The World Will Be Your Oyster?
Reflections on The Localism Act 2011

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I think it is reasonable that councils shouldn’t use their new found freedom to saddle up the horses, arm their citizens and invade France. Apart from that, the world will be your oyster . . . . From the address of The Right Honourable Eric Pickles MP, Secretary of State for Communities and Local Government, to the Local Government Association Conference on 27 July, 2010.
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Reflections on the Localism Act

The Localism Act – introduction and overview

John W Raine

Introduction
After a full year in the Parliamentary process, Royal Assent was finally accorded to The Localism Bill on November 15th 2011 and the provisions of the Localism Act, and a key part of the Coalition Government’s reform programme became enshrined in law. This is a reform programme that has been presented as effecting ‘a radical shift of power in the United Kingdom from the centralised state to local communities’ and ‘to move from Big Government to Big Society’. 1

Despite the year-long debate about the provisions of the Bill, the new statutes are hardly so different from those originally proposed, with all the main policy themes and most of the detailed provisions surviving the scrutiny of both Houses of Parliament and Committee Stages. Indeed, while a raft of the many amendments tabled were finally accepted, it is fair to say that none have significantly changed the direction in which the Government had, through this particular legislation, proposed to move. Most particularly, the Act remains something of a mixed bag that provides various new freedoms for local authorities but which also imposes new requirements on them and grants several additional powers to the Secretary of State (for Communities and Local Government). 2

Among the new freedoms it provides, the Act creates a new general power of competence for local authorities. It also heralds the end of the national code of conduct for councillors and the regime of the Standards Board for England, instead making it a criminal offence for elected members to withhold or misrepresent a personal interest. It repeals the powers taken by the previous government which enabled councils to levy special charges and fines in relation to waste collection and it frees councillors to campaign and to express their views on issues of local interest ahead of participating in formal decision-making on them (by clarifying the rules on ‘predetermination’). It also allows local authorities to be able to decide their own governance arrangements (albeit subject to local referendums) in place of the

2 Department for Communities and Local Government (2011) A Plain English Guide to the Localism Act, London: DCLG.
standard cabinet model, which for more than a decade now has been required of all but the smallest authorities³.

On the other hand, the Act places a number of new duties on local authorities and provides the Secretary of State with several new powers – notably, to initiate mayoral referendums in twelve English cities in May 2012 (and to allow for referendums for mayoral elections in any other local authority area). It also requires local authorities to publish statements in relation to the pay of their senior staff (and for this to be a matter for formal consideration and approval annually by Councils).

Furthermore, it requires referendums to be held by billing authorities and precepting authorities if their council tax requirements exceed levels determined as acceptable by the Secretary of State. It also requires local councils to draw up and publish lists of assets of potential community value and grants communities the right to bid for any of interest. Similarly, it empowers voluntary and community bodies, and employees of a principal authority or parish councils, to bid to take over any local authority service that they believe they can run better.

A major section of the Act is devoted to new provisions on planning and housing services. It makes a number of significant changes to the current planning framework – including the abolition of regional spatial strategies (RSSs). It offers more flexibility to councils to react to the observations and conclusions of the inspectors conducting statutory examinations of their development plans; and in relation to major development schemes, it requires developers to engage in pre-application consultation. It establishes new reporting requirements in relation to local plans; it makes changes to the community infrastructure levy; and it empowers town and parish councils in the planning process by entitling them (or other such body designated as a neighbourhood forum) to require the local planning authority (LPA) grant planning permission to a particular neighbourhood area (under a Neighbourhood Development Order), subject to a local referendum. It also provides new powers to LPAs to decline retrospective planning applications once an enforcement order has been served, and introduces new ‘planning control orders’ to be made by a magistrates’ court in cases involving breaches of planning conditions. The Act also abolishes the Infrastructure Planning Committee (established by the preceding Labour government) and transfers responsibility for national infrastructure decisions to the Secretary of State.

On housing, the Act provides new powers for local authorities to handle existing tenants’ requests for transfers through separate rules and criteria from those for others (non-tenants). It heralds greater flexibility for councils to develop their own housing allocations policies and allows councils to discharge their obligations towards homeless people via private sector tenancies (irrespective of the wishes of the prospective tenants). It also requires each council to produce a tenancy strategy (involving consultation with social landlords) and enables social landlords to introduce fixed tenancies of two or more years instead of for lifetime as at present and to restrict succession rights to spouses and partners. It abolishes the Tenant Services Authority (another body only recently established under the previous

³ i.e. those with populations of less than 85,000.
government) and also provides a number of specific provisions in relation to London, including the removal of limitations on the Greater London Authority’s general power, provision for more delegation of functions by Ministers to the Mayor of London, and new powers in relation to financial assistance and discretionary relief from non-domestic rates.

**Mixed messages?**

As this brief summary of the main statutes suggests, this is indeed a multi-faceted piece of legislation and one that addresses a range of quite diverse issues across the spectrum of local public policy. As indicated, it is also an Act which, while certainly involving some devolution of powers and responsibilities, for example, from principal local authorities to town and parish councils and to communities and citizens, and while freeing councils of several central government controls (as of course its title implies), also imposes a number of new requirements on local authorities and provides the Secretary of State with a range of new powers over these and other local public bodies.

One key provision in the Act – and one which contrives to represent the decentralization of power while in practice probably being much more likely to ensure tight central control, is that to require billing and precepting authorities to hold referendums on council tax increases that are deemed (by the Secretary of State) to be excessive. Although the regime of council tax capping is set to disappear, the Act heralds a new, but in effect, similar strait jacket – the cost of organizing a referendum alone being itself likely enough deterrent for most councils against pursuit of a local mandate for spending above the level that the Secretary of State regards as acceptable.

More than this, however, for an Act that purports to give power back to local authorities and communities, it seems strange that nothing changes in terms of the longstanding financial dependence of local government on central government (a circumstance that now stretches back three decades to the Thatcher government of the early 1980s). Even the avowed intention to return control of business rates to local authorities finds no place in this piece of ‘localising’ legislation, still less any of the much-discussed alternatives such as a local income tax to enhance the financial autonomy for local government (as indeed was recommended by the Layfield Committee, as long ago as 1976 and which has remained in favour with Liberal Democrats, now sharing power with the Conservatives in the Coalition Government)\(^4\).

**The Localism Act in Context**

For many, the new Act is viewed with considerable scepticism, for a large part because of the mixed messages it seems to convey, but also because, for at least the next few years, it seems that the context of severe financial constraint for local government and for the wider public sector will take precedence over anything else and will preclude most authorities from doing very much in the way of exploiting

whatever freedoms and new opportunities for local action that the legislation now offers. And for sure, the immediate prospects and priorities for most councils are probably more about protecting valued frontline services and balancing budgets – which, ironically, seems more likely to push authorities in an opposite direction to localism – towards the more centralising and standardising initiatives of ‘shared services’, ‘joint management’ and merger arrangements, in pursuit of necessary financial savings.

But perhaps that is to take too short-termist a view of what the Localism Act might represent. And certainly, whatever the constraints that current financial stringency creates, it is important to recognize the significance and growing commitment to the concept of decentralisation (of which the Localism Act is perhaps just a foretaste). For this is not just a commitment of the current government; the movement in the direction of a ‘new localism’ was quite as evident in the community governance agendas of the previous government. Some of the language may have been changed – for example, the talk is now simply of ‘decentralisation’, rather than also of ‘double devolution’ as previously, but the purpose and implications of the shift in perspectives on public policy are hardly different.

Indeed, what has begun to look rather different now is the wider policy landscape within which these initiatives are set – and particularly for local authorities, the dramatic announcement of the abolition of the Audit Commission, the scrapping of Comprehensive Area Assessment and of Local Area Agreements and the regime of centrally-driven targets, performance monitoring, assessment and inspection. This wider landscape of decentralisation and change was helpfully summarised in the short publication, ‘Decentralisation and the Localism Bill: an essential guide’ (DCLG, 2010) produced as an accompaniment to the Bill when it was first published. Here the Deputy Prime Minister specifically pointed out in his Foreword, that the Localism Bill was just one part of a decentralisation process that would be on-going over the term of the government, but a part that ‘…marks the beginning of a power shift away from central government to the people, families and communities of Britain…’ (p1).

The publication also described the Bill as ‘…providing an enduring legislative foundation for a new decentralised Britain…’ (p.1) Above all, it emphasised that decentralisation was not only an agenda for DCLG but one that would have impact across government (and for which a cross-governmental ministerial appointment was specifically created). In this respect, the document outlined six ‘essential actions’ that are proposed to bring about ‘…the radical shift of power from the centralised state to local communities…’ (p. 2), and what it describes as the transition ‘…from Big Government to Big Society…’. These actions were defined as follows:

1. Lifting the burden of bureaucracy:
2. Empowering communities to do things their way
3. Increasing local control of public finance
4. Diversifying the supply of public services
5. Opening up government to public scrutiny
6. Strengthening accountability to local people.
In summary....
A key test for the Coalition Government from this point forwards, then, will be the extent to which these six actions are indeed achieved. On its own, the Localism Act might seem to offer, at best, limited prospects in this regard, though perhaps, if viewed in conjunction with other DCLG policy initiatives, and with some of the priorities of other departments (for example, in relation to Free Schools and directly elected Police and Crime Commissioners) the picture begins to look rather more extensive and exciting. And perhaps especially relevant for local authorities in this wider context, is, as indicated, the planned abolition of the Audit Commission and the end of top-down performance management regimes of Local Area Agreements, Comprehensive Area Assessment – all of which might seem especially pertinent to Actions 1 and 6 (‘lifting the burden of bureaucracy’ and ‘strengthening accountability to local people’).

But as also indicated, a key difficulty in assessing the significance and likely overall impact of the Localism Act is its enactment at a time of acute financial stress for the public sector, for local government, for community organisations and of course for communities and citizens also. No doubt there will be a flurry of interest in many local areas around the country in exploiting some of the provisions, notably those which enable communities to acquire for their own use buildings and other assets that the local authorities have deemed redundant and ripe for disposal for redevelopment. However, on the whole, it seems unlikely that the new powers and freedoms that the Act affords to local authorities will be much exploited in practice simply because of the tight financial constraints that the Treasury and Secretary of State continues to impose on local public spending. For example, rather than pushing the financial boundaries by exploiting the new general power of competence, as suggested earlier, councils’ search for savings and efficiency gains seems more likely to push them towards larger organisational structures through shared services, organisational mergers and so on, which paradoxically seems likely to add, rather than reduce, distance between councils and local communities, to say nothing of reducing numbers of councillors and local authority staffing levels.

Finally in all this is the key question of how far the ‘journey of decentralisation’ extends and of the degree to which both government and the public really value ‘localism’ - ‘the government of difference’ and ‘post-code responsivity’ (as opposed to ‘post-code lotteries’). There is also an important question about whether the commitment to localism is largely confined to those local public service contexts where needs and circumstances really do differ from area to area, or alternatively, where the notion of consumer/community choice and therefore diversity in public provision seems relatively unproblematic. But how might it be viewed in some of the other fields of public policy, like public health provision or local justice where, in some contrast, the longstanding struggle has been for greater consistency, equality and equity in standards?

Time alone will tell of course, and it will certainly be interesting to see how the Localism Act is viewed in, say, ten years’ time. Might it, by then, have been largely forgotten or, for those who did remember it, recalled as just another show-piece legislative compendium of its time; with more words than substance? Or, on the
other hand, might it… just might it, despite its inherent contradictions, be regarded as a landmark and as a 'tipping point' in the unfolding story of public policy – the point at which localism officially broke out and began significantly to reshape our perspectives on public policy and the culture and priorities of public management and governance?
Reflections on the Localism Act

Community rights to challenge and to bid for assets of community value

Tony Bovaird

Introduction and context

The ‘Community Rights’ agenda is potentially a highly innovative part of the Localism Act, breaking sharply with the centralist traditions of British public policy. In doing so, it appears to call upon the ideas of radical writers such as Alinsky (1946), who informed the training of generations of community organisers (such as Barack Obama) and Ivan Ilich (1971), who set out a prospectus for citizen-run ‘learning webs’ which would enable communities to make the most of their own capacities. Indeed, this ‘turn to community’ appears to hark back to the community development movement of the 1960s and early 1970s in the UK, which experimented with a variety of ways of mobilising local people in civic activities.

However, part of the clever political calculation behind this approach comes from a different source. It builds on the reputation capital of the ‘right to buy’ which worked so well for the Thatcher administration a generation earlier in relation to council housing. Nor is it a surprise as a coalition government policy – it was signalled as part of the Conservative Party electoral manifesto as long ago as November 2009 and is fully in line with the Liberal Democrat tradition of ‘community politics’.

While Labour have called into question the ‘localist’ credentials of parts of the Act, such criticisms can hardly be levied at the ‘Community Right to Challenge’ and the ‘Community Right to Bid’. These provisions certainly compare well with the relatively weak ‘community rights’ reforms of Labour in its 2006 White Paper and subsequent Local Government and Public Involvement in Health Act, where one of the flagship policies, now largely forgotten, was the so-called ‘Community Call to Action’, derided even at the time as tangential to changing the power balance between the community and backbench councillors, on the one hand, and the council Cabinet and bureaucracy on the other.
Nevertheless, it will be important to reserve judgement until we see how the provisions in the Act are actually utilised at local level. This is likely to take some time - different parts of the Act will come into effect at different times, as government regulations are published, although the Government is aiming for many of the measures to come into effect in April 2012.

The way the Act is actually implemented will be critically important. As the LGA (2011) has commented, third sector organisations have already got the right to bid for the provision of public services (at least, if they pass certain vendor qualification tests) – consequently, these new rights will only be meaningful if they are backed by local government procurement systems. Will public procurement, in practice, make it easier than before for the third sector to bid successfully to make full use of its local expertise in providing the niche services for which it is especially appropriate? Urban Forum research has suggested that many community groups are likely to find that activating these provisions will simply be too resource intensive from them to consider challenging or bidding.

There is, of course, another narrative being told about this part of the Act. As Hazel Blears has commented (http://www.civilsociety.co.uk/governance/news/content/8086/localism_bill_passed_to_public_committee), if this Act simply opens the door for more externalisation, so that large-scale commercial firms end up being the main gainers, and the potential of local niche providers is not reaped, then it will not only be seen as an act of trickery but may also result in significantly worse public services than were being delivered previously by the public sector.

A further community right, the ‘Community Right to Build’, allows local people to hold a referendum to approve small local developments (up to 20 houses), without the need to go through the normal requirement for planning permission. For developments that benefit their community, including housing, local shops and community facilities. This is not further considered here, being covered in the chapter on planning issues arising from the Localism Act.

The provisions of the Act

Community Right to Challenge

This gives the right to voluntary and community groups, social enterprises (inserted during the passage of the Bill), parish councils and groups of (at least two) council employees delivering a service to challenge a council by ‘expressing an interest’ in
providing or assisting in providing any of its services. The council (and other relevant authorities, as decided by the Secretary of State) must demonstrate that it has considered the challenge, taking into account how the challenge might improve the social, economic or environmental well-being of the area and must respond to it. The ‘expression of interest’ can only be rejected on grounds set out in the regulations. If the council accepts the challenge, this will trigger a new procurement exercise for that service, in which the challenging organisation could then make a bid, alongside others (including private firms).

The Right to Challenge has been seen as a successor to the ‘Duty to Involve’ (introduced by the previous government), moving away from its more top-down approach. Indeed, the Government has presented this provision as part of its aim to mobilise the ‘Big Society’, making greater use of the potential of citizens and third sector organisations to achieve ‘bottom-up’ change.

A council can specify particular service periods during which expressions of interest may be submitted and councils can refuse to consider any expressions of interest submitted outside those periods, having due regard to the need to provide sufficient time to prepare and submit expressions of interest, the nature, scale and complexity of the service and the timescale for existing relevant commissioning cycle or other council processes. In effect, this means that councils will, in future, have to advertise the potential outsourcing of its services and make it clear in advance when ‘expressions of interest’ can be made.

**Community Right to Bid (for Assets of Community Value)**

Under the Act, communities will be given the chance to develop bids and raise capital to buy council assets which come up for disposal on the open market (rather than the ‘right to buy’ which was originally proposed, it has turned out to be a ‘right to try to buy’). In order to further this right, local authorities will be required to maintain a list of public or private assets of community value, as nominated by their communities (which may include such assets as shops, pubs, community centres, and libraries). Any asset on this list can only be sold, either as a freehold or as a long leasehold, after a six-month moratorium period has passed (despite robust lobbying from the Country Land and Business Association to have the moratorium period set at just 3 months). This moratorium is meant to give the community sufficient time to put together a bid and find the finance to purchase the asset.

Unlike in Scotland, there is no right of first refusal (as Conservative policy first announced), nor do these provisions restrict to whom the owner of the asset can sell, or at what price – they simply ensure notification of intent to sell and allow a period
within which a community bid can be put together. The intention is to help local communities to save sites which they feel to be important, with the aim of contributing to tackling social need and building up resources in their neighbourhood.

A community nomination must come from a parish council, a community council or a locally connected voluntary or community body. The nomination has to be made for land or buildings in the nominee’s local area. The definition of land or buildings of community value is now defined in the Act: its principal use (either now or in the recent past) must be for social wellbeing and social interests, including cultural, recreational and sporting interests.

Listing as an asset of community value does not place any restriction on what an owner can do with their property - planning policy determines permitted uses for particular sites, although listing may affect planning decisions (e.g. if the Local Planning Authority decides that listing as an asset of community value is a material consideration if an application for change of use is submitted)

Potential implications of the proposals

Implications of Community Right to Challenge

The Community Right to Challenge may indeed encourage a wider range of providers to consider bidding to run council-purchased services. For example, registered housing providers will have the opportunity to support their tenants in bidding to take over local services such as rubbish collection under the Community Right to Challenge. On many estates council environmental responsibilities such as rubbish collection are a constant source of complaint and the chance to improve such services would be welcomed by many tenants seeking to improve their environment. While some social landlords will welcome this, those who are providing housing services on contract to the council may, of course, themselves be challenged by tenants, who would then have the opportunity to bid for some of these services (www.insidehousing.co.uk/need-to-know/legal/build-community-strength/6513154.article).

Moreover, the Act has the potential to over-ride the rigidities of local geography. The cities and decentralisation minister, Greg Clark, originally suggested that the Localism Bill would help charities serving ‘virtual communities’ (e.g. people with disabilities) that cross council boundaries - they could to challenge to provide services across bigger areas. (www.thirdsector.co.uk/channels/Governance/Article/1049403/Consultation-Localism-Bill-within-weeks/). This would, of course, be administratively complex, unless the
councils in question were already merging their procurement teams or working closely together – this is certainly happening in many parts of England but is still not the norm. It is not clear how this would work – this aspect of the Act has had little attention in the last year.

Interestingly, the version of the Community Right to Challenge which moreover appeared in the Bill and now in the Act, is not the ‘full challenge’ which might have been included – it only includes services which the local authority is currently providing, not those which citizens consider they ought to provide, so that it will mean much less to councils which are already ‘lean and mean’ in the services they provide and will be most significant in councils where there is a large range of service provision. Clearly, there are political implications to this – this provision of the Act is likely to be most challenging to Labour-controlled councils, particularly those which are having to introduce particularly serious spending cuts (i.e. much of northern England), and may be rather nugatory in Conservative-controlled councils which have low levels of service and are being relatively protected by the grant settlement (i.e. much of the south-eastern part of England).

Moreover, in many respects the Act does not go as far as it might. This means that it is being presented by some as ‘the thin end of the wedge’ for community involvement and for more localism in public services, which can later be built upon further. Meanwhile, others, such as the New Local Government Network, have called for a more radical approach, under which ‘the right to challenge’ would be opened up to apply to the whole public sector, including Whitehall departments and government agencies, e.g. the Work Programme and crime prevention programmes. Under such proposals, community organisations or local authorities could submit an ‘expression of interest’ wherever they felt they were able to provide a service at lower cost or higher quality. NLGN Director Simon Parker has commented: “Ministers should not have one rule for councils and another for their own departments” (www.publicnet.co.uk/news/2011/01/18/call-to-make-localism-bill-more-radical/). NLGN also argues that the Act only covers policy within CLG’s remit, with a strong emphasis on planning and housing – it does nothing to integrate localism across the rest of public services in England. Current reform programmes in Health, DWP and Education do not appear to have localist principles at their heart – the Community Right to Challenge should be extended to all these areas, too.

The provisions in the Act for local authority staff to challenge partly parallel the Right to Request and Right to Provide which have been given to NHS staff in recent years - although, as APSE (2011) has pointed out, the Act does not specify the sort of organisation employees should form to use the Community Right to Challenge, so that in reality the new right could see public workers setting up ‘for profit’ companies to run local services, rather than the co-operatives or mutuals which Ministers have talked about. Moreover, the comparison between NHS and local government
approaches highlights the disjointed nature of the thinking behind the government’s approach to public services. This could have been an opportunity to reinforce the agenda for ‘joined up services’, by giving both NHS staff and council staff an opportunity to bid for each other’s services (particularly if they form a consortium or joint social enterprise). Indeed, the Secretary of State’s reserve powers within these provisions of the Act would allow this but there is little sign of such coherent thinking in Whitehall or Westminster.

