no mandatory code, and differences will emerge. It was suggested that the LGA could usefully draft a code as a way of creating a body of recognised standards. It was also thought likely that many authorities would keep the code that they already have.

- Peers were disappointed that the government has no plans to monitor the effectiveness of the new system, and again suggested that local government nationally might consider doing this.
- A number of questions are left open – how will authorities reach a decision – what role will there be for independent appointees beyond the statutory requirement?

The timetable

The Association of Council Secretaries and solicitors, ACSeS, has expressed concern about a tight timetable for replacing the current regime by 1 April, observing in a recent bulletin that, "it is more than probable that some authorities will not be able to introduce and approve a new code of conduct, make all the arrangements required to deal with allegations of breach, determine the committee arrangements, replacing the current statutory standards committee with whatever they consider is appropriate instead, appointing an independent person and training up members with the new arrangements, and all the other detail necessary to make it work".

Comment on the new standards framework

The speed with which this new framework was introduced in the Lords means that everyone with an interest had to rapidly familiarise themselves with the provisions and assess the implications. ACSeS is right to say that there is a great deal to do should the government confirm an April 2012 start date.

The implementation of standards for elected members may appear to have been localised in a way that puts everything within the remit of the authority, but there can be no doubt that the new codes and decisions made under them will be tested in the court of local public opinion. When councils are considering the future of their standards regime, a key element ought to be a readiness to be as open as possible, to demonstrate that the public can expect the highest standards from their representatives, and that the council is ready to take responsibility for ensuring that these standards are both set, and met. There will be great value in ensuring that there is consensus, and that all elected members sign up to the new code of conduct, whether it is new, or a revision of the existing code.

The lack of a set of formal sanctions in the Act is a matter of concern. Many may rightly ask, What are the sanctions going to be? An informed consensus is necessary on the scope of the 'existing powers' referred to by the minister, and councils will be well advised to ensure that their codes clearly provide a set of suitable sanctions. A statement by ACSeS that they are obtaining counsel's opinion on the scope of available sanctions is welcome.

There must be a question as to whether the sanctions referred to by the minister – such as suspension of a councillor's membership of a committee –will be seen by the public, by partner organisations, or fellow members, as sufficient in more serious cases. This may be one of a number of issues which are returned to in the future: other topics may arise from the emergence of differences between the content and decision-making between authorities when dealing with similar allegations.

The government has made it clear that it will not be monitoring the impact of the new codes and arrangements, but many will agree with an observation made during the Lords debate that there is a risk that this is an issue to which we will return, and on which further legislation may be needed in the future. Some form of national monitoring by the local government organisations does appear to be in the public interest.

Update on implementation – February 2012: Governance and community rights

What is in force?

The process of bringing the Localism Act into force began immediately following the Act receiving Royal Assent, when a number of regulatory powers necessary to lay the groundwork for the introduction of the main legislation were brought into effect.

A number of more substantial provisions were brought into force from January 15 – principally the new arrangements that enable councils to move to a committee system of governance. In addition, a number of further regulatory provisions have come into force, together with a number of transitional provisions, notably covering the move to a new standards regime, and arrangement for local governance[1].

Standards

The process of implementation has begun, with the responsibilities of the Standards Board for investigating complaints ceasing from 31 January. The Board itself will disappear on 31 March. Authorities will continue under the present standards regime until the new scheme is introduced – expected to be 1 July 2012, however the most recent press release from the Standards Board indicates that no formal date has yet been put on the changeover[2].

Transitional provisions: Extremely detailed transitional and savings provisions have the main effect that any cases under investigation by the Standards Board on 31st January 2012 are sent back to be dealt with by the standards committee of the relevant authority of which the person under investigation is a member or co-opted member.[3] Any complaints which are being handled locally on 31 January will need to continue through to a conclusion; and similarly any matters relating to completed investigations or appeals that have been referred to the First Tier Tribunal will continue to conclusion.

Stakeholder activities: Organisations such as the Association of Council Secretaries and Solicitors [ACSeS] and the LGA are understood to be lobbying government for clarity on particular issues. ACSeS is expected to produce a model code of conduct. This and other draft codes being formulated can be expected in February or March. The delay arises because information about the new criminal offences is needed from DCLG before the drafts can be completed.