As in so many parts of the Act, there are conditions attached to the ‘local’ nature of the Community Right to Challenge. In fact, the community may NOT have the right to challenge, as the Secretary of State may choose to exclude certain services. Moreover, the ‘community bodies’ which have the right to challenge are explained as any body which carries on its activities primarily for the benefit of the community, but this may therefore exclude some organisations which, in spite of very active community intervention, have a core business which does not meet this criterion, e.g. many registered landlords. As the Act does not restrict the Community Right to Challenge to bodies which have a local connection with the area of the council concerned, it is also possible that bodies which are largely driven by interests in other council areas (even other parts of the country) may issue this challenge and seek to take over local services. (This possibility is all the greater as members of community organisations are under no apparent obligation to declare any conflict of interest – such as also working for an organisation that would wish to tender). While these extensions to ‘wider organisations’ may not be unwelcome in themselves, they rather undermine the label of ‘Community Right to Challenge’ – it might more appropriately be called a ‘Third Sector and Public Sector Staff Right to Challenge’.

After the expression of interest, the council will be under a duty either to accept or reject it. Rejection can only be on limited grounds, set out in regulations made by the Secretary of State. A key issue which the local authority will be required to consider is whether the challenge, if successful, would promote or improve the social, economic or environmental well being of the authority’s area. However, there is a clear potential here for conflict of interest, since a council is likely to consider that its current services and decisions already are designed to promote and improve the well being of the area.

While third sector organisations in the local area are likely to see themselves as well placed to make a bid to run these services, because of their close knowledge of local needs, opportunities and potential resources, there are current pressures on councils to decrease their procurement costs, e.g. by making contracts larger, increasing the length of contracts and passing on higher risks to contractors. The Government’s Green Paper on Modernising Commissioning hinted at these pressures, all of which are likely to impose major disadvantages on small local third sector organisations seeking to bid to provide public services, but it did not commit to taking any steps to
counteract them and the *Open Public Services* White Paper in 2011 offered little progress in this regard. Moves toward more consolidated procurement would be likely to greatly weaken the importance of the Community Right to Challenge in practice.

The full implications of the Community Right to Challenge will only be evident when we see how councils choose to respond to community challenges – and, of course, what guidance is given by the Secretary of State in relation to such responses. The Act does not determine in detail how any subsequent procurement exercise should be undertaken, and this will be a critical factor in determining how much change is actually instigated by this provision of the Act. If councils set minimum standards of economic and financial standing and/or professional and technical ability, this may rule out the very people or organisations who triggered the challenge in the first place and leave the field open to larger or established providers. While the Act allows for legal challenges from the bodies submitting the expression of interest, service users concerned about future provision, staff and unions, and bidders in the procurement, such legal challenges are unlikely to be of interest to community organisations.

Nor does the Act entitle those making the challenge – e.g. residents or tenants or service users – to be involved in the design of any service specification which is put out to tender, which again blunts the intent behind this provision. ACEVO (2011) has proposed a mandatory ‘right to voice’ for service users, entitling them to information and, where appropriate, advocacy, based on government-established explicit minimum standards for information, advocacy and independent brokerage support, targeted at the most marginalised and vulnerable, for each public service commissioning area. This ‘community right’ has not been addressed by the government and, indeed, it could be argued that the abolition of the ‘duty to involve’ has actually reduced the power of local service users.

It may be that some councils will respond to community challenges by setting up a version of a Best Value Review – albeit in a rather leaner format than those undertaken in the early years of Best Value. This would enable the council to determine whether to market test the service or, if it is already externalised, how to tender it when the contract next becomes due. Such an approach would be thorough and would allow the third sector a full opportunity to bid to play a role in services – but it would, of course, be expensive.

Clearly, such a thorough approach is likely to be unusual. Where the council is not minded to externalise the service, the cards are stacked in its favour, even if the community challenge is well thought out and passionately pursued. The asymmetry of information means that would-be external bidders are relatively easy to fob off – this was clearly demonstrated under the Best Value regime. Where the council is
relatively open to, or even in favour of externalisation, the procurement process is likely to favour larger, well-resourced and experienced providers – and this will put community groups, parent groups, user groups, etc. at a very significant disadvantage.

At the very least, the Bill will remove some barriers to civil society getting involved in service commissioning and delivery – getting onto the tender list for council services has often been a major barrier. However, the potential for getting beyond this and actually being able to bid successfully to run a service will clearly depend on the capacity of the third sector, which is quite patchily developed across services and across geographical areas (Bovaird et al, 2010). The sector will therefore require support, advice and even, in some cases, significant financial investment – this is not a ‘resource-free’ initiative. Will the loss of funding, including seed funding, undermine the ability of voluntary and community groups to participate in this agenda – or will this agenda actually serve to rejuvenate community groups, as Eric Pickles has argued? Presumably with these issues in mind, there is a provision in the Act giving the Secretary of State the power to provide support, assistance and guidance to groups that submit an expression of interest (or, indeed, to bodies other than those expressing an interest) – it is still unclear how this will work.

In particular, the government needs to consider the danger that cuts to advocacy and advice organisations and legal aid will seriously reduce the ability of marginalised and vulnerable people to use the new right to challenge. A joined up government would not give rights with one arm, while another removes the means to use them.

Part of the infrastructure which will be essential to making practical the right to challenge will involve appropriate risk management and insurance frameworks – Paul Emery of Zurich Municipal has cited a survey which suggested that twice as many people thought that councils should retain responsibility for delivering public services as thought that local people should have more responsibility for them and commented that “… it’s highly unlikely that more people will come forward to run services, set up their own schools or volunteer with a local charity if they think that there will be some personal risk to them.” (www.civilsociety.co.uk/governance/news/content/7949/localism_bill_will_remove_barriers_for_civil_society).

Moreover, there tends to be a ‘life cycle’ phenomenon in both service provision and in the level of activism and innovation displayed by third sector organisations. Consequently, we can expect that even enthusiastic and capable community groups and social enterprises who succeed in winning contracts for public service will eventually experience rocky times, as they seek to keep services in line with changing needs and aligned with an ever-changing constellation of other services, with which they need to join up. As Stuart Etherington has pointed out, local
Compacts are likely to be particularly important in protecting the third sector when relationships between local government and communities don't work out.

**Implications of Community Right to Bid (Assets of Community Value)**

The principles and potential benefits of community ownership and management of public sector assets were thoroughly analysed in the Quirk Review for CLG (Quirk, 2007). Since then, there has been a round of reviews in local government, usually in close liaison with the local third sector, to explore the potential for change. While welcome, these reviews have often been slow, cumbersome and short on action. It is therefore welcome that the government wishes to inject some more speed and dynamism into this process. However, the provisions in the Act are disappointingly thin and do not address the three core issues. First, the importance of keeping distinct the ownership of public assets and the use of public assets has not been thought through. Second, this is a ‘small place’ Act, not a ‘Total Place’ Act – and the connections between these two agendas is almost invisible. Thirdly, there is little consideration of the role of community assets in the economic development/city competitiveness agenda, although this is meant to have a high priority in Treasury thinking about the role of the public sector. These three issues are considered later in this section.

The populist potential of the ‘right to bid’ agenda is clear. Conservative shadow ministers for some years have campaigned for residents to have the right to take over post offices, libraries, swimming pools or pubs threatened with closure. There is no doubt about the public appeal of this argument, especially in a context where more than 5,000 post offices, 3,500 pubs and 200 public libraries have closed in the last decade or so. While some of these assets are publicly owned, some will be privately owned, which hints at the potentially radical nature of these provisions.

This appeal is all the stronger when it is suggested, as in a Daily Mail article in 2009 at the time of the launch of this Conservative policy, that the ‘community right to buy’ would also give parents’ associations, church groups or other non-profit voluntary groups “the power to bid to take over playgrounds, parks, sports fields and even schools if they believe local authorities that run them are performing badly” and that such groups will have “first refusal on buying public assets that are being closed down and the right to a fair price if they do” (www.dailymail.co.uk/news/article-1229428/Tories-offer-residents-community-right-buy.html#ixzz1BPtO1cyh). However, it has not been easy to give effect to such promises and the Act falls short in this respect. It may therefore disappoint and even antagonise community groups which it had hoped to get on-side.
Moreover, there are questions about how effective such a policy will be. One review of the Scottish experience, where similar legislation was introduced in 2004, concludes: “Complex, cumbersome, frustrating, painful – these were just some of the words used to describe the process of turning the Scottish legislation into the acquisition of real assets for communities” (Dobson, 2010: 4). Dobson cites figures that in the six years after enactment, 148 approved community bodies submitted 124 applications to buy land or other assets when they came on the market and concludes that this power is not a magic bullet - while there have been benefits in Scotland since it was introduced, they have been relatively small scale. The lesson would appear to be that community buy-outs “require adequate, sustained and multi-faceted technical aid and financial investment” which, at a time of cuts, they will struggle to get (Aiken at al., 2011; 81).

Of course, there is another agenda at work here – the government’s drive to make savings and cut debt. Community Matters estimates that there are currently 5,000 community assets at risk of disposal, simply as a result of Treasury capital asset reduction targets, not through a desire to transfer assets to community use (NAVCA, no date). Moreover, the Asset Transfer Unit has assisted the transfer of only 200 assets to the community over its four years of existence. As NAVCA suggests, this rate of transfer implies that most of the 5,000 will not find a community use. In fact, the short- to medium-term prospects for the community ownership and management of assets in the UK currently look decidedly mixed (Thorlby, 2011: 4). Whilst the supply of community assets is currently growing, with public sector organisations currently more willing than ever to consider disposals, public sector support to enable the acquisition and ongoing operation of these assets is diminishing. Difficult trading conditions in the wider economy are also undermining income streams from enterprise-based activities. The gap between supply and support appears to be widening. This is another reason for community groups – and local authorities – to be cautious about how important this new power will be in practice.

The net effect of this provision of the Act may well end up costing local authorities both time and money. They will need to set up, publish and maintain a list of nominated assets and a list of unsuccessfully-nominated assets and then handle requests to add or remove assets from these lists. Subsequently, they will need to act as an intermediary between a landowner and any community group interesting in bidding for the asset. They will have to publicise notices of disposal and enforce the provisions of the Act. Finally, they will need to compensate landowners. where this process can be shown to have resulted in a loss of value to the owner (Auton and Sweeney, 2011).

In terms of the detail of the Act, it is fascinating to see that a ‘Localism’ Act is so rich in new powers for the Secretary of State. As the LGA (2011) has pointed out, this section of the Act 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”. The LGA has argued that these decisions should, in the spirit of localism, be made at the local level, not by the Secretary of State. However, there is, once again, another agenda at work here. This section of the Act was subject to much more debate and amendment during its passage through Parliament than the ‘Community Right to Challenge’. Issues which were given special attention included determining clarity over compensation for land owners, issues of land that spans two local authority areas, and ways to limit the burden on local authorities and protect land owners' rights. Clearly, where property rights are being qualified, lobbying and special interest pleading is particularly vigorous – and local and community interests are in danger of taking a back seat.

Ownership v. management of public assets

There is now little dissent from the notion that public assets will often be more cost-effectively managed when the management is vested in the community in which they are located. However, there is much more debate about whether ownership should also be vested in the voluntary and community organisations which do the management. On the one hand is a set of arguments that asset ownership increases both the power and stability of a third sector organisation, and is likely to increase the incentives to use the assets well. Moreover, it has a symbolic effect in giving communities a sense of ownership in their place (although this would presumably be undermined if the asset were not kept in good condition). On the other side, there is a contrary argument that there is a danger that community organizations may, in practice, be no more open and inclusive in giving access to the assets they take over, using them simply to meet their own (relatively narrow) purposes.

Even more worrying, as in the case of the Community Right to Challenge, there are implications from the 'life cycle' phenomenon which tends to characterise the vitality of third sector organisations and also the condition and functionality of assets. We can expect that even highly enthusiastic and capable community groups, which make excellent and cost-effective use of assets for years after taking over their management, may lose energy, become exclusive in their attitude to community use or may themselves find that the assets in question become of limited functional value to them. (Or, of course, they may simply run out of funds to maintain those assets properly). Consequently, there is a strong argument for ownership NOT to be vested in a specific third sector organisation. In this spirit, NAVCA (no date) has interestingly proposed an additional ‘right to try’ – allowing community groups an opportunity to take over and run facilities for a trial period – in order to identify and manage risks and provide additional time to raise funds for outright purchase.
Given that public sector organisations have also had an unimpressive record in sharing and maintaining public assets, a more radical approach is needed, which combines pressure for more intense use of assets with a more coherent pursuit of the overall public interest, rather than the interest of one specific organisation, whether in public or third sector.

‘Small Place’ v. ‘Total Place’
‘Total Place’ as a concept may have disappeared, to be replaced by the vague and uninspiring concept of ‘community place-based budgeting’, but the notion of integrating all public interventions in one place is still alive and, according to the government, well. However, one would not get this impression from the Localism Act. In particular, the provisions for the Community Right to Bid are likely to lead to much greater fragmentation of public assets and make it significantly harder to formulate and implement a long-term coherent strategy for an area.

A more appropriate approach, more consistent with the overall purpose of the Localism Act, would be to vest all public assets within a local authority area (either at upper or lower tier level) in a Local Community Asset Trust, to be managed locally under a Board of Trustees elected by local people. This proposal, which was surfaced in the Birmingham Total Place reports to HM Treasury (Bovaird, 2010), would be likely to result in a much more coherent and intensive use of public assets in each area and would open up assets to all community groups who could make a proper case to have access to them, without running the risk of ossifying the ownership of assets in organisations which later turn out to be inappropriate.

Moreover, it is important to ask: “The Community Right to Bid for whom?” Where the asset is owned by a local authority that is strapped for cash and not maintaining its assets properly, a major registered social landlord in the area might well encourage tenants to exercise the ‘Community Right to Bid’. It could then turn out itself to be the major beneficiary from the deal, if it becomes, in practice, the manager of the asset and can reflect the improved state of the asset in its housing rents. This could lead to the capture of public value for special interests on a grand scale.

Moreover, as with the Community Right to Challenge, there has been a failure of nerve on the government’s part. During the debate on the Second Reading of the bill in Parliament, Conservative MP for Dover, Charlie Elphicke, challenged the government to extend the Community Right to Bid even further, so that it covered not only local authority assets but also central government assets in their area. He gave the example of the port of Dover and suggested that people in other constituencies might want to buy their forests and other such community assets. (NAVCA (no date)
proposed including all PPP/PFI assets, too). Having ignored this possibility in drafting the original bill, the government backtracked and promised to consider this suggestion – but, predictably, nothing came of this. Again, the alternative does not appear to have been considered of a national Community Trust for nationally important assets, supervised by elected Trustees, in which all public sector assets could be vested, and then leased out to government agencies at an economic rent.

Economic development and city competitiveness roles of public assets

Given the emphasis by this government on economic development, as instanced, for example by their scramble to get Local Enterprise Partnerships up and running, it is surprising that the implications for city competitiveness arising from the Community Right to Bid has not been considered.

The government has emphasised from the moment of taking office that its central task is deficit reduction. However, debt alone is not a significant economic indicator - it has to be seen in the context of the assets which can be offset against that debt. In the UK, public sector assets, under resource accounting protocols, offset well over half of the public debt, and most of those assets are in local government and local public agencies, located in the major UK cities. And of course, targeted investment in those assets during the next five years is likely to speed up the growth of the UK private sector, while under-investment in those assets may damage long-term UK growth prospects. Putting in place a framework where future asset investment by the public sector is unlikely to occur, because those assets can subsequently be taken over by community groups for purposes over which the public sector will ultimately have little control, seems high risk and a prime example of unthinking short-termism, which is likely to undermine the government’s overall strategy, in order to build up some support for specific part of its programme.

References


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Thorlby, T. (2010), *Finance and business models for supporting community asset ownership and control*. York: JRF and SQW.
Reflections on the Localism Act

The Changing Role of Parish and Town Councils
Ian Briggs

As the debate about the potential impact of the Localism Bill developed throughout 2011 it became clear that the role and function of parish and town councils is likely to become more prominent. Taking a broad view this is to be welcomed as it could be possibly seen as problematic to approach a reform of the governance structure of England without any attention being paid to the lowest level of democratic representation.

Two broad issues are emerging now the bill is enshrined in law. The first is one of detail around processes and procedures. A great deal remains to be made specific about the role that Parish and Town councils will play in the major changes contained in the legislation; replacement of the section 106 arrangements for planning gain are being replaced by the Community Infrastructure Levy (CIL) and changes to the planning system. The second issue is whether many parish and town Councils have the capacity to respond to the overall spirit of what is being attempted in this reform. This chapter will concentrate on this second issue.

With approximately 8500 parish and town councils in England it is hardly surprising that there will be extremes in the variety of councils. Some will represent strong and active communities others will not. It would not be safe to assume that all parish and town councils will have the capacity to respond in the same manner to the legislation. The last few months has seen certain interesting developments on the national scale with NAC (the National Association of Local Councils – the non universal membership body for parish and town councils) offering an extended suite of short courses and seminars as well as advice notes to parish councils. Here we explore some of the practical issues faced by all of local government to change and adapt to the spirit of localism and move away from the top down approach characterised by decision making in the past.

Key issues.

1. **How will boundaries be managed?** This is emerging as an issue for certain parish councils where local planning issues are impacting upon areas where rural meets urban. Although much is dependent upon the National Planning Policy Framework potential tensions are developing in certain localities where the desired criteria for a locality are exposed to the close physical relationship to another locality where the intentions differ. This is a significant issue for a number of small and medium sized towns where broader infrastructure plans have mitigated against disputes between planning authorities. Here there is potential for confusion and challenge.
2. **The issue of ‘Fiscal Dumping’**. Already there is anecdotal evidence is emerging of where higher tier councils are making assumptions about the capacity of parish and town councils to absorb responsibilities for functions and assets that have hitherto being the responsibility of district and county councils. The capacity of many town and parish councils to expand their roles is open to question. However, there is perhaps a lack of understanding in some higher tier councils around this lack of capacity. Examples of this can be found in where district councils are passing down responsibility for the inspection of public play areas to town and parish councils. In one case reported to us, quite incorrectly a district council is insisting that parish councillors are CRB checked to undertake this responsibility. The fact remains however that the 2012/13 budget setting for many parish and town councils has been highly challenging as an assumption has been made by some higher tier councils that parishes can do the work that they are keen to divest themselves of.

3. **The requirement for town and parish councils to work in a coordinated way**. Hitherto it has been unusual for parish councils to work together in wider localities, indeed competition between parishes and isolation have often characterised the way that they have worked in the past. Some district and county councils have invested resource into working with parishes through area committees and local structures but this is by no means universal. Some councils have a long track record of working in close harmony with parish and town councils but this is not always the case. In some cases district councils have enjoyed good working relationships with parishes but have done little to encourage joint working between parishes. In other cases parishes themselves have strongly resisted cooperative working, citing the connectivity with local communities as being an argument against joint local working. Indeed in many parts of the rural hinterland around urban areas relationship between parishes is sometimes poor, openly competitive and dismissive of any attempts to share resources and information. Again, anecdotal evidence suggests some parishes are taking decisions that are to the disadvantage of other neighbouring parishes. This is an issue that is recognised by NALC and a number of regional associations in England are now offering short courses and workshops on developing joint working between parish and town councils.

4. **How can local councillors develop their skills and knowledge?** There may be as many 70,000 individual parish councillors in England – many of them are highly experienced local politicians, being ‘multi-hatted’ because they are also members of higher tier councils but this is not true for the majority. If the top down decision making processes typified by traditional local authority decision making are to be changed to a ‘ground up’ approach
which engages with the citizen the developmental deficit for many local councillors will need to be reduced. Many parish councillors are immersed in their communities in the way that even district councillors are not. They can be closely involved in local issues in communities that are often detailed and highly localised and as parish councillors are therefore disengaged from more strategic and area based issues. Whilst parish councillors can have a detailed knowledge of localities that is far more extensive than many councillors at district and county level, their interest in local issues may be offset by a lack of interest in issues that are driven from outside their local communities.

5. **How do local residents need to be involved in the changing role of parish and town councils?** Most parish and town councils engage with their communities through mechanisms that are not employed at higher tier council levels. However, it would be incorrect to assume that all parish councils are well engaged with their communities. The requirement to have an Annual Parish Meeting is central to the approach that many parish and town councils take to engagement with citizens. They are not always well attended or even published widely. This is a once a year commitment by parishes, certainly some parishes do this very well and have well attended meetings for others the experience is less well managed. But the fact remains that if higher tier councils can find it a struggle to have public meetings well attended so do many parishes. When the public is present the issue of how well individual citizens understand the complexities of local democracy and local decision making is exposed. Annual parish meetings can be difficult when local residents see them as an opportunity to challenge local decisions that either have already been made or that are far removed from the remit of the parish council. Recent examples reported of parish councils being inundated with citizens challenging the local parish around major, national issues such as HS2 are now on record. The issue here is that we are potentially placing parish and town councils unfairly in the firing line for decisions that are made elsewhere and this could seriously undermine the government’s intention to change the top down, rational choice decision making processes of the past. Unless parish and town councils can be effectively supported in the transition period there is the strong possibility of localism being discredited in the eyes of the public.

6. **Changing the upward perception from parish and town councils.** If higher tier councils have not always engaged parish and town councils effectively the same can be said of the often poor perception that parishes have of upper tier councils. Again there are anecdotal examples of parish and town councils who see their role as one of resistance to domination from above. This often masks the ignorance and lack of appreciation of the difficulties that are often faced by districts and counties on local issues that
extend well beyond the parish boundary. Where district and county councils have been selective in their engagement with parishes many parishes themselves have been selective and perhaps indeed manipulative in their relations upwards. This flies in the face of the overall spirit of localism and many councils will need to address the issue of the quality of relationships between parishes and higher tier councils before many of the positive changes around the localism act can be brought to fruition.

7. Is it realistic for parish and town councils to change rapidly? Much depends upon the support that parish and town clerks can offer. It is to be welcomed that NALC has expanded its offering of technical support to clerks and local councillors but even a cursory investigation of the recent agendas of many parish and town councils demonstrates a continued focus on the immediate and the relatively mundane. Localism does mean that parish and town councils have to operate on a variety of levels which many of them do but not all. The reason that many parishes are active is their ability to focus upon the immediate and local. It may be that higher tier councils and indeed local communities will have to be patient and not be too demanding on local councils to adapt to the new demands.

8. Changing the language. For many in local government the language that is used to describe and conduct business is different to that used in parish councils. Higher tier councils freely use language that is technical and complex and not shared by parish councils. Does a new language that is non technical need to be applied so localism can be enacted at a local level?

The Localism Act could be a significant opportunity to change the relationship between the citizen and the state in non urban areas. The task for parish and town councils is however complex and long term. Government clearly wishes to bring forward mechanisms that enable a better relationship between the individual citizen and the state at a local level and it wishes to see citizens better connected and more self-sufficient in dealing with local matters with an associated decrease in dependence on the state. To achieve this change in non urban and parished localities cannot be brought about with parish councils operating in the way that they have in the past. Many town and parish councils have begun the process of transition but not all and those on the path to change require support. The question remains as to the strength of the appetite of higher tier councils to support this change.
Neighbourhood governance: an opportunity missed?

Helen Sullivan

Introduction
Those interested in the potential of neighbourhood governance to improve local democratic governance, by supporting more ‘bottom up’ involvement and decision making and countering the highly centralised system of local government in England, are likely to have been generally attracted by the Government’s the Localism Act which emphasises its commitment to citizen empowerment and localised decision making through a programme of decentralisation. The six ‘essential actions’ underpinning the Act and associated with securing decentralisation and ‘the Big Society’ are complementary to a commitment to neighbourhood governance: lifting the burden of bureaucracy; empowering communities to do things their way; increasing local control of public finance; diversifying the supply of public services; opening up government to public scrutiny; and strengthening accountability to local people. In addition the Government tackles head on some of the myths about decentralization that grew up under the New Labour administrations, in particular countering the lazy assertion of decentralisation as generating a ‘postcode lottery’ in service provision by highlighting the ways in which more localised decision making can generate more informed and appropriate local services – diversity being a conscious choice rather than an unfortunate consequence.

However the detail of the Localism Act provides much less comfort for supporters of neighbourhood governance. To be sure there is one very significant provision in relation to development planning where the Act empowers parish councils, or neighbourhood forums in unparished areas, to grant approval for all but the very large or controversial applications within their areas.5 Locally generated plans, if approved by a majority voting in a referendum, cannot be varied by the relevant county or district councils. This is a key proposal which has already generated much discussion (see Chapter 10). But beyond this, the Localism Act has very little to say about neighbourhoods and neighbourhood governance. Instead the Act makes repeated reference to ‘citizens’ ‘communities’ and ‘people’, although none of these terms is used with any precision, which is odd given the ambitious claims for the Act presaging a future of ‘self-government’. One justification for this lack of precision

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5 This is to be achieved by giving them the power to pass a Neighbourhood Development Order approving a development, which the local Planning Authority (e.g. the District Council) will be obliged to accept, unless there are very clear reasons for not so doing. If a Neighbourhood Development Order is rejected, there is a right of appeal not to the District or County Council but to an individual who must be acceptable both to the applicant and the council.
may be that in our complex and diverse society, any strategies will need to be plural ones, recognising the fact that people inhabit and identify with numerous communities of place, identity and interest. However the Act does not make this simple acknowledgement. Another explanation may be that the multiplicity of terms used belies a particular Government attachment to the idea of citizens as individuals – as tax payers and/or service users – rather than as members of broader communities. This might explain both the negative focus of some of the elements of the Act e.g. vetoing excessive council tax rises, and the emphasis on referenda as mechanisms for expressing citizenship. However the Act does contain important provisions which are focused on collective expressions of local citizenship, whether through the ‘community right to challenge’ or the ‘community right to buy’, though again no indication is given of what constitutes a ‘community’ in either case.

Beyond the questions of who the Act is aimed at and whether or not it matters, there is a broader question of the extent to which the provisions in the Act really do add up to the kind of shift in power to citizens, communities and/or neighbourhoods that is suggested in the headlines. It could be argued that beyond the proposals for neighbourhood planning, some of the more significant proposals for self-government are contained in other legislation or policy documents, and indeed several are referred to in the supporting material that accompanies the Localism Act including ‘free schools’, the new right to provide afforded to public servants, commissioning at the point of need, and place based budgeting. What is of concern in this chapter is the extent to which an explicit focus on neighbourhoods and neighbourhood governance might generate a more coherent framework for designing new institutional arrangements that can embrace all of the relevant policies and services and offer a more robust foundation to support self-government.

Why neighbourhoods matter
The neighbourhood has emerged as an important component of contemporary multi-level and multi actor governance and evidence from Europe suggests that the ideas and practice of neighbourhood governance are now firmly embedded in public policy systems. Neighbourhoods represent several distinct, though linked, policy aspirations: for urban revitalisation, service improvement and democratic renewal. Their close proximity to citizens suggests a potential to generate new opportunities for citizens to participate directly in the co-production of particular policy outcomes that matter to them through networks created by the state for the purpose of improved system effectiveness or (less often) via citizen led networks operating outside conventional political systems and structures.

Neighbourhoods are not ‘objective’ entities, but they do share certain key characteristics. According to Lowndes and Sullivan neighbours:

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• Support or shape the development of individual and collective identities;
• Facilitate connections and interactions with others;
• Fulfil basic needs such as shopping, health care, housing and education;
• Are sources of predictable encounters;
• Have geographic boundaries, the meaning and value of which are socially constructed.

Neighbourhoods may be sources of considerable value for citizens providing a sense of identity, and security as well as offering access to services and decision making. However for many, neighbourhoods are not that significant – their sense of identity and their particular service needs may be met by employment related networks or faith communities, both of which are likely to be located at town or city level. Importantly, for some citizens neighbourhoods may in fact be sources of insecurity and conflict, factors including poverty, disability or discrimination contributing to neighbourhoods being experienced as ‘prisons’. The potential of neighbourhood governance to contribute to democratic local governance will be contingent on whether and how particular neighbourhoods are valued by citizens and communities.

Principles of neighbourhood governance
Lowndes and Sullivan define neighbourhood governance as arrangements for ‘collective decision-making and/or public service delivery at the sub-local level’9. They identify four distinct rationales for proposing neighbourhood governance, each containing distinct principles for democratic engagement, service provision and local leadership, a combination of which have informed successive government’s proposals since the 1970s.

Table 1. Forms of neighbourhood governance: four ideal-types10.

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<th>Neighbourhood partnership</th>
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<td>Citizen well-being and regeneration</td>
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Key objectives
- Participatory democracy
- Stakeholder democracy
- Representative democracy
- Market democracy

Democratic device
- Participatory democracy
- Stakeholder democracy
- Representative democracy
- Market democracy

Citizen role
- Citizen: voice
- Partner: loyalty
- Elector: vote
- Consumer: choice

Leadership role
- Animateur, enabler
- Broker, chair
- Councillor, mini-mayor
- Entrepreneur, director

Institutional forms
- Forums, Co-production
- Service board, multi-actor partnership
- Town councils, area committees
- Contracts, charters

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9 Ibid p 56
The civic rationale identifies opportunities for direct citizen participation and community involvement, and distills the insights of classical political theorists like Mill, Rousseau and Tocqueville\textsuperscript{11}. Neighbourhood units are physically more accessible to citizens and also contain fewer citizens, making direct participation more feasible as it is easier to distribute information about opportunities for participation and to communicate with citizens about options and outcomes. Citizens have incentives to engage because it is at the neighbourhood level that they consume many of the most important public services, and experience the issues most likely to mobilise them. This provides a platform for empowerment, which aims to increase the citizen ‘voice’ by developing forms of participatory democracy. However empowerment may go beyond allowing citizens to exercise ‘voice and choice’\textsuperscript{12}. Neighbourhoods may also be a space within which members of the public ‘co-produce’ policy and services in and around existing political frameworks. This implies a much more active role for citizens, one which Bang and Sørenson\textsuperscript{13} characterise as the ‘everyday maker’ - someone working for community well-being but doing so outside established political constructions of citizenship and not confined by ideas that the state may communicate about what it is to be ‘empowered’.

Controversially perhaps, neighbourhoods are also more likely to encapsulate homogenous communities and to be characterised by shared values, beliefs and goals. Community cohesion is more likely to emerge as a result of voluntary compliance to informal norms, reducing the costs associated with official enforcement. A key requirement of leadership is to enable all citizens and communities to participate; including involving traditionally marginalised or excluded groups.

The principles and the provisions of the Localism Act tend to align with the civic rationale, particularly through the focus on citizen voice in decision making and the potential for ‘co-production’ through the ‘community right to challenge’ and the ‘community right to buy’. However the Act does not acknowledge the challenges of exclusion and marginalisation that can exist within in neighbourhoods and which may hamper the empowerment of all community members. The Act is also silent on the issue of leadership, specifically the potential role of local councillors as leaders and mediators of different communities’ interests and aspirations. Lastly the Act makes no acknowledgment of the fact that citizens and communities may choose to work outside of state sanctioned structures and processes and my see their role as working in opposition to resist the kind of ‘empowerment’ that is being proposed.


The social rationale points to the possibility of a citizen-centred approach to governance, building on the work of Fabians like GDH Cole and contemporary commentators like John Stewart and Dick Atkinson. A neighbourhood focus enables governance to be observed from the standpoint of the citizen rather than the politician or the professional - and to design services and decision-making accordingly. Of particular importance is the opportunity to observe how local action may be better ‘joined-up’ to provide a more integrated approach to citizen well-being. Neighbourhood arrangements offer a reconsideration of public service design around ‘life episodes’ or the ‘life-course’ rather than professional demarcations, open up decision making to very local collaboration between citizens and providers and offer ways of viewing and addressing ‘wicked’ policy challenges (like security and safety) that may otherwise be overlooked.

This rationale supports a form of stakeholder democracy in which members have different kinds of mandate and legitimacy – a source of strength and conflict (Hirst, 1994; Lowndes and Sullivan, 2004). The public is one of the stakeholders, linked to the governance process through a relationship of ‘loyalty’ in which stakeholders expect each other to conduct themselves reliably and honestly. The key leadership roles are those of broker who brings stakeholders together, and the chair who facilitates collective decision-making and arbitrates in the absence of consensus.

The Localism Act says very little that accords directly with this rationale, but the references in the accompanying documentation to place-based budgeting and commissioning at the point of need echo the social rationale’s emphasis on integration and joining-up. The potential value of exploring ‘life-episodes’ and ‘wicked issues’ from the perspective of the neighbourhood offer a different dimension to how to consider ‘place’ and to determine what is the appropriate ‘point of need’ in commissioning terms.

The political rationale focuses on improvements in the accessibility, responsiveness and accountability of neighbourhood based decision-making, drawing on arguments made by Plato and continuously updated ever since. With direct experience and knowledge of the issues at stake, citizens are able to make informed inputs into policy-making. Neighbourhood leaders are more likely to be known to citizens and they have more opportunities to communicate with them on an ongoing basis and to monitor governance outcomes. Their proximity means that they are more likely to be responsive to citizen views and citizens are better able to hold leaders and service-deliverers to account because their deliberations and actions are more visible, as are the consequences of their decision-making.

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The political rationale is part of an attempt to restore trust in government. It focuses on enhancing the representative role of councillors as local leaders by establishing an ongoing dialogue with constituents, advocating for their community, and scrutinising the work of the local authority and other service providers on their behalf.

The Localism Act’s focus on improving accountability to local people can be aligned with the political rationale. However the contents of the Act refer to the role of local councillors hardly at all and certainly not in relation to their role in and around the neighbourhood, nor to accountability being practiced at the neighbourhood level. Where neighbourhood accountability is addressed it is in the radical proposals for neighbourhood planning which seek to offer new powers to existing neighbourhood bodies e.g. parish councils and to facilitating the creation of new ones e.g. neighbourhood forums. No attention is paid to how the existing body of local authority councillors will engage with these new or newly empowered institutions. In addition the Act introduces new provisions designed to enhance accountability that focus on local government and on the police service but which also neglect to consider the likely impact on local authority councillors (and have no neighbourhood dimension).

The economic rationale stresses efficiency and effectiveness gains of neighbourhood service delivery. Neighbourhood units are better able to identify and limit waste in organisational processes; they are also better placed to identify diverse citizen needs and provide appropriate services. Neighbourhood governance can exploit economies of scope – the benefits of ‘bundling’ services and functions) - in a world in which traditional economies of scale may be reducing in significance with the advent of e-government and a mixed economy of provision. Small units of governance are potentially more efficient than larger ones (according to the Tiebout hypothesis) because of the increased transparency of the tax/service deal and the greater possibilities for exit.\textsuperscript{17} Neighbourhood government is, in short, more susceptible to market-style forms of ‘bottom-up accountability’.

The economic rationale offers a kind of market democracy in which the citizen as consumer is able to influence what services are provided and to whom. While most neighbourhoods are not able to take advantage of the operation of full market democracy, in which consumers may choose to take their ‘business’ elsewhere the prospects for neighbourhood management have been enhanced by new technologies that allow for backroom functions to be carried out at a central base and by externalisation which can allow neighbourhood managers to commission services to suit local needs from providers who operate on a much larger scale.

The community right to challenge and to buy could be located under this rationale as could the new right to provide afforded to public servants and the provision of ‘free schools’. However without complementary changes to the way in which local government works and in a context of significant reductions in local government funding it is difficult to see how far this rationale can be realised.

Designing neighbourhood governance

Situating a commitment to localism explicitly within a neighbourhood governance framework, rather than one that refers variously to citizens, communities and neighbourhoods, draws attention to the importance of institutional design and to the design choices that need to be made to achieve particular governance purposes. Lowndes and Sullivan derive four ‘ideal types’ of neighbourhood governance from the rationales outlined above (see table 1). Ideal types clarify the scope for, and dimensions of, choice in governance arrangements including matters of leadership and citizen roles and the kinds of resources that might be needed to develop each role. As real-life arrangements are more likely to be combinations of different features, a consideration of ideal types enables designers to contemplate the challenges and tensions associated with the application of hybrid designs.

In addition there are several key challenges that any neighbourhood governance system needs to acknowledge and respond to. The first concerns the amount of power and control neighbourhoods have over decisions. To date, neighbourhoods have been afforded relatively little power over services and resources, instead offered the opportunity to influence service priorities within certain set parameters and/or able to make decisions over relatively small amounts of local spending. The limited amount of power and control afforded to neighbourhoods has often acted to depress the level of citizen participation and further alienated communities whose expectations had been raised.\(^{18}\) The proposals for neighbourhood planning represent a significant increase in the power and control afforded to certain communities, shifting the balance of away from the local to the sub-local level.

This shift highlights another longstanding challenge to neighbourhood governance, that of the quality of available neighbourhood representatives and leaders. The pool of available representatives is inevitably smaller than that from which local or national representatives are drawn. This means that the range of skills and experience is likely to be less, which may impact on the capacity of representatives to lead and on the capacity of citizens and communities to mobilise campaigns and hold their representatives to account. Absence of media interest in neighbourhood activities further limits scrutiny of these.

The limits of competence may be compounded by the limits of citizen homogeneity within neighbourhoods and the challenges this poses for community cohesion, particularly in a society in which diversity is increasing. The idea of neighbourhood governance rests heavily upon the notion of shared values and identities. However, the smaller and more homogenous the unit of governance, the easier it is for elites to dominate, and the harder it is for diverging views to be expressed and accommodated. No community is ever entirely homogenous, but those who identify themselves as ‘different’ (or are identified as such by others) may be especially isolated within a neighbourhood setting where associations and groups may reflect the dominant interests. When conflict does break out at the neighbourhood level, it

can be particularly acrimonious. Experiments in the 1980s with neighbourhood decentralisation in multi-ethnic areas provided evidence of the marginalisation of minorities, most notably in the London Borough of Tower Hamlets.\textsuperscript{19} Defensiveness and insularity may result in neighbourhoods being unable to establish links across community boundaries despite a strong internal coherence. The need to negotiate cohesion, diversity and pluralism is a significant challenge not acknowledged at all in the Localism Act.

Devolution to neighbourhoods implies increased differentiation in public service delivery across areas, something which is promoted in the Localism Act with its emphasis on diversity of local choice and of public service supply. However the Act does not address two potential challenges associated with devolution to neighbourhoods. The first concerns the consequence of an increased differentiation of resources and services on neighbourhoods that are not equal in resources capacity and support to begin with – the risk that neighbourhood governance could compound what the political scientist LJ Sharpe calls the ‘geography of inequity’, and militate against the redistribution of resources between areas.\textsuperscript{20} Self reliance in terms of human, social and economic capital is very problematic for those neighbourhoods that lack these forms of capital. Second, as neighbourhoods develop their diversity in service provision, this will generate variation in both the range and quality of local services from neighbourhood to neighbourhood, a feature that will be intensified should neighbourhoods gain revenue raising powers. While the Government has rightly asserted the value of ‘local choice’ to counter claims about ‘postcode lotteries’, it has not addressed itself at all to the implications for equity and social justice resulting from this stance.

**Conclusion**

The Localism Act represents something of a missed opportunity for neighbourhood governance. The Act’s multiple foci on citizens, communities, groups and neighbourhoods suggests that neighbourhoods are one among many options for devolved power and influence. While this may encourage a diversity of response there is a risk that the failure to provide a coherent framework within which to operationalise neighbourhood governance will act to undermine the impact of the radical proposals for neighbourhood planning because the latter appear disconnected from other aspects of neighbourhood governance. A more coherent commitment to neighbourhood governance would also allow for other proposals such as ‘community right to buy’ and ‘to challenge to be located within an institution that could support and develop proposals as well as mediate competing claims and disputes.

One defence of the Act is that in keeping with the Government’s commitment to localism it is non-prescriptive, offering options and opportunities rather than


frameworks to follow. Setting aside the Government’s preparedness to prescribe over a host of ‘local’ issues from chief executive’s pay to the frequency of refuse collection, the Act’s failure to offer a clearer steer on how it understands the respective roles of citizens, communities, neighbourhoods, localities and the centre, means that there is no articulation of how different elements may connect together as part of a wider system of governance. The Act is also silent on the implications of moving towards greater devolution – particularly with regard to community cohesion, equity and social justice. Again this may be argued to be in keeping with the Government’s localist agenda but the potential changes to the central-local settlement implied by the contents of the Act call for a re-articulation of how these issues will be considered.

**Acknowledgement:** This chapter builds on ideas developed and published in collaboration with Vivien Lowndes.
Reflections on the Localism Act

General Power of Competence: just what local government always wanted and needed, or another damp legislative squib?

Steve Rogers and Catherine Staite

Introduction

The ‘general power of competence’ has traditionally been something of a holy grail for all promoters and defenders of local government in the UK – be they parliamentarians, local councillors, officials, academics or think tankers.

What local government really needs, such people have argued, is a general power of competence such as that found in a number of other European countries – especially those that ascribe high value to the role of local government within society.

It is not therefore surprising that the Local Government Association almost immediately gave approval to the provision for a general power of competence when it appeared in the Localism Bill – ‘We strongly support the Government’s decision to set out in legislation a broad and clear general power of competence which we have lobbied for. The power means local councils and Fire and Rescue Authorities will be able to respond to local issues and priorities ambitiously, confident in their legal footing.’

What is a General Power of Competence?