Problems identified so far: ACSeS is reported to be obtaining Counsel's opinion on the sanctions for breach of its code of conduct that would be available to a local authority under the new standards arrangements [LGiU policy briefing December 2011]. It is also hoping to clarify whether the wording of the new law prevents existing independent members from being appointed as independent persons under the new scheme [an issue also raised with LGiU] . News is awaited.

Governance

Committee system

The provisions of the Act enabling councils to change to a committee form of governance arrangements came into force on 15 January. Detailed transitional provisions in relation to local

1 http://www.communities.gov.uk/news/corporate/2067635
2 http://standardsforengland.gov.uk/News/PressOffice/Pressreleases/Name,27541,en.asp
3 Articles 5, 6 and 8 in Commencement Order (2) January 2012

authority governance mean that where a local authority in England has previously held a referendum to change governance arrangements under Part 2 of the Local Government Act 2000, it may not hold a referendum under the new Part 1A for a period of ten years from the date of the earlier referendum. Other changes in governance arrangements are not yet in force.

Mayoral arrangements

Draft orders for mayoral referendums in each of the eleven major cities identified during the passage of the Act have been issued[4], as has a set of draft regulations covering referendums in general, which include some detail about mayoral referendums[5]. These orders have been put before parliament under the affirmative resolutions procedure, and will be in force in time for mayoral referendums on 3 May 2012.

Orders requiring a referendum on whether to operate a mayor and cabinet executive are as follows:

- The authority must, on 3rd May 2012, hold a referendum on whether to operate a mayor and cabinet executive.
- If the result of the referendum is to approve a change to a mayor and cabinet executive, the authority must implement that change.

- If the result of the referendum held by virtue of this Order is to reject a change to a mayor and cabinet executive, the authority continues to operate their existing form of governance.

The Secretary of State has default powers to take any action which should otherwise be taken by the authority, if it fails to do so.

The questions to be asked in a referendum are set out in the main regulations and present existing and proposed executive arrangements as alternatives for each of the permitted arrangements, for example:

How would you like [insert name of local authority] to be run?

- *By a leader who is an elected councillor chosen by a vote of the other elected councillors. This is how the council is run now.*

Or

- *By a mayor who is elected by voters. This would be a change from how the council is run now.*

The regulations cover publicity, and all other aspects of referendums.

Council tax referendums

The transitional provisions in the original Commencement Order set out how, for the financial year beginning April 2012, an 'authority's relevant basic amount of council for the financial year immediately preceding the year under consideration' is to be calculated[6].

Subsequently, the arrangements for council tax referendums have been set out in draft regulations, currently before parliament. These provide for publicity and other arrangements[7], and while they are broadly on the same lines as existing referendum rules, some adjustments are made, in particular on:

4 http://www.legislation.gov.uk/ukdsi/2012?page=2
5 http://www.legislation.gov.uk/ukdsi/2012/9780111517604/contents
6 http://www.legislation.gov.uk/uksi/2011/2896/contents/made
7 http://www.legislation.gov.uk/ukdsi/2012/9780111519035/contents

The Referendum Question

The draft Order prescribes the question to be asked in the referendum. As the notes explain: "Voters are to be asked whether they approve of the percentage change in the relevant basic amount of council tax set by the authority for the financial year in question and are also informed of what the percentage change will be if the voters do not agree with the increase. The Department considers that it is important for voters to understand how the result of the referendum will affect the amount of council tax charged on dwellings situated in different council tax bands and in different parts of an authority's area. Regulation 7 therefore provides that the authority must publish information about this." The question proposed to be asked in a council tax referendum is as follows[8]:

Part of the council tax in your area goes to [Midtown Council].

For the financial year beginning on 1st April [2015][Midtown Council] has decided to increase the amount it charges by[insert percentage change in relevant basic amount of council tax from the preceding financial year to the relevant financial year expressed to one decimal place - x%].

That decision is subject to the result of a referendum.

If most voters in [Midtown Council's area choose 'yes', the increase will be [x%].