The General Power of Competence (GPC) is set out in Chapter 1, sections 1 to 6 of the Act. The Government’s declared aim is to give local authorities the legal reassurance and confidence to innovate, drive down costs and deliver more efficient services. The GPC gives local authorities the power to do anything that an individual could lawfully do, anywhere, with or without charge, for any purpose, anywhere in the UK or elsewhere. However, the bill also specifies some boundaries to the power which may be imposed by statute, statutory instrument or by an order made by the Secretary of State. Such an order may apply to some or all local authorities and would have to be consulted on before being laid before Parliament. Charging for statutory services and making a profit on charged for services will not be within the

21 LG Group On the Day Briefing, 13/12/2010
GPC and such commercial services will only be able to be provided through a company. The GPC replaces the common law ‘ultra vires’ rule under which local authorities can only do those things which legislation allows.22

**What is the purpose of a General Power of Competence?**

Localism has been a consistent theme of the discourse on local government for many years and the GPC has been seen by local government as an important element of localism because it changes the balance of power between central and local government.23 Responses to the proposed new power when the Bill was published were mixed. Some have been positive. Alex Thompson of Localis24 welcomed the Localism Bill and the GPC as a ‘seismic shift’ in the relationship between local and central government. However, he also acknowledged that the GPC comes at a time when local authorities’ ability to act is constrained by the recent financial settlement and also by the tendency for Whitehall to interfere or micromanage locally based initiatives such as Total Place25 and Community Budgets.

This conflict between the theoretical freedoms offered by the Act and the behavior and rhetoric of central government remains a consistent theme of the discourse about local government in 2012.

The GPC will enable local authorities to develop new services, such as estate agency, insurance or banking and to invest in new technologies. It will also strengthen the position of local authorities within the wider public sector and possibly encourage closer collaboration and pooling of budgets with partner agencies wishing to exploit the GPC to achieve their own objectives.26

The GPC does look promising. It cannot be dismissed without careful consideration. But – haven’t we been here before? The 1999 Bill, and subsequently the 2000 Local Government Act, provided local councils (but not Fire and Rescue Authorities) with a ‘Power of Well-being’ ‘to promote the economic, social and environmental well-being of their area’. Not quite a power of general competence, but something that was intended to be quite close to it.

The 2000 Act introduced a ‘new’ role for local government – that of ‘Community Leadership’. This expansive role was intended to encourage local authorities to be more outward-looking and more involved in all the needs and concerns of the local area. Local authorities were no longer expected to be creatures of narrowly interpreted statute – they were expected to be concerned with all aspects of the social, economic and environmental wellbeing of the area and its people. The

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24 [www.localis.org](http://www.localis.org)
25 Problem, purpose, power, knowledge, time and space: Total Place final research report, Keith Grint Warwick Business School.
general concept of that role, although not very clearly defined, was taken up with enthusiasm by a number of local authorities who saw it as a welcome change from the painful recent reductions in the role and powers of local government. The new role, it was argued, needed a new general power – a Power of Well-being. It was linked to the new legislative duty, which implemented the role of community leadership, to prepare Community Strategies. These strategies, to be prepared with the direct involvement of partners and the community, were for the promotion and improvement of the social, economic and environmental well-being of their areas.

As in 2010, the 1999 provision of a broad, general power was given strong support from the world of local government. For example, even some of the normally cautious and reticent lawyers involved in local government were encouraged to describe the power as ‘Heavenly Freedom’. ‘For many years we have argued for a new power of general competence for councils so that they can implement innovative schemes without the constant fear of auditor intervention. Finally we have something along those lines’. 27

The power was not utilised as effectively as it might have been for a number of reasons, including that; ‘… local government is so distracted [by the introduction of new structures, best value and other aspects of the modernisation agenda] that it is not using the well-being power, …’. 28 It became submerged by the importance attached to changing the political structures and decision-making processes and the implementation of Best Value. Best Value did not encourage local authorities to be adventurous and innovative in their approach. It did the opposite – encouraging local authorities to ‘play it safe’. The form of the legal power was of considerable complexity – being a combination of apparently wide discretion together with a list of exceptions and a power of veto by the Secretary of State, not unlike the GPC established by the Localism Act.

INLOGOV, together with the Cities Research Centre, University of West of England, were commissioned by the government (DETR) to undertake an evaluation of the take-up and implementation of the Power of Well-being. We found that awareness and understanding of the Power was extremely variable in local authorities but that it had increased over the four years of the research. However, awareness and understanding amongst partners and in the community remained very low. We also found only a slight broadening in the use of the Power (starting from a relatively low base) although there was evidence of more widespread consideration of the use of the Power. 29

We may conclude that the Power of Wellbeing was nowhere near as significant as had been initially anticipated. Not quite a damp squib but certainly a piece of legislation in a minor key – only obtaining a major key in a small number of locations where it was used extensively.

Like the wellbeing power, the ‘Central Local Concordat 2007’\textsuperscript{30}, which was intended to establish better rules of engagement between central and local government, did not deliver as much as was hoped. There is no evidence that it was ever taken seriously by central government. In the same year, ‘Strong and Prosperous Communities’ and the Local Government and Public Involvement in Health Act both also ostensibly heralded a new relationship between central and local government. The reality, as experienced by local government was target driven centralism. The ‘freedoms and flexibilities’ offered to better performing councils have not always been delivered because the underlying relationship between central and local government has remained one of control and dependence. LAAs may have helped achieve better outcomes and made it easier for local government to work effectively with partners but the relationship between central and local government remained very top down and controlling. For example, the standard central government response to local delivery failures has been to intervene.

If the Power of Well-being, the Concordat and other previous efforts to reframe the relationship between central and local government and to give local authorities more freedom to act have failed to live up to their early promise, might that not also happen to a General Power of Competence, unless the underlying relationship between central and local government changes significantly? That relationship has a complex history characterised by unfulfilled expectations and frustration on both sides which have led to deep mistrust on the part of local government. George Jones\textsuperscript{31}, in his evidence to the Political and Constitutional Reform Committee commented that we ‘can’t rely on the present culture, attitudes and laws for protecting what should be the proper relationship between central and local government.’

The relationships between central and local government operate in a number of domains; financial, political and inter-personal. The financial relationship is characterised by dependency because of centralisation and the fact that three quarters of local government funding is from central government and only a quarter is raised locally. The political relationships are complex because although national party policies influence local policy in councils led by the same party they are resisted (to some extent – if only in rhetoric) by councils of opposing parties. The political and inter-personal meet in the relationships between ministers, MPs and councillors as well as in the relationships between chief officers and senior civil servants. The habit of the current Secretary of State and his ministers of issuing critical pronouncements, for example, about the salaries of local government chief executives, which have been set by councils, most of which are led by Conservatives or Liberal Democrats, shows how complex and difficult these relationships can become.

The relationship and the balance of power between central and local government has exercised local authorities, academics and other commentators, for many years.

\textsuperscript{30} www.lga.gov.uk
\textsuperscript{31} Oral evidence to Political and Constitutional Reform Committee.
www.parliament.gov.uk/committees
Jones and Travers argued ‘ministers and civil servants have, in effect, played God with British local government’, citing 150 Acts passed since 1979 which had significant implications for local government. They also commented on the attitudes of civil servants to local government: ‘the mundane nature of many local services appears to encourage (at least some) civil servants to believe that they possess Rolls Royce minds, while local government officers have motor cyclists’ minds’. Politicians currently reflect that lack of understanding of the nature and complexity of senior local government officer roles by numerous derogatory comments and the unsuccessful attempt by central government to combine the function of the new city mayors with those of chief executives.

The Lyons Enquiry argued for a ‘rebalancing of responsibilities between individual and family, local community and national government with a stronger ‘place-shaping’ role for local authorities, working closely with partners’. When the Bill was published, Sir Michael Lyons posed the question - is what the Bill is offering really localism? His test for localism includes even-handedness between what is expected of locally run and centrally run services. It could be argued that even-handedness is necessary for local authorities to make the best use of the GPC but recent experience, for example the disparity in the proportion of cuts in public spending experienced by local government and the NHS, suggests that even-handedness does not prevail.

Professor George Jones, in his evidence to the Political and Constitutional Reform Committee, remarked that ‘the Secretary of State says ‘localism, localism, localism’ at the same time he seems to think he knows best what the level of council tax should be. He will know whether it is excessive or not, and then insist on a referendum. He seems to know how local authorities should conduct refuse collection. He seems to know about how they should inform their citizens about their activities’.

Sir Jeremy Beacham also highlighted the dissonance between the proposed GPC and the continuing micromanagement commentary from CLG, for example, on frequency of bin collection and local authority management arrangements.

Chris Leslie argues that local government has improved in terms of efficiency and overall performance over the last 10 years but is not being rewarded. Instead he describes a ‘tragedy of dashed expectations’. He identifies central government’s ability to resist tabloid pressure to intervene when things go wrong as a vital sign of localism. He highlights six key yardsticks for measuring the extent to which localism is a reality, including; the extent of ministerial control, the same standards for Whitehall and local government and the extent of local authorities’ forward planning capability. Given that the Secretary of State can still over-ride the GPC and also the

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33 LGC, 13th January 2011.
35 LGCPplus.com/5023316.
36 LGC 8th June 2010.
contrast between the duty on local authorities to publish expenditure over £500 and on central government departments, with the exception of CLG, over £25000, and that the current method of allocating resources to local authorities undermines their forward planning capabilities, it could be argued that the Localism Act fails those tests.

Some actions taken by the Coalition are seen as helpful by local government, for example, the abolition of Comprehensive Area Assessments, a reduction in the amount of money which is ring fenced and the transfer of power over spatial planning from Regional Development Agencies to local authorities. However, swapping control by targetry for control through financial constraint and relentless micro-management will not result in local authorities feeling more empowered and it may undermine the aims of the GPC. The Act does move some powers to local authorities but also directly to citizens and communities so we are now seeing a confusing mixture of ‘old localism’ (devolution of power by central government to local government) and ‘new localism’ (devolution of power by central and local government to citizens and communities).  

What difference will the General Power of Competence make?
The GPC will give local authorities more power to act than they currently have. However, as the experience of the wellbeing power shows, local authorities’ own perceptions of and their confidence in their freedom to act and the way in which the legislation is interpreted are as important as the provisions of the legislation itself. Those perceptions are shaped by past experiences and current relationships between central and local government. Shifting the ‘burden of proof’ in favour of local government’s freedom to act will be widely welcomed, although much depends on how the legislation is interpreted both by local authorities and by the courts. The LAML experience highlighted the risk that local authorities may embark on new ventures under the GPC and then find, when their actions are tested in court, that the power in interpreted narrowly.

What will help and hinder success?
The GPC has major implications for relationship between central and local government. If GPC is perceived by councils as a mechanism which will support flexibility and creativity to increase revenue or deliver better services and outcomes it may improve the relationship between central and local government. However, if it is understood to mean ‘you can do what you like as long as we agree’ then local government may disengage and the use of the power in order to innovate will be limited.

The GPC may also be used by local authorities in their roles as community leaders and place shapers to reduce the costs of public services by harnessing local creativity and energy to tackle, collectively and cooperatively, the endemic problems which fuel demand for and dependency on services. The Total Place pilots gave us

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38 Local government in the United Kingdom Wilson W and Game C, 2006 Palgrave Macmillan.
39 APSE LAML- as assessment of the judgement 2009.
some useful and varied examples of how positive change could be achieved.\textsuperscript{40} However, learning from the pilots and parallel projects also highlighted the barrier which central control of budgets poses to the ability of local partners to tackle complex and expensive social and service issues.\textsuperscript{41}

The financial settlement for 2011/12 has created major challenges for local government which may well impact on their ability to make best use of the GPC. However, at a time when local authority funding is being significantly reduced, the GPC gives an important message about the ability of councils to do what is right locally, including – promoting enterprise, establishing joint vehicles and trading. Income generation is an obvious way of mitigating the impact of the cuts but the restriction on making a profit, notwithstanding the current freedom for councils to generate income from new sources, for example, by charging for MOTs, will cause some problems.

We also need to learn lessons from the past to avoid creating similar circumstances as those which led to lack of effective use of the wellbeing power. Legislation can have both an instrumental and a symbolic importance. Our research found this to be the case with the wellbeing power. There was narrow interpretation of that power, as a legal instrument for achieving local aspirations in the absence of other more specific powers – its instrumental value. And there was a wider, symbolic value. The symbolic value was derived from the way in which the wellbeing power, together with a variety of other contextual factors, contributed to a culture of empowerment and innovation in support of the community leadership role. We must now ask whether the current government is developing, or intends to develop, a culture of empowerment as part of a wider policy and legislative context within which the General Power of Competence will be perceived as having both instrumental and symbolic importance. At the moment, the answer is probably ‘no’.

The Political and Constitutional Reform Committee is currently exploring the case for the codification of relationships between central and local government and consulting on a draft model code. Their recommendations may help to shape a more balanced relationship for the future, which may, in turn, help to support effective use of the GPC.

\textsuperscript{40} Total Place: a whole area approach to public services. HM Treasury 2010.
\textsuperscript{41} Problem, purpose, power, knowledge, time and space: Total Place final research report, Keith Grint Warwick Business School 2010.
Reflections on the Localism Act

Governance arrangements and their implications for Overview and Scrutiny

John Cade

Context
As much trailed and anticipated, the Act provides for all forms of local government that so decide to “return” to a committee system. Until this new millennium the committee system had been the bedrock of how local authorities took their collective decisions.

From the time central government started taking an interest in local government through the Municipal Corporation Act of 1835 and the subsequent Acts of Parliament that created County Councils, District Councils, London Boroughs, Parish Councils and finally Metropolitan Borough Councils, councils in the UK were governed by committees of elected Councillors. There is, therefore, a longstanding track record of many councils successfully working through a committee system.

Thus, the Local Government Act 2000 which effectively ended the committee system was revolutionary. But it did not come out of the blue. For, whilst there were many enthusiastic defenders of the committee system it also had critics who argued that it entrenched departmental interests and was clumsy, time consuming and slow until in 1990 the Audit Commission argued that “we can’t go on meeting like this”. (Somewhat ironic, given now the position of that body.)

The reality now, however, is that many Members, Local Authority Officers and a new generation of the public have no experience of how the committee system worked. They are dependent upon the recollections of others and as with all such reminiscing some might be a bit too nostalgic.

The bill requires that all authorities operate governance arrangements in one of three forms:

- Executive arrangements (either Leader, Cabinet and Scrutiny or Executive Mayor, Cabinet and Scrutiny)
- A Committee system

Another prescribed arrangement as approved by the Secretary of State Governance arrangements can be changed either by a Council resolution alone or by one instigated by a referendum.

In the Bill the process for change was a two-stage one – first the full Council resolution with implementation following the next “appropriate election of Councillors”.

Now, however, in the Act, a “relevant change time” is the first annual meeting of the Local Authority to be held after the resolution to make the change in governance arrangements.
Once a change has been made it will be locked in for a fair period of time. There are two ways to call for a further change. Where the original change had been made through a resolution, another resolution for a change may not be made within the next five years. If the change had been brought about through a referendum another change cannot happen within the next ten years. Another important point to bear in mind is if a local authority has moved its governance arrangements through a referendum, the subsequent change must also be through a referendum.

This does not encourage piloting. It makes it all the more important that a thorough assessment is made before embarking on change. It is very likely that there will be divided opinions amongst Councillors on this matter. Some may be unwilling to see existing decision making powers changed, whilst others currently excluded from the decision making process, albeit from the same political party in control, might see this as an opportunity to readdress the balance. It is also likely that chief executives will have strong views on these matters, typically being more in favour of fewer rather than larger numbers of Members being involved in taking decisions. In these circumstances some external and independent advice and mediation could prove very helpful here.

**Implications**

Having provided an overall context this paper now focuses on the implications for Overview and Scrutiny. Whilst acknowledging that scrutiny undoubtedly has had a chequered history, sometimes being tepid or even non-existent, that there are also plenty of examples, where given the right organisational culture and environment, Overview and Scrutiny has been able to make real and lasting contributions to the improvement agenda of local authorities and partners.

The Act consolidates in one place previous scrutiny legislation and regulations, (although provisions relating to crime and disorder remain in the Police and Justice Act 2006 and health provisions remain in the NHS Act 2006). It replaces the relevant provisions in the 2000 Act in full. This consolidation of the patchwork of legislation on Overview and Scrutiny is undoubtedly helpful for local authorities and their partners making it easier to understand its scope.

At the report stage of the Bill three noteworthy amendments were made to the scrutiny provisions.

- The deletion of the prescription about matters non-scrutiny committee members may refer to a scrutiny committee. Councillors who are not members of scrutiny committees will no longer be restricted to referring only local government matters to scrutiny committees. This means that any members of an authority may refer any matter to scrutiny committees for consideration.

- The removal of the link between the scrutiny committee powers to scrutinise partner authorities and improvement targets in local area agreements. In future partners will be required to have regard to the reports and
recommendations of the overview & scrutiny committees that relate to any of their functions exercised in relation to the committee’s area or residents of that area. This widens the partners’ activities that overview & scrutiny committees can scrutinise.

- The removal of the distinctions in the scrutiny provisions between district councils in county councils’ areas and other partners authorities. This places the scrutiny committees of non-unitary district councils into an equivalent position to those of other authorities.

However, having seemingly set out its stall for the continuing importance of scrutiny, the Act then introduces a demarcation line according to whether a local authority opts for Executive arrangements or Committee arrangements.

If an Authority settles on Executive arrangements these MUST include provision for the appointment of at least one scrutiny committee. The rest of the provisions concerning scrutiny will then apply.

But if an Authority settles on a committee system it MAY have one or more scrutiny committee.

Whilst there is the retention of Health, Community Safety and Flood Risk Management scrutiny powers for all Councils, the implication is that all other aspects of current scrutiny arrangements are discretionary.

Two reflections

Health Scrutiny

The Act contains provision for local authorities to continue to have a role in scrutinising the work of health authorities.
In the consultation stage leading up to the bill there were proposals to merge local authority scrutiny functions into Health and Wellbeing Boards.
A number of bodies like the Centre for Public Scrutiny, the Unitary and County Scrutiny Network as well as INLOGOV pointed out that, given that it was almost certain that senior Executive Members and Officers would be appointed to these Boards, the scope for scrutiny would be limited with the scope for conflict of interests increased. It would also be very difficult for the proverbial person on the Clapham omnibus to see such a Board being independent and impartial. Bluntly, the proposals were flawed.
It was heartening that these representations were listened to and what we now have is the continuing opportunity for scrutiny to contribute to the work of the NHS. It is this focus on the difference between Executive and Scrutiny powers (which Parliament is very clear about in its own arrangements for Select Committees) that must provide a continuing thread through the passage of the Health and Social Care Bill.
Designated Scrutiny Officer

The role of a designated scrutiny officer involves:

- Promoting the role of authorities’ of O&S committee(s)
- Providing support to O&S committee(s)
- Providing support and guidance to “Members, Members of the Executive and Officers of the Authority”

Furthermore in stating that this Officer should not be the Head of Paid Service, Monitoring Officer, or Section 151 Officer and placing it in this category suggests that it is envisaged that this role should be at a senior level.

Our view is whether or not a Council chooses to conduct its affairs through committees; it should properly resource a capacity to undertake scrutiny. For committees, or for that matter cabinets (and cabinets are, in the last resort, just single party committees, dealing with detailed and complex agendas) there is no substitute for the analysis of an issue or service in depth which scrutiny is properly placed to do and where an input from non-executive Members can bring out choices and alternatives that otherwise might never see the light of day.

In Sum

The Government explains its purpose as wanting to increase transparency and also give local authorities the choice in deciding their appropriate governance arrangements. The Act provides for local authorities operating Executive arrangements to have scrutiny committees and designated scrutiny officers. For local authorities that choose to operate a committee system, they will have the flexibility to decide the appropriate arrangements (including having a scrutiny committee) that will enable local people and their elected Members to hold their Councils to account.

At a time when the Government is placing great emphasis on transparency, accountability and local scrutiny, it is important that the narrative it provides around the Act does not give the impression that those authorities who opt for committee governance arrangements can water down the scope for effective local authority Member scrutiny.
Reflections on the Localism Act

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Elected mayors: the serpentine progress of an unloved reform
Chris Game

Act 1 – the ministerial double U-turn and Leicester’s opt-out

The previous version of this chapter (Game, 2011a, pp.53-63), written shortly after the Localism Bill’s publication, opened with a section on ‘The ministerial double U-turn’, which seemed a fair description of how DCLG ministers had flip-flopped on their policy of imposing directly elected mayors on England’s largest provincial cities. This update will deal with several further retractions, volte-faces, changes of heart and mind – the whole, it is suggested, resembling less the normally direct, undeviating locomotion of the Communities Secretary than the serpentine meanderings of a rattlesnake, or indeed a rattled snake. First, though, back to those early Ueys, as Australians would say, and a brief recap of the state of play reached, as it were, at the end of Act 1.

David Cameron, like Tony Blair before him, has long seemed genuinely and personally committed to the idea of directly elected mayors, and for similar reasons. Both apparently see it as a way of recruiting into civic life business entrepreneurs too busy and important to participate, like their Victorian predecessors, in the collective leadership and government of their towns and cities. The plan for requiring mayoral referendums to be held in each of England’s 12 largest cities outside London made its first significant public appearance in the Conservatives’ 2009 localism policy paper, Control Shift (p.21 – emphasis in the original):

“In our biggest cities, there is a strong case for new powers being placed in the hands of a single accountable individual – an elected Mayor who can provide the city with strong leadership ... Where mayors have been chosen, the system has proved generally popular. Even if there is considerable appetite for changing the incumbent, in most cases there is very little appetite for abolishing the post of mayor ... However, the experience of the current situation, whereby communities are required to choose a mayoral system for their area, is that vested interests can act as a powerful blocking force for local change.