If most voters in [Midtown Council]'s area choose 'no', the increase will be [insert what the percentage change in the authority's relevant basic amount of council tax from the preceding financial year to the relevant financial year expressed to one decimal place will be if the authority's relevant basic amount of council tax is not approved]

Do you agree with [Midtown Council]'s decision to increase the amount it charges by [x%]?

Publicity

The authority triggering the referendum must publish a detailed notice of a referendum in its local area, so that people living in the area are aware that a council referendum is due to be held and that they are informed of key information relating to the referendum. An authority may then publish an additional statement setting out the reasons for the excessive increase – to use the terms of the legislation – and the likely consequences if its council tax increase is not approved. This statement will be subject to the campaign expenses limit for the referendum and published no later than 28 days before the poll.

The authority will be prohibited from issuing any publicity other than the statement between its decision that its relevant amount of council tax is excessive and the referendum. This is expressed as ensuring that "the authority is not able to unduly influence the result of the referendum", and extends to contributing to broadcasts on radio and television[9]. It would appear that elected members will be prevented from taking part in public debate on the issues raised by the referendum. The authority may refute inaccuracies, and answer specific requests for information.

General Power of Competence

No regulations yet published

Community Right to Challenge

No regulations yet published

Community Assets

No regulations yet published

8 Original text is repetitive – information in brackets has been substituted for clarity

9 Articles 10 and 11 of the draft regulations

Social housing

Part 7 of the Localism Act deals with the reforms to social housing, homelessness and housing finance.

The government says that the changes set out in the act will give local authorities 'the flexibility to better manage their housing stock by adapting to meet local needs'.

The most significant changes for local authorities are that they can:

- offer homeless people tenancies in private sector accommodation instead of being obliged to offer social housing
- offer new social housing tenants shorter, fixed-term (minimum two year) tenancies
- decide who goes on their housing waiting lists, with central government setting out who it feels has the greatest housing needs
- keep rental income to spend on housing investment locally.

Social housing provisions

Allocation

The act allows councils to set criteria for whom they will accept onto social housing waiting lists, and to refuse to allow people who do not qualify to join the list. Every local housing authority (in England) needs to prepare an allocation scheme which sets out their priorities for determining housing need

(for example, the act says that 'reasonable preference' should be given to homeless people, people occupying unsanitary or overcrowded housing, people who need to move on medical needs and so on). The allocation scheme should also set out the procedure a local housing authority will follow for allocating housing accommodation.

Homelessness

A key change relating to homelessness is that councils can fulfil their duty to someone who is homeless and has a 'priority need' (such as having dependents) by offering them a single privately-rented housing tenancy for one year. Previously, councils were obliged to offer a social housing dwelling unless the tenant asked for a private sector one.

Social housing

Local housing authorities must now prepare a tenancy strategy to guide decisions social landlords working in their area make on:

- the kinds of tenancies they grant
- the circumstances in which they will grant a tenancy of a particular kind
- the length of tenancies
- the circumstances in which they will grant another tenancy when an existing one expires.

For new social housing tenants, landlords can now issue fixed-term ('flexible') tenancies: social housing no longer comes with a 'tenancy for life'. The length of the fixed term has been subject to much debate, and guidance on how this should be applied is still vague. However, the act does set a minimum of two years.

Social housing regulation

There are also reforms to how the social housing sector is regulated. The act paves the way for tenant panels, which social landlords will be expected to support. The purpose of a tenant panel, set out in the act, is to 'refer complaints against the social landlord'. The government has already launched a £535,000 training scheme for tenants so that tenants can participate effectively on a panel. Examples of the training on offer include how to resolve local disputes such as anti-social behaviour, and how to progress repairs.

Social housing tenants will now have a single body to contact when making complaints about their landlord: the Independent Housing Ombudsman (previously they could also contact the Local Government Ombudsman). This change aims to achieve greater consistency across the social housing sector.

Social housing tenancy exchanges

Research suggests that social housing tenants face more obstacles to moving house than people living in the private rented sector. To make it easier for people living in social housing to move to a different home the act enables legislation for facilitating the exchange of tenancies.

As a consequence, the government has announced the launch of HomeSwap Direct, a national home swap scheme for social housing tenants. The service means that social housing tenants will be able to search an online database of all available properties.