“We will legislate to hold a referendum in England’s twelve largest cities on having an elected mayor. In these cities, a mayoral system will be established unless voters reject that change.”

42 Throughout this chapter, unless it would involve altering direct quotations, ‘referendums’ (rather than ‘referenda’) will be used. It is the plural form used in the legislation itself, and also, according to the OED, certainly in the case of mayoral referendums (ballots on a single issue), logically and linguistically preferable.
The Conservative manifesto contained the pledge in slightly less detail (p.76), and it then appeared in the Coalition’s *Programme for Government* (p.12):

“We will create directly elected mayors in the 12 largest English cities, subject to confirmatory referendums and full scrutiny by elected councillors.”

There being no further clarification in the Queen’s Speech summary of the proposed Bill, a semantic debate kicked off. We knew what was meant by ‘full scrutiny’, even if some questioned the likelihood of its being achieved. But ‘subject to confirmatory referendums’ – what was that about? Previously, the referendums came first, and mayoral systems were established only *after* a confirmatory vote. This new formula, though, could be taken to mean that the referendums would be not so much a public consultation as a public verdict on a system that, now in operation, could be argued to be too disruptive and expensive to reverse – much as was claimed, indeed, by pro-Marketeers in the 1975 referendum on Britain’s continued membership of the Common Market. So, was this the Coalition’s way of announcing a U-turn?

Evidently, yes – for at a fringe event at the October 2010 Conservative conference, Local Government Minister, Bob Neill, described how confirmatory referendums would work (*LGC*, 4 October, 2010): “[The question will be] we have set up these things, do you want to stick with them?” Asked if that would mean existing council leaders being made mayors, he replied: “That would seem the easiest way of doing things, yes.” Not much ambiguity there, it seemed, and certainly not to the existing leaders in the designated cities, most of whom, and most of whose parties – with one important exception – were opposed in principle to directly elected mayors, and even more so to their being ‘foisted’ on their councils, as the local media liked to call it.

The exception was Leicester, whose Labour-dominated council took advantage of having delayed until almost the proverbial last minute its consultation and decision on a preferred model of governance, required under the 2007 Local Government and Public Involvement in Health Act. While Coalition ministers were planning the nature and timing of their confirmatory referendums, Leicester’s Labour group voted in November 2010 to change from a Leader and Cabinet Executive to a Mayor and Cabinet and thereby avoid a referendum, and its cost, altogether. It was not an uncontroversial decision, but the necessary special Council meetings were called and the public were consulted – with 344 of those responding preferring the Leader/Cabinet model and 357 an elected Mayor. It was hardly a conclusive response from a potential electorate of over 200,000, but it did at least narrowly support the policy of the Labour administration. The mayoral model was therefore adopted, opening the way for the first mayoral election in a major English provincial city to take place on 5 May 2011.

The overwhelming winner of that election was Sir Peter Soulsby – with 55% of first preference votes in an 11-candidate contest, and a 37,260 majority over the second-placed Conservative. Soulsby had been the Labour MP for Leicester South since 2005, but for 30 years before that a Leicester City councillor, and for 17 of them the Council Leader: very much not, in short, the kind of MP who wonders if becoming an elected mayor might provide an interesting culmination to an otherwise Westminster-based political career.
Soulsby had announced immediately his intention to run, reminding YouTube viewers of his longstanding support for elected mayors in cities like Leicester:

“I think it’s a no-brainer … it’s the people of the city who should have the chance to choose the person who they want to lead their council and their city”.

Well, yes, except that in an overwhelmingly Labour city like Leicester, that’s not quite how it works, because the really key decision is not so much that of the electorate, but of the selectorate – members of the City Labour Party. In fact, Soulsby won that contest almost equally comfortably, very nearly on the first ballot, against a field including both the current and a former Council Leader. Having been selected, he straightaway announced his intention to resign from Parliament and embarked on as high profile and intensive a campaign as he and his considerable body of supporters could organise – but which succeeded in raising the turnout by barely 1% above the 39.4% at the previous council elections in 2007. Enthusiasm for the new form of government was, it seemed, no greater among the voters of Leicester than among the leaders of the other big city councils.

Returning to October 2010, Local Government Minister Bob Neill’s announcement of the intention to go for shadow mayors and confirmatory referendums drew a concerted outcry from the 11 remaining cities. It reinforced the reservation DCLG civil servants were known to have towards the changed method of proceeding, and it looked as if the Government was preparing to back down. A ‘New Clause 20’ was inserted by ministers into the Parliamentary Voting System and Constituencies Bill, Schedule 2 of which would allow the referendum on the Alternative Vote (AV) for the House of Commons to be combined in England with local parish and mayoral elections and local government referendums on 5 May 2011. As far as elected mayors were concerned, the new clause was to prove a complete red herring, but at the time it was taken to suggest a timetable in which referendums would be held in May 2011, followed where relevant by full mayoral elections in May 2012.

This scenario was certainly not contradicted when the Secretary of State made clear that it was apparently the Local Government Minister who had misunderstood the policy, not the rest of us. Answering questions in the Commons, Eric Pickles reproached Diana Johnson, Labour MP for Kingston upon Hull North (HC Debate, 21 October, col. 1117):

“The hon. Lady is mistaking this Government’s position with that of the previous one, who would often impose things on local people. She seems to be suggesting that we would somehow impose mayors on those 12 cities, but of course we will not. That is completely out of the question. The proposals will be subject to referendums. Once we know the views of the people in those 12 cities, we will move on to the election of a mayor if people vote for that.”

The Bill: shadow mayors imposed, new powers unspecified

The double U-turn had been completed. The Localism Bill would implement the policy as understood from David Cameron’s pronouncements and the Conservative manifesto. Nothing had changed – as indeed the Government’s own Directgov website appeared to confirm in its summary of the Bill’s main measures:

“The government proposes to allow 12 English cities to have executive mayors from 2012, subject to referendums and full scrutiny by elected councillors.
Ultimately, it will be for local people in each city to decide whether to have an elected mayor.”

But what’s that ‘ultimately’ doing? It wasn’t there before. Was it significant? Was it simply describing previous practice, with the people voting first on whether they wish their city to be one of those allowed to have an executive mayor? Or was it a chronological ‘ultimately’, whereby the people get the last say and are the last to get a say? It was, of course, the latter. Bob Neill had been right. Imposing mayors was not completely out of the question after all (House of Commons, 2010, para. 126):

“This section [9N] gives the Secretary of State the power by order to provide that on the relevant date a specified local authority shall cease operating its existing form of governance arrangements and start operating a mayor and cabinet executive. It also makes provision for the creation of a ‘shadow’ mayor ... and sets out who the ‘shadow’ mayor will be.”

That is imposition. More to the point was what was completely out of the answer – which proved to be arguably the most important issue of all: the heralded substantial new powers that elected mayors would have at their disposal. The prospects that the Communities Secretary had outlined in his statement to MPs had been mouth-watering (HC Debate, 11Oc	tober, 2010, col. WS14):

“We will put local councils in the driving seat to join up public services, pooling resources across the public sector to tackle social problems. We want elected mayors to trail-blaze such initiatives ... to bring together different devolved budgets and pool them with our national payment-by-results systems. Together, mayors will be able to help design services specifically targeted at the hardest-to-help families. They will be able to add their own budgets - social services, care, housing, health improvement - to the national programmes. This will give local communities the power to change lives, and help save money at the same time.”

There had been plenty of other hints and rumours too, with the October 2010 Local Growth White Paper referring to the economic levers elected mayors could expect to have at their disposal (HM Government, 2010, p.11):

“Mayors, with their strong, visible and accountable local leadership, will play an important role in ensuring that our biggest cities are genuine drivers of economic growth. These mayors will also work closely with neighbouring council leaders on issues such as transport, the strategic approach to planning and wider economic priorities. This may include mayors chairing the board of local enterprise partnerships.”

In the Bill itself, though, there were simply further prospects (House of Commons, 2010, paras. 94-5):

“Section 9HF provides that the Secretary of State may by order make provision to confer a local public service function on the elected mayor of a specified local authority...

“Section 9HG provides for elected mayors to apply to the Secretary of State to confer local public service functions on them.”

There was nothing specific on what such functions might be; only a further reminder that, if you wanted your city to benefit from any conferring of powers, you’d better
vote yes in your mayoral referendum. Nor, despite much external debate and numerous recommendations, were we much wiser nearly a year later, as the Bill completed its passage through Parliament. Evidently, the DCLG had found key Whitehall departments like Education, DWP, and the Home Office at least as reluctant to hand over functions to elected mayors as they were to contribute actively to the community budgets programme. So, faced with having to make a virtue out of necessity, ministers decided that, if they couldn’t come up with a convincing set of local public service functions to confer, they might as well earn themselves a bit of localist credit by at least temporarily handing the responsibility over to us – or, more precisely, to those who live and work in the 12 mayoral cities. In early November 2011, therefore – slightly late in the day, some might think – the DCLG produced a consultation paper, *What can a mayor do for your city?*, setting out this new decentralised approach (paras. 24-28):

> “Whilst we are clear about the potential of mayors to drive a city’s economic growth and prosperity, we are equally clear that we do not have all the answers. We do not presume to know what is best for each of the cities in terms of the specific powers that should be exercised by individual city mayors… We are thus proposing to look to the cities themselves to come forward with their own proposals…

> “It is … in this essentially ‘bottom up’ way that we are proposing that the fundamental question of ‘what can a mayor do for a city’ … be addressed. We want to hear now, particularly from the people who live and work in the cities where mayors are planned, their views on this proposed approach for giving powers to mayors.”

While primarily soliciting views, this consultation paper also imparted details of a new provision in the Bill, although this wasn’t how it was described (para. 21):

> “The Localism Bill, if enacted, will provide the Secretary of State with a power to transfer by Order, subject to Parliamentary approval, local public functions to any local authority outside London.”

It may sound unexceptional – one more ministerial power on top of the dozens of others in this nominally localising Bill – but it was another of those U-turns and potentially one of the most important changes that its parliamentary scrutineers achieved. It will be revisited later in the chapter.

### The Bill’s proposed timetable and ‘mayoral management arrangements’

Immediately following its publication, The Localism Bill introduced a three-stage process that would apply to the twelve big cities with the exception of Leicester:

**Stage 1**: Following Royal Assent – expected autumn 2011 – the Government would make an Order, whereby the council leaders for Birmingham, Bradford, Bristol, Coventry, Leeds, Liverpool, Manchester, Newcastle upon Tyne, Nottingham, Sheffield and Wakefield would become *shadow mayors*, and be given the powers available to existing council mayors.

**Stage 2**: On the same day as the May 2012 local elections, these cities and any other area that calls for a mayor would hold *mayoral referendums*.

**Stage 3**: On the same day as the May 2013 local (mainly county council) elections, the cities and any other areas that voted ‘Yes’ in their referendums would hold
mayoral elections, using the Supplementary Vote system that is used for all existing mayors. Mayors would be elected for four-year terms and, according to the DCLG briefing, would “have the status and power to make their city a success, details of which will be further explained during the course of the parliamentary process” (emphasis added).

Table 1 indicates who the current shadow mayors would be (Sir Peter Soulsby excepted) – if the only changes since December 2010 had been those resulting from the May 2011 local elections. Those changes were extensive enough, with Labour displacing the Liberal Democrats in Newcastle and Sheffield, and turning minority into majority control in Leeds. But the changes in the Bill – concessions might be the more accurate term – were at least as profound, and an effective riposte to any constitutional reformers sceptical of the ability of Parliament, and the Lords in particular, to amend significantly the legislation of a majority Government.

Table 1: The 12 mayoral cities and their leaders, 2011-12

<table>
<thead>
<tr>
<th>City</th>
<th>Control 2011-12</th>
<th>Leader</th>
<th>Leader’s party</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Birmingham</td>
<td>Con/LD</td>
<td>Mike Whitby</td>
<td>Con</td>
<td>Labour control 2012?</td>
</tr>
<tr>
<td>Coventry</td>
<td>Lab</td>
<td>John Mutton</td>
<td>Lab</td>
<td></td>
</tr>
<tr>
<td>Bradford</td>
<td>Lab minority</td>
<td>Ian Greenwood</td>
<td>Lab</td>
<td>Lab within 2 seats of majority</td>
</tr>
<tr>
<td>Bristol</td>
<td>LD minority</td>
<td>Barbara Janke</td>
<td>LD</td>
<td></td>
</tr>
<tr>
<td>Leeds</td>
<td>Lab</td>
<td>Keith Wakefield</td>
<td>Lab</td>
<td>Lab gained majority control 2011</td>
</tr>
<tr>
<td>Leicester</td>
<td>Lab</td>
<td>Sir Peter Soulsby</td>
<td>Lab</td>
<td>Elected mayor 2011</td>
</tr>
<tr>
<td>Liverpool</td>
<td>Lab</td>
<td>Joe Anderson</td>
<td>Lab</td>
<td>(Elected mayor 2012)</td>
</tr>
<tr>
<td>Manchester</td>
<td>Lab</td>
<td>Sir Richard Leese</td>
<td>Lab</td>
<td></td>
</tr>
<tr>
<td>Newcastle</td>
<td>Lab</td>
<td>Nick Forbes</td>
<td>Lab</td>
<td>Lab won control from Lib Dems 2011</td>
</tr>
<tr>
<td>Nottingham</td>
<td>Lab</td>
<td>Jon Collins</td>
<td>Lab</td>
<td></td>
</tr>
<tr>
<td>Sheffield</td>
<td>Lab</td>
<td>Julie Dore</td>
<td>Lab</td>
<td>Lab won control from LD minority 2011</td>
</tr>
<tr>
<td>Wakefield</td>
<td>Lab</td>
<td>Peter Box</td>
<td>Lab</td>
<td></td>
</tr>
</tbody>
</table>

It is hard to overstate either the breadth or depth of the initial opposition to the Government’s mayoral proposals among those most directly affected – namely, the cities’ existing leaders and prospective shadow mayors. They questioned the idea in principle. Far from a direct personal mandate being a necessary condition of effective local leadership, the concentration of power in a single pair of hands – ‘elected dictatorship’ – was inherently undesirable. It was not the most effective form of leadership for our socially, culturally and economically diverse cities; it diminishes the role of other elected members; and it lacks any widespread backing even among the public, who for ten years had had the opportunity to petition for elected mayors, if they wanted them. Irrespective of party, the existing leaders were united in denouncing the mayoral model the Bill was seeking to force on them and their cities (see Game, 2011, pp. 58-9).
Not surprisingly, therefore, they were even more stridently critical of the Bill’s imposition of shadow mayors in Schedule 2, Section 9N (referred to above) and of the required adoption of so-called mayoral management arrangements in Section 9HA: ‘Mayoral management arrangements – mayor to be chief executive officer etc.’ (yes, including the ‘etc.’; students may be ticked off for using it in essays, but for parliamentary draftspersons it’s evidently OK).

There were several possible objections to shadow mayors, but they were most easily articulated as ‘the Birmingham problem’. According to the Bill’s timetable, Birmingham’s existing Conservative leader, Mike Whitby, would have become shadow mayor by order of the Secretary of State, exercising the full range of mayoral powers either until the referendum in May 2012 failed or, if it succeeded, until an elected mayor took office in May 2013. Setting aside any inherent objections, this might have been acceptable, were it not widely anticipated that in the 2012 local elections, on the very same day as the mayoral referendum, Labour would win majority control of the Council. If so, a ‘Yes’ vote in the referendum would mean that, for the ensuing year, the government of the nation’s second city would be in the joint hands of a Conservative (anti-mayorist) minority shadow mayor and a Labour (pro-mayorist) majority leader – quite possibly fighting each other for the mayoralty. Entertaining perhaps, but an odd arrangement to create deliberately by legislation.

The manifest failure to think through the most basic implications of what was bound to be a contentious policy is sad, but might with generosity – and alongside the now confirmed policy of mayors being able to double up as police and crime commissioners – be filed under ‘they knew not what they were doing’. Not so for mayoral management arrangements: here ministers knew exactly what they were doing, and, to be fair, had given plenty of notice of their intentions. The conflation of the political and managerial role at the top of local government had been an enthusiasm of Michael Heseltine’s as Environment Secretary in the early 1990s that was revived by the Conservatives and particularly by Eric Pickles personally.

Within weeks of becoming Communities Secretary, Pickles informed the London Borough of Newham that, with an elected executive mayor, there was no need to appoint a new chief executive, now that the present one was leaving. More generally, he lost no opportunity to air his views that chief executives, if not exactly a waste of space, were seriously overpaid for a role that was less distinctive and more duplicative than they would have their councils believe. In his first speech to the LGA in July 2010, he acquainted delegates with his “new favourite word” – Doppelspitze – the term for the ‘dual leadership’ that municipalities in Länder like North-Rhine Westphalia in formerly British-occupied Northern Germany found they had when, like the rest of Germany, they introduced directly elected mayors in the 1990s (Wollmann, 2005). Having previously operated a council/committee model of local government, with a largely ceremonial Bürgermeister (mayor) and an increasingly powerful, council-elected – and thus already politicised – Stadtdirektor or Gemeindeđirektor (city/council manager), these municipalities now had competing dual or, in Pickles’ translation, identical authorities: a situation resolved by the mayor taking over administrative powers and becoming chief executive officer.
To Pickles the message was clear: the dual structure of executive leader and chief executive is functionally and financially unsustainable. Moreover, it is increasingly recognised as such – as evidenced by the trends for councils to share a chief executive, or, like Wiltshire most recently, to abolish the CE’s post altogether and share the role and functions among the remaining chief officers (Morrison, 2011). Others saw it differently. To them, the council leader or mayor – the two are sometimes not differentiated – and the chief executive are not identical or interchangeable. They have different responsibilities and require significantly different skill sets to enable them to fulfil these responsibilities. The institutionalised role division between the council leader (or mayor) as political head and the chief executive as head of the officer management structure and impartial senior corporate adviser to the authority is one of the traditional and most valuable features of the British system. Blurring or removing that distinction may bring a short-term financial gain, but at the risk of incurring longer-term corporate costs.

Blurring, however, was precisely what the Bill proposed. Between them, Sections 9HA to 9HC in Schedule 2 required that mayoral authorities resulting from this legislation operate mayoral management arrangements, which are that:
the elected mayor is the most senior officer, though not an employee, of the local authority;
the authority’s head of paid service (HPS) reports to the elected mayor;
the mayor should be able to issue reports covering effectively the core duties of the HPS – namely, setting out mayoral plans in respect of:
the manner in which the authority coordinates the discharge of its functions;
the number and grades of staff required for the discharge of these functions;
the organisation of the authority’s staff; and
the appointment and proper management of those staff.

More U-turns
The Bill’s passage through the Lords was always likely to offer its critics the best chance of extracting amendments and concessions from ministers, and so it proved. The House made a total of no fewer than 441 amendments, all of which were accepted in a brief final ‘consideration’ by the Commons on 7 November: testament no doubt to the noble Lords’ collective diligence and sagacity, if hardly to the soundness of the overall legislative process.

Labour spokesman on the Bill was Lord (Jeremy) Beecham, former Leader of Newcastle City Council and Chairman of both the AMA and LGA. Never personally a fan of elected mayors, he indicated at the Second Reading debate the issues which the Opposition considered “the most objectionable” and “unacceptable”, and on which it would concentrate its attack (HL Debate, 7 June, 2011, cols. 152-53):
“Much worse than that proposal [to require mayoral referendums in the designated cities] are two further extraordinary provisions, concerning shadow mayors ... and the delightfully euphemistically termed ‘mayoral management arrangements’. Under new Section 9N in Schedule 2 the Secretary of State may order a shadow mayor to be appointed in an authority due to hold a referendum, who will be the executive leader at the date of the order. He will have the full range of mayoral powers until either the referendum fails or an elected mayor takes office.
"Yet that is not all. In those of the 12 authorities which end up with elected mayors, the positions of mayor and chief executive will have to be combined, while other authorities with a leader and executive model will have to consider this novel, and in my judgment, wholly inappropriate conflation of the political and officer roles. It does not seem appropriate that the political head of a local authority should effectively be the head of paid service. Contrast this with the separation of roles prescribed by the Cadbury rules in the private sector. This is not local democracy but local autocracy. These two proposals are the most objectionable in what is in many respects a deeply flawed Bill. I trust that through today's debate, if it does nothing else, the House will send a clear message to the Government that those proposals are totally unacceptable, and an affront to democracy and good governance."

The message hit home, to a degree that even Lord Beecham may not have anticipated. Two weeks later, during the first day's debate on the Bill's Committee Stage, Baroness (Joan) Hanham, DCLG Under-Secretary of State and herself former Leader of RB Kensington and Chelsea Council, accommodatingly unveiled the latest of the Government's U-turns (HL Debate, 20 June, 2011, col. 1062):

"At Second Reading I indicated that we would listen to noble Lords' concerns about shadow mayors and mayors as chief executives. We are keen to build on the common ground and consensus that the Bill has enjoyed. I should therefore like to say at this stage that when we reach the debate on mayoral provisions, the Government will be pleased to support amendments that have the effect of deleting from the Bill mayoral management arrangements; that is, mayors as chief executives and the concept of shadow mayors."

It was a significant climb down, particularly on an issue identified with the Secretary of State personally, and it was not surprising that Baroness Hanham took the opportunity to emphasise the valid point that:

role until the outcome of this procedure is completed, and until I.... look at the rest of the senior management."

Subsequently, Soulsby made clear that it was not so much the size or indisputable complexity of large councils as organisations that was the key issue in the debate, but the nature of the elected mayoral role (Morrison, 2011):

"The overlap between the job description of a chief executive and what is expected of an elected mayor is very extensive". [Though council leader for 17 years, he says he would not have advocated operating without a chief executive under the leader and cabinet model.] "The system of governance with an elected mayor is so dramatically different, and the expectations on a mayor are so different, and that is why deleting these provisions from the Bill will not prevent councils deciding to do away with the non-statutory post of chief executive should they choose to do so. Indeed, the newly elected mayor of Leicester has announced that he is proposing to do just that."

Sir Peter Soulsby had indeed, in one of his first actions after being elected, announced plans to abolish the position of chief executive – in terms, moreover, that echoed Eric Pickles' views and showed that by no means all those with first-hand senior local government management experience found the idea as unacceptable as
Lord Beecham and his parliamentary colleagues. Yes, it would save money, but there was a role overlap too (BBC News Leicester, 17 May, 2011):

“The chief executive has a very wide range of responsibilities, some at least of which I believe overlap with the newly elected mayor, particularly providing strategic direction. For that reason I've come to the conclusion, partly to save money but also because of this overlap of roles, that the chief executive's role can be removed from the organisation and that's the proposal that I'm making."

“There's no legal requirement for us to have a chief executive, but we do have to have a head of paid service. What I'm intending to do is to ask the deputy chief executive to take on that t makes it possible to do this."

The Core Cities amendment – from mayoral to permitted authorities
No further changes were made to the Bill’s mayoral clauses during the Lords Committee Stage, but other potentially far-reaching amendments – seeking to extend the Bill’s provisions for the Secretary of State to transfer public service functions to mayoral authorities – were tabled, debated at some length, and showed evidence of having at least a measure of cross-party, including ministerial, support. That being the case, they were not moved on the final day in Committee, on the understanding that they would be raised again at Report Stage, possibly following further negotiations and deliberations by ministers.

The amendments were moved by Labour's Lord (Bill) McKenzie, former Leader of Luton BC and until 2010 a DCLG Junior Minister. But, as was readily admitted by all the signatories to what by the Report Stage had become a genuinely cross-party cause, the real authors were the Core Cities Group (CCG) (Game, 2011b). Core Cities is a small self-selected and self-financed network of the local authorities of England’s eight largest city economies outside London – Birmingham, Bristol, Leeds, Liverpool, Manchester, Newcastle, Nottingham and Sheffield. Following a strategy set by the city council leaders – of all three major parties – it works with government and other agencies to influence policy that will improve cities’ economic performance and reduce their dependency.

The CCG amendment, as tabled initially at the Lords Committee Stage (see briefing paper - http://www.corecities.com/what-we-do/publications/core-cities-localism-bill-amendment) was far-reaching in aim, but, seeking cross-party support, calculatedly cautious in its phrasing. The aim was to enable cities – not necessarily mayoral cities – to make the case for greater autonomy over key areas such as transport, housing, skills and regeneration, similar to that enjoyed by the Mayor of London, and to enable ministers to devolve such powers, on a case by case basis, over time, without the need to pass further primary legislation. Powers would only be devolved to cities meeting key ministerially-set ‘competency tests’, such as robust governance arrangements, evidence of a functioning economic area, and organisational capacity to deliver – the implication being that different cities would probably access different powers over different timescales. It was, then, certainly not wholesale devolution or presumed autonomy; rather, a repackaging of that New Labour favourite, earned autonomy, but for a government proclaiming itself committed to presumed autonomy.
As noted above, the amendment was not pushed to a vote at Committee Stage, but over the summer recess the Government, working apparently directly with the Core Cities Group, progressed matters to the point of producing the set of amendments, agreeable to all parties, that were tabled, harmoniously debated, and passed without division at the Report Stage (HL Debate, 15 September, 2011, cols. 557-67), and that came to form a new Chapter 2A in the revised Bill.

The key Amendment 114 provides for the Secretary of State to transfer “a local public function from the public authority whose authority it is to a permitted authority”, provided … that the transfer “would promote economic development or wealth creation, or increase local accountability …” The interpretative Amendment 119 later defines ‘permitted authority’ as an English local authority or a combined authority or economic prosperity board, as established by the 2009 Local Democracy, Economic Development and Construction Act. No mention of mayoral authorities, just permitted authorities – as was noted with unconcealed delight by Lord Beecham:

“As some of your Lordships will be aware, I am not an enthusiast for elected mayors by any means. I am therefore glad that the original restriction [restricting the transfer of functions to mayoral authorities] has been abandoned because it seems to me important that councils with the more conventional model of leader and executive should have this opportunity.”

al pertinent papers, both making the case fThe big mayoral carrot, it would seem, had gone. The transferable functions may not have been spelt out, but it was this deal, for mayoral cities only, that had been the incentive to persuade sceptical voters and even hostile councillors in the designated cities to back the Government’s mayoral project. Now, there was no longer any need, in the interests of your city’s greater autonomy, to opt in the 2012 referendum for an elected mayor; any additional powers going should be available to any city authority, irrespective of the precise form of its political management arrangements.

To phase or not to phase
Actually, as the Bill became an Act, on 15 November 2011, it would not have been possible to write that bit in the last sentence about ‘the 2112 referendum’. Remarkably, there was less certainty about the mayoral referendum/election timetable after the Bill had received Royal Assent than when it had been introduced 11 months earlier. True, the situation was partially clarified shortly thereafter, but the casual and still vague manner in which even that vital news was released suggested that, like New Labour before it, this Government – at least at the very top – was losing some of its enthusiasm for powerful elected mayors before the main show had even started. In fact, the most active and noisiest mayorists during 2011 were probably the Institute for Government, who were also, ironically, the chief instigators of the timetable uncertainty.

The Institute for Government (IfG) is a still newish but already sizable think tank, funded by one of the Sainsbury family’s charitable trusts, which aims to develop the skills of senior public servants and politicians, undertake research into public administration and government, and generally improve their effectiveness. It would not claim the specialist local government knowledge and experience of, say, the LGIU or the New Local Government Network, but the Institute’s Director at the time was Lord (Andrew) Adonis, a minister and special adviser in the last Labour
Government, and an unreserved advocate of elected mayors, certainly in cities or city conurbations. Under his direction, IfG published severor mayors (IfG/Centre for Cities, 2011) and drawing on findings from visits to existing and potential mayoral authorities (Sims, 2011).

In early 2011, Adonis and colleagues visited all but one of the cities due to hold referendums the following year, with a view to advising the Communities Secretary, with his prior agreement, on the Government’s legislative proposals. They met with heads of chambers of commerce, newspaper editors, university vice-chancellors, council leaders, MPs and other stakeholders, many of whom no doubt could see the benefits a high-profile executive mayor might bring to their cities. However, even without actually meeting any ordinary electors, they must also have realised that there was scarcely enough interest in the topic among the general public to achieve even respectable turnouts in referendums, let alone many positive results. This balance between advocacy and anxiety can be clearly sensed in the IfG group’s conclusions and recommendations, which were contained in two papers published in early September, as the Localism Bill entered the final stages of its passage through Parliament (Blatchford and Sims, 2011; Adonis and Sims, 2011).

On additional mayoral functions, the Secretary of State’s proposal to transfer powers to mayors – and, at that stage, only to mayors – was welcomed. But, “to provide voters with greater clarity on the model they are voting for”, for heaven’s sake [that bit’s not a direct quote] put some of these additional powers into the Act, particularly any enabling them to promote economic growth and attract private investment. Specifically, IfG advised, the Bill should be amended to give city mayors planning powers comparable to those of the Mayor of London, and the power to appoint themselves or a nominee to sit on other local governance boards, such as the Integrated Transport Authority and Local Economic Partnership. Also, police and crime commissioners should be required to “have regard to” the mayor’s policing priorities for his or her area when setting priorities for the police authority as a whole.

A second set of recommendations concerned the transition to the mayoral model. “To ensure a smooth transition ... and to help inform voter choices” in the referendums [and to prevent the embarrassment of most, if not all, of them producing ‘No’ votes], IfG proposed that the referendums be staged over two years. The first wave, in May 2012, should be limited to just Birmingham, Leeds and Bristol, with the remainder put back to May 2013. The three first-wave cities were those in which IfG felt “the debate on mayors is already most advanced and where the example of London has made most impact” (Adonis and Sims, p.7), with Birmingham and Leeds also happening to be the two largest cities, and Bristol having “the weakest governance”, as measured by novel indicator of the number of changes of leader in the past decade. For any of these three voting ‘Yes’ in May 2012, the ensuing mayoral elections should, IfG recommended, be held earlier than planned, in September 2012, thereby enabling the second-wave cities to observe the mayoral model in action before staging their own referendums.

Finally, there were some proposals aimed at securing mayoral integration with existing governance. “In order to ensure that mayors are fully integrated within council governance and appropriately scrutinised” (ibid., p.4), IfG recommended that
the Localism Bill be amended to: (a) enable mayors to appoint up to three members of their cabinet from outside the council; (b) require mayoral authorities to have dedicated scrutiny support officers; and (c) stipulate that mayoral authorities switch from electing their councillors by thirds — “the system ... designed to bolster accountability” – to the less “wasteful” system of whole council elections every four years, at the same time as the mayoral election (ibid., p.15).

Assiduous amenders as the Lords were on this Bill, there was no way some of these proposals were going to make it on to the statute book at this relatively late stage. In the event, none of them did — no additional powers specified, no non-councillor cabinet members, no statutory scrutiny support officers — but at the time the phasing recommendations in particular were taken seriously, both by the potentially affected authorities and, it seemed, by the DCLG and the Communities Secretary himself.

In mid-September, Eric Pickles was reported in the *Yorkshire Post*: “I think it’s fair to say we’re thinking about whether we should phase or not.” A few weeks later the *Coventry Telegraph* informed its readers that “a referendum in Coventry to decide if an elected mayor should lead the council could be delayed for another year – due to lack of public interest.” The *Liverpool Daily Post* had a different angle: “Ministers are poised to delay Liverpool’s referendum on an elected mayor by 12 months – paving the way for the role to become Merseyside-wide.” This idea seemed to make a certain political sense, with city region or city-conurbation mayors being favoured not only by IfG — for Manchester as well as Liverpool — but also in a timely report by Lord Heseltine and former Tesco chief executive, Sir Terry Leahy, arguing for greater devolution to English cities in general and, at least in Liverpool’s case, to the much wider city region.

However, throughout the two months leading up to Royal Assent in mid-November, there was not even a tactical leak that the Secretary of State had completed his thinking and actually come to a decision on phasing, one way or the other. When we did finally learn that phasing was off, and that all referendums would take place on 3 May 2012, it came first in the form of interviews granted to a few selected local newspapers by the Minister for Decentralisation and Cities, Greg Clark – more a news seepage than an announcement. For anything official we had to wait until 5 December, when draft orders for the referendums were laid in Parliament. As for the date of any ensuing mayoral elections, it was not until the end of January that a DCLG news release confirmed that these would be on 15 November 2012, the same day as the election of Police and Crime Commissioners in the 41 police force areas outside London. By which time, Liverpool’s Labour-controlled council was on the point of deciding that its city’s voters would be deprived – or saved the cost – of a referendum, and instead move straight to a mayoral election on 3 May.

This final ministerial decision that any and all city mayors would be in post by the end of the year constituted – depending on how you count the phasing wobble – roughly the ninth U-turn or serpentine slither in what might be termed the mayoral transitional mechanics since the policy’s appearance in the Conservative manifesto. With Governmental leadership and commitment like this, is it any wonder that voters seemed more than a touch apathetic – and that even in Birmingham, with less than
two months of one of the livelier referendum campaigns still to go, a Populus opinion poll was showing 59% of voters completely unaware of the whole thing?
Reflections on the Localism Act

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Standards and codes of conduct

Philip Whiteman

Introduction

Standards in public life have rarely been off the agenda especially at a national level. In Parliament, the political establishment has sought to halt errant behaviours of parliamentarians with varying degrees of success, but overall the system has been obvious and transparent. A politician wishing to abolish the system would probably rue the day in terms of likely public backlash and drop in confidence. Local government has had a longer history of establishing expected standards but has proved a very difficult nut to crack. Councils first became subject to standards through the creation of a voluntary code of conduct for members. This incrementally grew through the following decades to become an unwieldy beast often referred to by the pejorative term, 'standards regime'. Unfortunately, such a term has failed to reflect the requirement for maintaining standards in public life at the local level and has provided a convenient tool for those who seek a more lassez-faire approach to councillor conduct. It was the latter approach that recently landed the Coalition in hot water when it effectively decided to dismantle any effective means of maintaining standards of public life at the local level. Nonetheless, they changed course during the last weeks of the passage of the Localism Bill, when peers in the House of Lords successfully promoted a number of amendments supporting a standards system in local government. Many of these proposals will be open to question on their effectiveness or appropriateness.

A background to the codes of conduct

The National Code of Local Government was first introduced in 1975 on a non statutory basis but it then became a mandatory requirement in 1989\textsuperscript{43}. On a wider scale, the parliamentary sleaze and scandals of the 1990s rapidly produced a greater public awareness of the requirements of good moral and ethical standards of politicians in public life. The resulting Nolan Committee initially focussed upon the conduct of national politicians but their attention soon switched to local authorities. Following on from Nolan, the New Labour Government acted quickly (perhaps too quickly) to reinforce local government standards through the introduction of a new ethical framework that went far beyond the national codes of 1975 and 1989. Part III of the Local Government Act 2000 was arguably the most extensive framework for

\textsuperscript{43} The Local Government and Housing Act 1989 s.31 gave statutory status to the National Code of Local Government Conduct
standards of conduct for any group of public office holders in the UK\textsuperscript{44}. As well as establishing a statutory requirement for independently chaired local standards committees to oversee the framework, it also introduced a strategic regulator – the Standards Board for England and a quasi-judicial organisation for sanctioning serious infringements – the Adjudication Panel (later to be merged with equivalent tribunal bodies into the ‘First Tribunal’).

There has been a long history of pockets of corruption and poor practice, sometimes considered endemic, within local government. However, given the number of elected members, problems have not been as widespread as perhaps might have been expected, particularly in recent decades\textsuperscript{45}. Codes of conduct have been a significant feature in attempting to deal with improper behaviour. Whilst in recent years local government may not have suffered repeats of corruption such as the Poulson scandal of the 1970s, where the investigations unmasked serious instances of bribery and corruption, the risk of councillor misconduct certainly still remains. The codes of conduct, whether in the pre or post 2000 form, have remained a backbone for dealing with errant behaviour. It is easy to cite high profile cases from recent history including the notorious case of Lady Porter, who as Leader of Westminster City Council, was found to have been gerrymandering the sale of council houses to bolster support for the ruling Conservative vote. There was also the so-called ‘Donnygate Scandal’ of the 1990s which involved corrupt behaviour amongst Doncaster councillors. Codes of conduct have made an important contribution to the restoration of acceptable councillor behaviour where authorities had suffered very poor and disruptive member-officer relations – most notably in Doncaster, Walsall and Bromsgrove councils. While proven cases of member misconduct are less easily recalled with few comparatively reaching the national headlines, the actual number has not been insignificant - during 2008/9, for example, some 41% (66 cases) of the complaints made to standards committees for local investigation resulted in a judgement that a councillor had indeed been in breach of the code\textsuperscript{46}.

The retention of a local standards framework is an important inclusion within the Localism Act and should be welcomed. However, the inclusion of parish and town councils into this process remains questionable. Bearing in mind the limited scale of local or ‘third tier’ council activities, the costs and benefits of a standards regime at that level are to be questioned. This point of view was strongly made in a paper published by Michael Macauley and Alan Lawton in 2006, who commented that, ‘the first, and perhaps most contentious problem, is one of scope rather than content.’\textsuperscript{47} They critically challenged whether the application of the Code of Conduct was entirely appropriate for such small units of local government. Typically, many of the complaints made against parish and town councillors were regarded as trivial and, at their very worst, vexatious. Whilst the abolition of the Standards Board may remove


\textsuperscript{45} Chandler,J. 2009. Local Government Today. 4\textsuperscript{th} Ed. Manchester University Press.


the ‘parish problem’, the work load generated by handling of complaints against parish councillors may be disproportionate to their public influence and responsibility as well as unwieldy, expensive and unnecessary.

The Localism Act – a new code

The Localism Act places a duty on local authorities to have a code of conduct. In summary:

i. The statutory model code is abolished. However, all relevant local authorities must adopt a code of conduct for their members. Although the provisions of local codes are not specified, any local code must when viewed as a whole, be consistent with the Nolan Principles of standards in public life.

ii. The code must include appropriate provision with regard to the registration of pecuniary and non-pecuniary interests. A councillor will be committing a crime if, without reasonable excuse, they fail to declare or register a pecuniary interest, or if they knowingly or recklessly provide false or misleading information about pecuniary interest. The Police and CPS will therefore become responsible for handling serious abuses.

iii. Local codes will be binding upon elected and co-opted members of relevant authorities.

The original Localism Bill outlined the abolition of the so called ‘standards regime’, a term coined by the Government. Such a move, if it had been successful, would have been retrograde in terms of promoting high standards in the conduct of local politicians. However, the code amongst a number of other amendments, returned to statute following amendments made by the House of Lords. When moving one of the amendments to the House of Lords, Lord Bichard saliently observed that:

“At a time when the public’s trust in politicians is at a low ebb, it is important that all public bodies have explicit standards of conduct, which make transparent how they will carry out their business and provide benchmarks against which they can be held to account.48”

The move to secure a standards framework has removed the risk of local authorities deciding to opt out of all forms of monitoring standards. Anecdotal evidence gained by INLOGOV, suggests that some authorities were actively considering the option to abandon their codes of conduct and standards committees. This would have been a backward move in terms of the public’s confidence in their elected politicians.

A fascinating feature of the new Act is the inclusion for the first time, of the Nolan Principles of Standards in Public Life, something not previously seen in local government legislation. From April, all local authorities, including parish councils will have to enshrine the following Nolan Principles into their codes, which are:

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(a) selflessness;
(b) integrity;
(c) objectivity;
(d) accountability;
(e) openness;
(f) honesty;
(g) leadership.

These seven principles are welcome but not without their own problems as some of the requirements set out in previous legislation have been dropped in their place. Duties to ‘uphold the law’ and ‘stewardship’ are not included in the Act. There is no rational explanation as to why these features are no longer extant but it does raise rhetorical questions including; are councillors no longer required to act lawfully in their decisions and behaviours and are they no longer stewards? These questions could be considered ridiculous but bearing in mind the problems caused by poor officer-member relations, discrimination or offensiveness, they are significant. There will be no effective means of handling these problems directly through the code unless explicitly incorporated into the locally determined code.

Standards Committees and Independents

The Localism Act makes some significant changes to the provision of standards committees and the handling of cases. In summary:

(a) principal authorities will be required have a system of dealing with standards within the authority. In practice, that is most likely to be through the use of a standards committee.
(b) there will no longer be a requirement for an independent person to be co-opted to be a member of, or to chair the standard committee,
(c) co-opted members will no longer have a right to vote,

The original Localism Bill would have rendered standards committees toothless tigers. Instead, their important role in developing the code for consideration and dealing with cases is likely to remain but subject to the new role of an independent person.

The ‘independent person’ is an interesting feature and raises several significant questions about the role of co-opted members on the standards committee. As it stands, the Act states that the authority must seek the views from the independent person where an allegation has occurred and it has been decided to investigate (s28(7)). However, the independent person must not be a member or an officer for that authority or any other local relevant authority for at least a period of five years from the becoming that independent person. The motivation behind the independent person is clear but it does raise the assumption that existing co-opted independent members are politically motivated in their actions. Baroness Hanham suggested in a statement to the House of Lords:

“…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 of the authority, he or she can have access to the independent person for a view\textsuperscript{49}.

So, the coupling of a five year period of grace, the pressure on members of a council dealing with a case and a bar on independent members from chairing or voting at committees, will doubtlessly reduce the significance of their role. The bar will also have significant consequences, for it will result in authorities losing the benefit of the input of suitably experienced and independent minded people from the process.

In terms of hearing cases, whilst the future of standards committees is likely to be assured in many cases – especially for the purpose of developing and overseeing their locally determined codes - their role in sanctioning errant councillors is far from clear. Baroness Hanham raised a further interesting prospect where councils may seek a sanction greater than in minor cases where a letter or training would be the required remedy:

“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.”\textsuperscript{50}

This proposal is paradoxical and runs counter to the view that dealing with complaints against councillors should be de-politicised. Rather than achieve that objective, the possibility of full council debating a case is more likely to generate politicised complaints associated with partisanship rather than circumvent the problem.