The government says that this service will help social housing tenants to 'find a home that better meets their needs and to exercise greater control over their lives'.

Self-financing

The Localism Act enacts the legislation required to replace the Housing Revenue Account Subsidy System with self-financing for council housing, which will come into force in April 2012. Local authorities will now keep the rent they collect from social housing tenants and use it to maintain housing locally.

To accompany this change the government has published:

- Implementing Self-financing for Council Housing (February 2011): this includes methodology, financial parameters and timetable for reforms, and key financial information for each local authority so that councils can see how they will be affected and begin to plan for April 2012
- Self-financing – Planning the Transition (July 2011): this sets out the detailed steps for government and councils ahead of the April 2012 launch.

Councils are required to develop housing plans in consultation with social housing tenants. The government says that local housing authorities should use these plans to consider:

- what investment existing homes will need and the scope to replace stock with new homes that better meet future needs
- what rents they will need to charge and how the income will be used
- how they will provide information to tenants and local taxpayers about income, spending and investment plans after the complexities of the subsidy system have been removed.

Note that the government will retain some controls over the rents councils charge and the amount of borrowing local authorities can make for housing in order to 'protect the national fiscal position'.

Comment on social housing

Self-financing: opportunities beyond the upheaval?

Self-financing is an enormous change to the finance regime of local authorities with housing stock. The reforms set out in the act around self-financing are strategic as well as technical. Councils are currently considering how they will raise investment, and this means having a plan for what they intend to do. Louise Dunne, CIPFA Lead Housing Advisor, acknowledged last November that 'very few authorities are as prepared as perhaps they ought to be at this stage'. But she urges local authorities not to shy away from 'the really quite incredible freedoms that self-financing affords'.

Flexible tenancies and community cohesion

Not all the reforms set out in the act have been welcomed as supporting neighbourhoods and people in housing need. The most high-profile of these has been the introduction of so-called flexible tenancies, which in effect set a time limit on a new social housing tenancy. Flexible tenancies are designed to give social landlords the power to refuse to extend a lease if a tenant's circumstances change and they deem them to be no longer in need of social housing.

Abigail Davies, Head of Policy at the Chartered Institute of Housing, says that the housing profession believes this reform will turn 'social housing into welfare housing' and 'change the way people think about their homes and communities – people invest more time and money in property, friendships, and community activities if they see it as a long-term home'.

The government has responded by saying that although the legislation does allow for a minimum of two years, it expects that most flexible tenancies will be much longer. It is not compulsory for social housing landlords to introduce flexible tenancies, however many are considering using them. Two-thirds of respondents to the consultation on Local Decisions: A Fairer Future for Social Housing said that they 'expected to take advantage' of the new flexible tenancies.

Planning

Part 6 of the Localism Act addresses changes to the planning system.

Plans and strategies

The act sets out:

- the abolition of regional spatial strategies (RSS) as part of the planning framework and the return of powers over housing and planning matters to local authorities (the London Plan will be retained in the capital)
- a duty to co-operate: the act includes a new duty on local planning authorities (and county councils in England that aren't LPAs) to 'co-operate in relation to planning of sustainable development'
- changes to the enforcement regime, including a new power for LPAs to 'refuse to make a decision on a retrospective planning application while enforcement action is taking place' and a new 'planning enforcement order' to counter deliberate deception or concealment to avoid planning regulations.

Community infrastructure levy

The act retains the Community Infrastructure Levy (CIL) but includes some provisions for communities to have more control over how the levy is spent and how that spending is monitored (the government is currently consulting on regulations related to this change, see the LGIU briefing on neighbourhood planning).

Neighbourhood planning

In summary, the act creates provisions for parish/town councils or neighbourhood forums to:

- prepare neighbourhood plans that, if they pass certain tests such as aligning with existing plans and receiving a majority in a local referendum, will be adopted and become a material consideration
- put forward neighbourhood development orders to secure planning permission for developments they support.

Nationally significant infrastructure projects

The main change here is that applications for consent for development of major infrastructure projects will now be decided by the Secretary of State, following a recommendation by a planning inspector from the Major Infrastructure Planning Unit.