**The Parish Difficulty**

The Government had previously been disposed towards abolishing the standards regime for towns and parishes when the Localism Bill was first introduced. However, they soon realised that leaving local councils to manage their own misconduct and complaints would be unworkable. Yet more amendments to the Bill saw district and unitary councils assuming responsibility for such complaints.

Retaining parish and town councils within the new standards regime may be a move that Government come to regret, for it does not actually address the cause of the original problem that was criticised in the past, as discussed in Background to the Code, (above). Government could have simply removed local councils entirely from the equation. Bearing in mind the limited scale of local or ‘third tier’ council activities, the costs and benefits of a standards regime at that level are open to question. Rather curiously, whilst unitary and district councils will be charged with overseeing

\textsuperscript{49} Hansard HL Deb. 31\textsuperscript{st} October. C 1028 .

\textsuperscript{50} ibid
implementation at the local council level, the Act fails to equip districts and unitaries with any form of sanction over local councils nor do the latter have to pay any due regard to the former’s opinions.

**Conclusion**

The standards regime over the last decade has been problematic and it is quite understandable why the coalition government amongst others were so critical although their initial reaction lacked forethought. It would have been irresponsible to abolish all forms of dealing with poor standards of councillor conduct. The proposals outlined within the Act will ensure that standards will remain at the forefront of decision makers minds and that sanctions will occur where councillors over step the mark in terms of ethical or legal behaviour. However, the proposals are from ideal. Many of the amendments and government’s recommitment to the standards were rushed through the legislature at the eleventh hour. The amendments were well meaning but not thoroughly considered in terms of what will happen at the point of implementation. It is doubtful that the new Localism Act will be the last piece of legislation to deal with the standards of conduct in local government. We can probably expect a return of anxieties about standards in forthcoming years.
Reflections on the Localism Act

The Localism Act: Community Empowerment

Andrew Coulson

The provisions of the Localism Act can, in broad terms, be divided into two groups: those which will affect the way councils operate, and those which are about giving enhanced powers to neighbourhood or community organisations. The first group includes the general power of competence, continuation of standards committees, clarified rules on declarations of interest, directly elected mayors, scrutiny, and above all the opportunity to return to the committee system or other ways in which a council might be governed, including hybrids. To this can be added numerous minor clarifications, including the prohibition of bi-weekly bin collections – though most would argue that this is the antithesis of localism.

This chapter is about the second group of changes in the Localism Act, which will give powers to communities, including powers to bid to take over local services (the Community Right to Challenge), to buy assets of importance to local communities (the Community Right to Bid) or to construct buildings that will be of community benefit. Above all, town or parish councils, or where there are no parishes, Neighbourhood Forums created by local residents, will be able to influence the processes of land use planning, and in some circumstances to grant planning permissions.

Civil parishes vary hugely. According to the National Association of Local Councils, there are approximately 8,500 town or parish councils in England. No-one knows precisely how many, because many are defunct or too small to function effectively. Some have parish meetings, where any residents can attend, but no elections. Most parishes with fewer than 1000 residents, and many with fewer than 2000, find it hard to do more than employ a part-time clerk and to maintain an office that opens for a few hours each week, to maintain a village hall and to comment on planning applications as they arise. At the other extreme are the town councils, many of which were Urban District Councils before 1974; some of these have histories continuous since the middle ages (and associated mayors, robes, regalia and historic rooms). 680 “quality parishes” have gone through an accreditation process which requires them to have elections, audited accounts, meetings at least six times a year, a qualified clerk, a website or regular newsletter and to be involved in community activity, e.g. in the production of parish or village plans. These are the parishes which will be most equipped to make use of the new powers available under the Act.
Large parts of the country, including most of London and the large conurbations, and significant areas elsewhere, are not divided into civil parishes. Here new powers will be available to neighbourhood forums. The original Bill would have allowed a group as small as three residents to create a Forum. It was radically revised in the House of Lords, and a Neighbourhood Forum is now required to have at least 21 local residents as members. Membership will also be open to businesses which operate locally and to those who work in them and to elected councillors who represent any part of their area. They will be recognised by their local district council, after a period of consultation in which any other groups interested in registering a neighbourhood forum in all or part of the area will have a chance to make counter-proposals (those registered at a particular dwelling must be represented by just one Forum). These rules will encourage existing neighbourhood forums, residents’ associations or groups of residents’ associations, or local conservation societies to apply.

Thus the capacity to respond to the new opportunities will be patchy. Towns or parishes with quality status will have few problems, as will non-parished areas with active neighbourhood organisations. But in many places the capacity will be limited, or non-existent, and areas between existing neighbourhood forums, or where there are very weak parishes, will miss out. Smaller parishes will have incentives to merge into larger ones. District councils with areas that are not as yet parished might be wise to propose boundaries which they would be minded to accept, in advance of specific proposals, and thereby ensure that, eventually, all of their areas are covered. In the even longer term, these neighbourhood forums might use legislation passed in 2003 to create new parishes - in effect, to convert themselves into parish councils.

The most significant new power is the ability to influence the planning process. Parishes and neighbourhood forums will be able to create Neighbourhood Development Plans. If these are judged as “sound” by an independent inspector, which means that they must meet basic requirements such as not running counter to national policies or to policies in local plans approved for district councils, and then passed by a local referendum (or two referenda if the area includes a business district, the second just for the businesses in the area) then the district councils will be required to approved them. Where a plan has impact on nearby areas, the district council may require an extended boundary for the referendum.

Once approved by the district council, their provisions will become “material considerations” in the determination of planning applications. Most quality parishes already have parish plans (strictly this is a non-mandatory requirement for recognition as a quality parish, but in practice most have them). So do some active neighbourhood forums, while others have made inputs into district council local plans and often have campaigning objectives for local sites or streetscenes. Most of these, and the work that has already gone into them, will be convertible into neighbourhood development plans. For those which need more work, a small cottage industry has grown up, using approaches such as “Planning for Real” to ascertain the desires and aspirations of local residents, and the feasibility of those desires. The new legislation will require district councils to provide technical advice to parish councils or neighbourhood forums that want to create plans, but not financial support.
It will also be possible for parish councils or neighbourhood forums to apply for Neighbourhood Development Orders that will permit them to grant planning permissions for some categories of development, likely to be relatively uncontentious (similar to present powers for “permitted development” – planning permissions for un-contentious cases are already delegated to parish councils by some districts, e.g. South Somerset). The procedures to be followed are similar to those for Neighbourhood Plans, involving a referendum or referenda, and, as with Neighbourhood Plans, district councils will be required to include them in their Local Planning Frameworks.

Many neighbourhood plans are likely to allocate minimal areas of land for new housing. If a developer subsequently applies to build on land not allocated for housing in the neighbourhood plan, the district council, in deciding the application, or a planning inspector (if the application is refused and the developer appeals) will put the neighbourhood plan alongside other material considerations, one of which may well be the need for more housing in the area. So whether local groups will achieve some of their most dearly held objectives will depend on how the planning inspectors balance these different material considerations. There could also be conflicts where local plans do not include sites allocated for supermarkets, but supermarket companies think that there is a demand for their services. Similar considerations will apply to proposals for various “non-conforming uses” which villages and suburbs are most unlikely to want – scrapyards, incinerators, waste transfer stations, travellers sites, bail hostels, children’s homes, etc – but which have to be located somewhere (but sometimes in places where local communities are least organised to object).

Much will depend on the final drafting of the National Planning Policy Framework, which, highly condensed, will replace the detailed guidance hitherto laid out in the 30 or so Planning Policy Statements on a range of the key issues involving land use, and a variety of other guidance notes. The draft of the NPPF includes requirements that plans and local policies support “sustainable development”, and the forward by the Minister emphasises that “development means growth”. As the text of the draft puts it: “Every effort should be made to identify and meet the housing, business, and other development needs of an area, and respond positively to wider opportunities for growth.” It goes on to require that “Decision-takers at every level should assume that the default answer to development proposals is ‘yes’, except where this would compromise the key sustainable development principles set out in this Framework” (although there are elements of this kind of pressure already in the planning system). How such decentralised planning will influence some of the key choices which will affect carbon use and transport modes is far from clear (e.g. the desirability of siting developments near important public transport nodes such as railway stations, away from flood plains, or in locations very difficult to service by bus). Many developers may be expected to propose schemes that are heavily dependent on travel by car. The commitment to encourage employment close to where people live would favour industrial parks or estates, warehouse developments, and access roads which may also not be desired by local residents.
Infrastructure projects of national importance will be a fast-tracked under a centralised regime, not likely to take over much cognisance of local objections. This will also take preference over Neighbourhood Plans. Neighbourhood Plans are likely to provide support for high quality architecture and materials, playing fields, allotments, traffic calming, and perhaps restrictions on building heights and preservation of views, and in practice all these could prove difficult to sustain. If local residents and local businesses go to the trouble of preparing plans, and subsequently find that when push comes to shove they have very limited influence, they are going to be extremely unhappy and disillusioned with the process.

The Localism Act will require local authorities to maintain lists of assets which are of value in the community – village halls, leisure centres, libraries, but also pubs, post offices, sports fields (it will be interesting to see if schools are included, as logically they should be). If these assets are put up for sale, the local authority must be notified, and the community given a chance to raise money to purchase them. The detailed mechanism will be set out in regulations. Local groups will also be able to start building “new homes, businesses, shops, playgrounds or meeting halls” without the need for planning permission, but again only after this is approved in a referendum (has anyone considered the costs of all these referenda? Surely a hurdle unless they can all be taken together on the same day as local council elections). The proposal gives no indication as to how these groups will find the resources to buy the necessary land, but the ability of a local community to assemble to purchase significant assets must be very limited. In most cases it will probably be cheaper, and simpler, to get a traditional planning permission than to conduct a referendum. The provisions for permitting local community organisations to bid for services were modified during the passing of the legislation. Powers to take initiative and force a council to run a procurement process will be open not just to parish councils or neighbourhood forums, but to local cooperatives, amenity groups, or groups of local authority workers. However, these powers will not apply if the council has subcontracted the relevant service to an external supplier, other than in the time period when a contract is up for renewal (so not much joy for a village that wants to dispose of its own refuse if this is being done by a private provider under a 25 year Private Finance Initiative (PFI) contract). In practice, most district and many county councils have been well disposed to parish councils that wanted to take over basic services, such as cutting the grass on a council-owned village green, or maintaining the local toilets, and this type of local negotiated agreement may often by more productive than the rather pugnacious provisions of the Act.

There is thus a dichotomy running through the legislation, between the desire to release local initiative and get local buy-in and ownership of proposals and national considerations like the need to find the land for more house-building, to get the economies of scale which come from large projects and shared services, and the need for national standards. The elephant in the room is the reduction in local authority budgets, which will mean that there is even less money in available to provide basic services and very little at all to take discretionary initiatives, however entrepreneurial and imaginative they are. There is a certain naivety in many of the proposals, along the lines that if there is sufficient talking everyone in an area will agree over what needs to be built (the African village theory of land use planning),
that money can be found for desirable developments, that developers are generally benign and will not have to be forced into maintaining high standards of access roads, house sizes, energy conservation, or the designs and finishes of buildings. There are times when all these apply. But if there are no sanctions when they do not apply, we may expect many decisions which in the long run all concerned will come to regret.

There is also a very distorted view of the planning process, which seems to be based on the assumption that all developers are paragons of virtue, committed to job creation and good quality design and all planning regimes negative and reactionary, dedicated to stopping development. The reality is often very different. Not only do developers have resources to promote their ideas, and sometimes to offer concessions in return for development, but they also have the advantage of holding the initiative – they make proposals and everyone else can only react - and in such circumstances it is very hard to produce viable alternatives. Many developers are cowboys, who will cut any corners they can to get a development through, such as registering a planning application with incomplete or very inadequate documentation, resisting requirements clearly stated in local policies (such as requirements to include a proportion of social and affordable housing in their developments), make the smallest contribution to the Community Infrastructure Levy (CIL), and use the cheapest materials. Councils and council officers, need to have the courage and the resources, to turn down unsatisfactory developments, especially those with poor quality design and then, if necessary, to fight the developers through the appeals process, on behalf of their communities. It is also very misleading to think that most councils do not want to create employment; indeed for most councillors unemployment, and especially youth unemployment, is one of their foremost local issues. That does not mean that they should not try and negotiate to minimise the impact, and maximise the quality, of whatever employment-creating development is under consideration (and to have a robust view of employment creation, considering jobs likely to be lost consequent on a development such as a supermarket, as well as jobs the developer claims will be created).

Taken as a whole, the community empowerment parts of the Act are therefore a curate’s egg - good in parts. They will encourage the creation of new Neighbourhood Forums and perhaps new parishes and parish councils, and challenge them to do more in their communities. It may well produce some creative thinking about land use, and initiatives that can be taken in local areas. But it will not be a revolution in terms of service delivery. Most planning will continue much it would have done otherwise. Parishes who want to take over services, or buildings, may find existing arrangements easier to work than the new ones. Self-build housing is a good aspiration, but there is nothing here to deal with the present constraint on it, the high price of building land. And above all it is new legislation that will favour the already organised areas, where community leaders have plenty of time to put into community initiatives. The hard-pressed areas, where the needs are greatest, will not find it easy to meet the demands of the legislation and thereby benefit from the opportunities it offers.
Reflections on the Localism Act

The Localism Act:
The implications for local economic development and Local Enterprise Partnerships

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Introduction

There is nothing much more or less in the provisions for local economic development and Local Enterprise Partnerships (LEPs) in the Localism Act than there was in the Localism Bill in regard to local economic development and LEPs51. The LEPs were afforded no statutory role in the Bill; there is no statutory role given to the LEPs by the Act. Nevertheless, the Act does touch on economic development.

The Localism Act received Royal Assent on 15 November 2011. Much of the debate in the press, other publications and in the House52 on the Bill was about planning matters. There was, however, some debate on economic development and there are a number of matters that are worth commenting on about the local economic development agenda and Local Enterprise Partnerships.

The first part of this chapter looks at the provisions in the Act in relation to economic development. It then goes on to highlight some questions with regard to the localism agenda in relation to local economic development and Local Enterprise Partnerships. The chapter goes on to explore the extent to which LEPs are localist and whether LEPs will be sufficiently empowered to secure private sector led growth. Central Government appears to remain in control, in particular over funding. While LEPs and local authorities may be empowered to do what is necessary, this is on the basis of a constrained freedom to secure outcomes. Nonetheless, there is some evidence that LEPs are able to undertake innovative actions and that the future may be bright for LEPs.

Localism Act: Provisions for Local Economic Development

One thing the Localism Act does is finally to bring the axe down on regional government. The whole regional tier concerned with economic development has gone: Regional Development Agencies (RDAs), Government Offices for the

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Regions, the Regional Observatories, the Regional Ministers, Regional Select Committees and the Leaders’ Boards. Regional Statistics are disappearing, to be replaced by statistics for LEP localities. The loss of the regional tier of administration caused some consternation and bewilderment to the European Commission. Given that the Structural Funds are disbursed and administered by the regional tier in Member States, it posed the question - at what level would the Structural Funds be administered in this country? Lengthy negotiations would have been required before another, lower, level of government, could be considered as a proper authority to be able to act as managing agent for the funds. At first, it seemed that there would be a Single Programme for England and that it would be managed by the Department of Business Innovation and Skills. However, that scenario has been averted by the retention of ‘regional teams’, reporting to the Department of Communities and Local Government.

No Statutory Role for LEPs

LEPs have taken up the economic development baton. LEPs are “joint local authority-business bodies brought forward by local authorities themselves to promote local economic development”. There was nothing in the Bill about the empowerment of LEPs and there is nothing in the Act about them. The Decentralisation Minister, Greg Clark, had said that LEPs were not to be defined in legislation. Unlike the RDAs, which were given a statutory role and tasked to carry out certain functions, LEPs do not have a statutory role; they are asked to do what is necessary to secure economic prosperity. The Act enshrines this principle in the General Power of Competence which is afforded to local authorities. Instead of being able to act only where the law says they can, at risk of being ultra vires, local authorities are now free to do anything - provided they do not break other laws. A local authority is to do anything “that individuals generally may do”, including “things unlike anything that other public bodies do.”

However, while the Act does not give a statutory role to LEPs, a new clause in the Act (Section 15) gives the Secretary of State power to transfer local public functions to permitted authorities and, in particular, those that (a) promote economic development or wealth creation or (b) increase local accountability in relation to each local public function transferred by the order. The first is a clear function of the LEPs and it would appear to potentially afford them some statutory role in the sense that if powers were transferred to LEPs, they would be executing some statutory public function; albeit it one not laid down in the Act. There powers would be those that are transferred. This is different from the situation for the RDAs. The Local Government

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54. ibid
55. HM Government (2010b) Local growth: Realising every place’s potential [Cm 7961], London: The Stationary Office
https://www.eversheds.com/uk/home/articles/index1.page?ArticleID=templatedata%5CEversheds%5Carticles%5Cdata%5Cen%5CLocal_government%5CLG_briefing_note_82_211211 [Date accessed 17/01/2012]
Democracy, Economic Development and Construction Act 2009 (passed by the previous Labour Government) set out clear roles and functions for the RDAs. The new clause was ‘inspired by the Core Cities Group’. Led by the leaders of Birmingham, Bristol, Leeds, Liverpool, Manchester, Newcastle, Nottingham and Sheffield councils, this group describes itself as aiming in partnership ‘to enable each City to enhance their economic performance and make them better places to live, work, visit and do business’. The core cities want to exploit the general power of competence and this to be given concrete expression in the transfer of local public functions. The provision also may have some implications for LEPs. Some have been set up as private companies, but with very limited staff. They might formally take on local public functions, were LEPs to be classed as a permitted authority. Whether a LEP would constitute a permitted authority does not seem to have been raised during debates on the Bill. Legal opinion is uncertain whether a LEP can be a permitted authority and whether government can transfer powers to private companies. The discussion has focused on whether local authorities can form companies. However, given most LEPs will be serviced by local authorities in their locality this would seem rather to safeguard local authorities’ key role in economic development.

Economic Prosperity Boards?
The Government seems keen to promote joint working among Councils, as indicated by the duty to cooperate, set out in the Act. However, it could be argued this is more to save costs than secure synergy. Indeed, as the Plain English Guide to the Act points out, the general power gives councils more freedom to “work together with others in new ways to drive down costs” (our emphasis). Moreover, it says it will give them “increased confidence to do creative, innovative things to meet local people’s needs”. This is tied in with thinking underpinning the ‘Total Place’ pilots under the last government and the Community Budgets pilots under the current government. Greater public service cohesion is to be encouraged by rationalising and streamlining elements of public sector funding in a particular area. In addition, the Act gives ‘the Secretary of State the power to remove unnecessary restrictions and limitations’ to Councils’ actions.

Perhaps not surprisingly, among the ‘permitted authorities’ mentioned in the Act that the Government wants to work together are ‘combined authorities’ and the new Economic Prosperity Boards. The Act enables Local Economic Prosperity Boards by making additions to the Local Democracy, Economic Development and Construction Act 2009, to give general powers to the Boards and the combined authorities. Economic Prosperity Boards however are not new and are, as described in the Consultation Document published by the Labour Government when it was still in power in 2010, “designed for groups of relevant authorities that wish to work closely

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60 Eversheds (2011) op cit
62 Dobson (2011) op cit
together to deliver improvements in economic development, regeneration”. In relation to combined authorities, transport across a sub-region is added to the list. “Economic Prosperity Boards are intended to support improved strategic decision making on economic issues, and better coordination and delivery of economic development interventions by local authorities”. The addition of EPBs to the legislation is puzzling as the question arises: where does this leave the LEPs; it is not clear. Do Economic Prosperity Boards supersede LEPs? Or do they sit alongside LEPs. As noted above, authorities may well be expected to work together in line with the ‘Total Place’ and ‘Community Budgets’ concepts and they may wish to work together as a combined authority in any case, but it is not clear how this relates to the position of the LEP. It is possible that a group of local authorities will chose to work together and will serve a LEP, such as they do in the Greater Birmingham and Solihull LEP and the Black Country LEP. In the latter case, local authorities in the area had already formed the Black Country Consortium and are now working together with and for the Black Country LEP. However, it seems clear that ‘combined authorities’ will mean a rationalisation of city governance structures.

**Transfer of Public Functions**

One key question is whether the Act will mean that the LEPs and local authorities will obtain greater autonomy from central government and whether the government will decentralise powers to the local level, as the localism agenda would suggest. The answer appears to be yes. Accordingly, “the Act enables Ministers to transfer local public functions from central government and remote quangos to local authorities, combined authorities and economic prosperity boards - in order to improve local accountability or promote economic growth.” The government says that authorities will be encouraged to come forward with innovative proposals.