Currently these decisions are made by the independent Infrastructure Planning Commission, which will close and be replaced by the Major Infrastructure Planning Unit. The Major Infrastructure Planning Unit will sit within the Planning Inspectorate and continue to use the framework set out by the national policy statements. The government says that this change will 'return democratic accountability to major infrastructure applications'.

Definition of presumption in favour of sustainable development

The Environmental Audit Committee called on the government to include a statutory duty in the act that would require local planning authorities to apply the principles of sustainability in the planning system and other functions of local government. However, this idea has been rejected. More broadly, the Localism Act does not cross-reference to – or even mention – the NPPF, despite its importance to the new planning regime.

Comment on planning

There has been debate within local government and outside over whether the revised policy landscape, at least in planning terms, would see a focus on devolving power to communities and lead to a relatively emasculated council tier.

But at the end of all the debate, amendments, counter-amendments and conjecture, local planning authorities do still have a very secure place in the planning system.

The Planning Advisory Service (PAS) is urging elected members to embrace neighbourhood planning, and to take a proactive role in helping to determine how this takes root in their local areas. It has published a guide to neighbourhood planning for ward councillors – key to their guidance is that elected members need to provide clarity to forums at the very beginning of the neighbourhood planning process about what will and will not be possible because of the restrictions that apply. Put simply, communities have been led to believe that they will be 'in the driving seat' when it comes to planning locally. But as the provisions make clear, neighbourhood forums need to work within the opportunities and constraints of the existing hierarchy of plans.

Despite the emphasis on planners working more closely with neighbourhoods and communities, there is still a critical role for LPAs to adopt their own local plans, and disincentives built into the draft NPPF for failing to do so. So planners still have to get on and plan. However, the regional level of plans – regional spatial strategies – are now abolished. The most notable casualty so far of this change to the planning regime is the number of approvals for new homes (see JRF-funded research by the TCPA).

Update on implementation – February 2012: planning and social housing

Social housing

Local housing authorities in England can begin drawing up, and consulting on, new tenancy strategies in readiness for the reforms to social housing tenure. The commencement order has brought into force sections 151 and 152 of the Localism Act 2011 and parts of sections 150 and 153. Together those four sections set the framework for tenancy strategies and require that the final strategy in every local authority area is agreed and published by 15 January 2013 at the latest.

Councils can also begin drawing up and consulting on new allocation schemes to reflect the changes to allocation law being made by the Localism Act 2011 sections 145-147. However, they must have regard to the statutory guidance issued by the secretary of state and to regulations he has made and the present statutory guidance only refers to the current law. The likely future guidance is still in draft and subject to consultation. Also, although the regulation- making powers of the secretary of state are now in force, he has not yet issued the regulations. There is no commencement date for the substantive changes to allocation law.

Planning

The commencement order bringing various parts of the Localism Act 2011 into immediate force was published on 15 January. The government has also confirmed that some remaining key changes will come into effect in April including the strengthening of planning enforcement, including powers to prevent the "twin tracking" of a retrospective planning application with an appeal against an enforcement notice on grounds planning permission ought to be granted. The retrospective planning application would still have its usual right of appeal. The second enforcement power to come into effect in April is to enable Local Authorities to take action against concealed breaches of planning control even after the usual time limit for enforcement has expired. The commencement order was the first step in the process to strengthen these powers in preparation for commencement of the substantive provisions in April.

The commencement order on 15 January clarified the rules on predetermination - this is the provision where councillors are freer to talk about issues before they decide them. The clarified rules on predetermination still require a planning committee member to have an open mind when determining a planning application. However, proof of previous campaigning against a proposed planning application would not be proof that the member had a closed mind.

Further information

http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted The Localism Act 2011

http://www.legislation.gov.uk/ukpga/2011/20/notes/contents The Localism Act Explanatory Notes

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About the LGiU

The LGiU is an award winning think-tank. Our mission is to strengthen local democracy to put citizens in control of their own lives, communities and local services. We work with councils and other public services providers, along with a wider network of public, private and third sector organisations. Through information, innovation and influencing public debate, we help address policy challenges such as demographic, environmental and economic change, improving healthcare and reforming the criminal justice system. We organise the Children's Services Network (CSN) and Local Government Flood Forum (LGFF) and are the host organisation for Local Energy Ltd.