The new powers - included in the Act again at the request of the Core Cities group - representing the largest cities in England outside of London - enable Government to empower the major cities and other local authorities to develop their areas, improve local services, and boost their local economy. How this relates to LEPs is unclear. But it suggests that local authorities can work together, be constituted as an Economic Prosperity Board and take on central government functions. However, this implies that the LEPs will be bypassed. Powers are devolved to local authorities and not to the LEPs. It can be seen also that this is also likely to result in different places accessing different powers over different timescales. This is likely to be exacerbated, if the major cities choose to have an elected mayor; the Act provides the scope for referenda on whether areas want to have an elected mayor.

While the Act states that a minister of the Crown may delegate to a permitted authority any of the minister’s eligible functions, it is not clear that the government truly intends to decentralise some national government functions to local authorities. What the Act does do, however, is give councils more control over local business rates which they can use for economic development purposes. This is in the form of the freedom to offer business rate discounts. This it is argued would attract firms, investment and jobs to a locality. However there is a sting in the tail, as councils will

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63 DCLG (2010) Economic prosperity boards and combined authorities. Consultation on draft statutory guidance
London: DCLG

64 DCLG (2011) A plain English guide to the Localism Act London: DCLG

65 ibid
be expected to meet the cost of any discount from local resources. The Plain English Guide to the Act\textsuperscript{66} says, councils “may decide that the immediate cost of the discount is outweighed by the long-term benefit of attracting growth and jobs to their area”. Thus LEPs will continue to have relatively few resources at their direct disposal to secure economic development in their localities. This point is returned to below as the next section presents an assessment on the progress on the localism agenda in relation to LEPs.

**Local enterprise partnerships and the Localism Agenda**

The question arises of whether there has any progress made on the Localism agenda in relation to Local Enterprise Partnerships and economic development. Do the LEPs represent a move towards greater localism? It has been argued that LEPs represent nothing of the kind.\textsuperscript{67} Localism, of course, can be defined in several ways. The principles of localism underlying the Act, are rooted in the concept of ‘Six Actions of Decentralisation’ highlighted in the *Essential Guide to the Bill.*\textsuperscript{68} These are: 1) Lift the burden of bureaucracy; 2) Empower communities to do things their way; 3) Increase local control of public finances; 4) Diversify the supply of public services; 5) Open up government to public scrutiny and; 6) Strengthen accountability to local people. The Conservative Party attests to shifting control and power down to local government and local communities, as part of its ‘Big Society’ programme.\textsuperscript{69} IPPR\textsuperscript{70}, the RTPI\textsuperscript{71} and CLES have also contributed to the debate about what localism means. Here we take the view that it refers to local autonomy. Pratchett\textsuperscript{72} suggests three separate ways in which autonomy is manifest: as freedom from central interference; as freedom to effect particular outcomes; and as the reflection of local identity.

One of the important ways in which autonomy can be demonstrated is by reference to the availability of resources and having power to take decisions over expenditure. The question is whether LEPs have a budget and do they have control over the budget; do they have the freedom to effect outcomes. The answer is clearly no. Most of the funding at the disposal of LEPs for economic development goes to the private sector through local authorities or is controlled by central government. Of course, €3.2bn of ERDF was available 2007-13 for local projects through the European Commission but these have to be bid for; they are not in the gift of the LEPs. New financial instruments are to become available for economic development. However these will be channelled through local authorities. These include the Community Infrastructure Levy (CIL), which enables funds to be raised on development projects to build infrastructure and Tax Increment Financing (TIF). This enables borrowing against future increases in business rate but this is still the subject of debate as part of the Local Government Finance Bill 2010-12 as is the

\textsuperscript{66} ibid
\textsuperscript{68} HM Government (2010a) Decentralisation and the Localism Bill: an essential guide London: DCLG
\textsuperscript{70} Cox, Ed (2010) Five Foundations of Real Localism Newcastle Upon Tyne: IPPR North
\textsuperscript{72} Pratchett L (2004) Local Autonomy, Local Democracy and the 'New Localism' Political Studies 52, 2, pp 358–375
amount of business rates which local authorities will be able to retain. In addition, there is Local Sustainable Transport Funding, with £560m being made available to encourage the uptake of sustainable modes of transport.

**Waving a Magic Wand?**

The government has announced a number of different infrastructure schemes with developments being proposed for different areas in England, which LEP localities are benefiting from although not controlling. While LEPs can bid for projects under the schemes or can advise government about who should get funding, the schemes are ultimately under the control of central government. These include Enterprise Zones, where businesses can get up to 100% discount on rates and tax breaks on capital investments in advanced manufacturing, with the funding going to businesses not LEPs; the Regional Growth Fund, through which £1.4bn up to 2014 is going to support projects and programmes that lever private sector investment creating economic growth, where the funding goes from government to businesses and; the recently announced Growing Places Fund, a £500m revolving fund to address infrastructure constraints to economic growth and the delivery of jobs and houses allocated by central government.

There are a number of government initiatives to be delivered via the private sector. These include the Business Growth Fund in which the banks have set aside a fund of £2.5bn to invest in fast-growing UK businesses, as part of Project Merlin. It is difficult not to be cynical about this and to say, given this name, that these schemes give the impression that the Government is acting like a magician waving a magic wand and expecting projects to spring up, in a cloud of sparkling dust, and to lead to economic recovery. A Green Investment Bank is also to be set up in 2015 with £3bn to be set aside to lend to Green businesses and the Big Society Bank (now called Big Society Capital Group) which sets aside £600m for social investment intermediaries. As can be seen, the LEPs do not have control over these funding streams. This means that it is difficult for them to utilise and rely on such funding to achieve strategic aims for the development of the LEP area.

Funds that LEPs have at their direct disposal are the £5m Start-up Fund and the Capacity Fund. However, these relate to LEP operations and operational costs, not for economic development projects. To obtain funding, LEPs had to show that they were without sufficient existing institutional capacity; what their co-funding activity would be; that they would become self-sustaining and not need further central government funding; that the funds were essential to the ability of the LEP to set priorities to drive private sector led growth and jobs in their area; and that activities would achieve the maximum efficiency. The Capacity Fund amounts to £4m over four years which is to be made available to a LEP. It is to be used to address gaps in intelligence on business needs and barriers to growth; to facilitate business engagement; or to boost board capacity to prioritise actions which will support business-led growth and jobs within the LEP area. The fund is to be used for research not secretariat support. However, the LEPs do not get this funding automatically; they have to bid for it.

This raises issues about the funding of LEPs. The operational costs of LEPs are being carried by local government which is providing secretariat support and is carrying our work on behalf of the LEPs. Few LEPs have staff; they were not set up on this basis. On the other hand, the issue is what funding is available to enable LEPs to secure the development of business and enterprise in their locality? Most is
coming through sources over which they have no control. LEPs do not have a budget for economic development and very little for their running costs. Overall, LEPs have relatively few resources at their direct disposal to secure economic development in their localities.

It is understood that funding and in particular business development grants at the time the RDAs were in place was also under the control of and the gift of central government. However, the RDAs had assets which could be utilised in development projects. These are not being transferred to LEPs or local authorities, to be put at their disposal. RDA Land Assets have been transferred to the Homes and Communities Agency and to Central Government. The Venture Capital Loan Fund has been transferred to Capital for Enterprise and Grants for Business investment and R&D Grants transferred to BIS and the TSB.

Doing things their way?
This all indicates that LEPs are limited in their scope to effect outcomes. Concern has also been expressed about whether they are an effective mechanism for promoting local economic growth\(^{73}\) and are able to do things their way, undertaking innovative actions. Centre for Cities’\(^{74}\) report suggests that it has taken time for LEPs to gain approval for their Board. At the time of writing of their report, October 2011, of the original 24 LEPs announced, eight had not had their boards recognised. They also say that it took on average at least six months for the other 16 to obtain approval for their boards. Without a Board in place, actions cannot be identified, still less can the LEP catalyse action. The report also points to the lack of progress in work on strategies. In their research they found that only two of the original 24 LEPs have published a full long-term strategy. Most were at the stage of consultation and development with some not indicating publicly how far they had progressed. Centre for Cities also makes the point that the strategies that have been published “represent lengthy activity lists rather than identifying projects where they can realistically make a difference”. The most that had happened was that LEPs had bid for and been awarded Enterprise Zones. In addition, the report seems to be suggesting that LEPs might be as bureaucratic as it was argued RDAs were, by pointing out that “one LEP has fourteen focus groups and at least 160 people involved in developing its work”. The report also says that ‘go-to’ organisations ought to have websites up and running – they highlight that 5 did not have one – considered essential to present a public face and make information available to potential developers and business.

Whether the LEPs are fit for purpose can be questioned. We have already suggested that control over funding for projects is an issue. From the point of view of the Localism agenda, the LEPs do not have total scope to effect outcomes and they are not free from Government interference. However, LEPs need to be made to work, to be enabled to undertake innovative actions to secure economic development in their localities.

\(^{73}\) Bolton T & Coupar K (2011) Cause célèbre or cause for concern? Local enterprise partnerships one year on London: Centre for Cities.
\(^{74}\) ibid
Fit for Purpose: A Bright Future for LEPs?

Gibbons criticises the Centre for Cities report and argues that the criteria they have chosen are not good measures by which to assess progress. She points out that Boards are in place, even though they might not have been approved, activity is taking place. Strategies have been produced which do give a focus to LEP priorities and actions. The lack of a website is also not deemed to be a good measure of the lack of progress, and thus fitness for purpose. She considers that there is much to be excited about with LEPs and points out that the “partnerships are currently spending their start-up fund drawing up business plans, recruiting and training boards, putting communications strategies in place and other first tasks”. Things are happening. While some LEPs did not win a bid for an Enterprise Zone and this may mean that a two-tier LEP structure is developing, it should not be taken as an indication of failure as the decision will have been made on sound planning grounds and not because of any lack of competency in the LEP.

In relation to LEPs having scope for innovative actions, she points out that a tranche of the Growing Places Fund has been allocated to each LEP and that they will be able to determine the use of the funds, albeit it is to be spent on infrastructure projects. LEP sector groups are also being established, including a rural network and an aerospace group – some of which have already met and it can be seen that these will facilitate exchange of ideas. Recent work has shown that LEPs are undertaking innovative actions (See Table 1). It remains to be seen if LEPs can do it their way and make a difference.

75 Gibbons L (2011) Local Enterprise Partnerships have a bright future – don’t write them off yet Guardian Professional, Thursday 1 December
76 Pugalis L, Shutt J and Bentley G (Forthcoming) Local Enterprise Partnerships: Living up to the hype?
Reflections on the Localism Act

The Localism Act and Reform of Social Housing

David Mullins

Introduction

This chapter explores the implications of the Localism Act and related reforms being planned by the Conservative led Coalition Government for the future of social housing. It should be read in conjunction with Chapter 10 which refers to on the linked provisions of the Act for Planning.

Social housing provides a home for almost five million households in the UK. It is important for the localism agenda because of who it houses, the focus of provision on local neighbourhoods and as an example of the outsourcing of state services to third sector organisations. The sector has contracted by over a quarter since its peak in 1979 when it accounted for nearly a third of all households, including some people from the highest income decile. Now it caters much more exclusively for low-income groups. Rationing of access has tended to leave those with least bargaining power and choice in the least desirable housing. Recent policy debate has focused on the links between worklessness and social housing and the exclusion of long-term renters from asset based welfare. The positive role historically played by secure and decent quality rented housing has tended to be given less emphasis. The wider role played by housing providers in building sustainable communities, for example in employment and training and financial inclusion work and by investing in neighbourhood facilities; has been emphasised by the sector. An audit by the National Housing Federation in 2006/7 identified £435 million of investment by housing associations in neighbourhood services and facilities.

Over the past 20 years there has been a dramatic change in the structure of the sector as the management and/or ownership of some 2.5 million council homes has been transferred to housing associations and arms length bodies. In the process, more than 300 new social landlord organisations have been established. As the market share of third sector provision of social housing has grown, so too have the organisations involved, with the largest managing over 50,000 homes and operating across over 100 local authority areas. The nature of this expansion process has

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78 National Housing Federation (2008) The scale and scope of housing associations activity beyond housing; London, NHF.
created tensions between local accountability and control, and these have been accentuated by ‘funding and regulatory structures that have placed distance between associations and the communities they serve’.

This chapter covers three main topics:

- The Big Picture: Reform of Social Housing under the Conservative-led Coalition, Comprehensive Spending Review (CSR), Housing Consultation paper\textsuperscript{81}, Strategy for Housing\textsuperscript{82} and the Localism Act
- The Relevance of Localism Principles to the social housing sector: The six principles of localism and social housing
- Competing logics within the reform package: localism and communities or scale economies and markets?

The chapter argues that the social housing provisions of the Localism Act are diverse in nature but have more to do with deficit reduction than localism and can be directly traced through from provision in the CSR to a discussion paper on reform of social housing and the strategy for housing published alongside the enabling changes enacted in the Localism Act in November 2011. On the other hand the underlying principles of localism, as set out in the DCLG Guide to the Localism Bill\textsuperscript{83}, are highly relevant to social housing and if applied through detailed and specific policy initiatives could produce a reversal of the long term dominance of scale and efficiency over local accountability and control in the sector.

**The big picture of social housing reform**

The Localism Act can be seen as part of a set of policy announcements with considerable consequences for the future of the social housing sector. The Act was originally introduced in 2010 hard on the heels of the CSR and a consultation paper on social housing, some of the directions of which the Act sought to enact. In November 2011 the Act was enacted at the same time as a fuller statement of housing strategy was published, the social housing provisions of which relate closely to the Act. While some commentators have gone so far as to declare ‘the end of social housing’;\textsuperscript{84} it is clear that at minimum these changes will provide an important further shift for the sector, consumers and providers of social housing. As this chapter goes on to discuss, it is questionable how much this change will be in the direction of greater local accountability and control, or indeed how different the direction will be to that outlined above which has seen comprehensive restructuring of the sector over the past thirty years. But before embarking on this discussion we review the main provisions of the related policy announcements, starting with the CSR which set the context for most of the new Government’s policies, given the scale of deficit reduction aimed for.


\textsuperscript{81} DCLG (2010a) *Local decisions: a fairer future for social housing*.


\textsuperscript{84} Inside Housing, Cover Story October 29\textsuperscript{th} 2010.
The Comprehensive Spending Review
Capital spending on housing has long proved vulnerable to decisions on overall public spending. Public housing investment was one of the biggest casualties of the cuts in spending following the IMF intervention in 1975 and again one of the few areas of real public expenditure reduction under Margaret Thatcher’s government. Explanations for this vulnerability range from the uncertain status of housing as a ‘wobbly pillar’ of the welfare state, the preference for cutting capital over revenue and staff costs, and economic arguments favouring consumer subsidies (such as housing benefit) to enable consumers to choose between providers (including private sector landlords), rather than producer subsidies (growing the social housing sector).

So it came as no surprise that, as part of the Coalition Government’s deficit reduction programme of £83 Billion cuts announced in October 2010, the housing capital programme bore a disproportionate share a key target for cuts. Overall reductions were between 60% and 75% from the previous comprehensive spending review when the previous Labour Government had announced a record affordable housing programme of £8.4 Billion over three years. The equivalent 2010 CSR announcement was for a £4.5 Billion programme for affordable rented homes over a four year period, around £2.3 Billion of which was already committed, leaving £2.2 Billion new funding which was to be used in a new way (see below). The abolition of Regional Spatial Strategies (see Chapters 10 and 11) was also expected to impact on provision of social housing through ‘planning gain’ which had become an increasingly important mechanism for new affordable homes prior to the recession. If the abolition of targets led to lower housing approvals this would have a knock-on effect on affordable housing supply through planning gain.

There was a further £2 Billion to enable existing social housing to meet the decent homes standards, but Arms Length Management Organisations (ALMOs) learned that only 90% of the required investment would be funded. Regeneration funding was also reduced, most significantly by the abolition of the Regional Development Agencies (RDAs) and in housing by the ending of the Housing Market Renewal Areas programme which had originally been set up in 2003 to fund long term revival of failing housing markets in nine areas. Other major area based initiatives such as New Deal for Communities had already ended leaving regeneration schemes much more dependent on cross-subsidy based schemes and in turn dependent on economic recovery. The new Regional Growth Fund (see Chapter 11) of £1.4 Billion would be on a much smaller scale than the RDAs and more focused on promoting private sector growth in areas previously dependent on public sector jobs, making housing related investment less likely, although proposals for carbon reduction retrofitting of housing were candidates for some LEP packages.

It was not so much the scale of the capital spending cuts in the CSR that seemed likely to set a new direction for social housing but two major accompanying changes. First, attempts to control the growth in personal housing subsidies through the Department of Work and Pensions (DWP) funded housing benefit system. Second, the creation of a new investment framework for spending the reduced capital funding allocated to new affordable housing. Superficially these new policies appeared to be moving in precisely opposite directions, with the former seeking to keep down private
sector rents and thereby reduce housing benefit expenditure and the latter to increase social housing rents towards the market, thereby potentially increasing benefit spend.

The CSR announcement allocated £100 million for empty homes and in a commitment to ‘protect the vulnerable’ 85 pronounced that homelessness grant of £400 million had been protected and that reductions in Supporting People had been minimised (with £6.5 million promised over four years) and that Disabled Facilities grant had been protected. The Supporting People announcement was in fact a cut of 12% in real terms, and both of the latter budgets would no longer be ring fenced reflecting principles of devolved decision making. Tensions with these principles were apparent in sector comments that ‘there is a high risk that Supporting People funding in many areas will get lost in this large and complex funding pot’. 86

Consultation paper on social housing
The social housing Consultation Paper spelt out more of the thinking behind the directions signalled by the CSR and anticipated some of the legislative change that would be included in the Bill prior to the end of the consultation period in January 2011. It proposed changes to increase flexibility in the types of tenure offered to social and affordable housing tenants, to give local authorities greater flexibility in social housing allocations (to reduce the requirement to register new housing applicants while promoting greater mobility for social housing tenants), to enable authorities to meet homelessness duties by arranging suitable private tenancies, and to reform social housing regulation and council housing finance.

In setting out the ‘case for reform’ the paper depicted social housing as too often acting as ‘a block on mobility and aspiration’ rather than ‘a springboard to help individuals to make a better life for themselves’ (p.5). Building on the previous Government’s concerns about links between social housing tenure and worklessness, the paper stated that ‘In 2008/9 only 49% of social rented tenants of working age were in work, down from 71% in 1981’ (p.12). This combined with arguments about equity and efficiency, of better off households clogging up social housing, to support the view that in the context of growing waiting lists for social housing ‘it is no longer right that the Government should require every social tenancy to be for life, regardless of the particular circumstances’ (p.5). A more flexible approach was proposed in which the continuing need of tenants for their housing would be reviewed periodically; although it was stressed that any changes would apply to new tenants only and existing rights would be protected. Flexibility was also proposed to deal with the tensions arising from keeping large numbers of households on waiting lists with little chance of getting a home. Housing authorities would have the flexibility to manage the waiting list by no longer being required to register applicants with low levels of housing need. On the other hand they were expected to use greater flexibility on transfers to enable moves for tenants with low levels of housing need and to make better use of the stock. Furthermore councils

85 Communicated to the sector in an email letter from Housing Minister, Grant Shapps, October 20, 2010.

could meet their homelessness duties through suitable private rented dwellings. This proposed policy would extend the previous Government’s direction but crucially the applicant’s agreement would no longer be required provided the accommodation was suitable. Interaction with proposals to stem the rise in the housing benefit budget will be important to consider; particularly in high rent London Boroughs where authorities are reportedly planning large scale out of Borough placements due to the limited local private rented stock within eligible benefit levels.

These proposals for greater flexibility were presented as being about localism, enabling housing authorities and social landlords to make decisions about the best use of their housing stock to meet local housing needs. They could equally be presented as being about national housing demand and supply management (cutting waiting lists, recycling existing stock and substituting private rental supply), and supporting the directions of change required by the deficit reduction strategy which had driven the CSR.

Changes to regulation, following from the decision to abolish the Tenant Services Authority (TSA), fit more clearly within the localism agenda. In the place of external consumer regulation and inspection, the paper proposes more local delivery, an enhanced role for tenant panels, local councillors and MPs to enable tenants to hold landlords to account and press for better services. Alongside the abolition of the TSA was the decision to remove funding for the National Tenants’ Voice that had been established to consult and engage tenants at the national policy level. This is consistent with the move towards a more local focus for the consumer protection aspects of housing but does raise questions about accountability of large national landlords. However, in order to maintain lender confidence and to ensure value for money for the taxpayer, the paper proposes continued financial regulation through transfer of these functions to the Homes and Communities Agency; and this was later provided for on Part 7 of the Localism Act.

Changes to finance of council housing apply to those authorities still holding stock and are far reaching, ending the well established Housing Revenue Account system by a one off settlement payment between local authorities and central government. Authorities would then be able to plan the management of these assets on a long term basis creating greater similarities with stock transfer landlords operating in the housing association sector.

**A Housing Strategy for England**
The much delayed housing strategy statement was finally published in November 2011 at the same time as the Localism Act was passed. Chapter 3 on social and affordable housing reform confirms the broad directions of change that had been triggered by the CSR and set out in the Consultation paper in 2010. The strategy confirms the Conservative controlled Coalition’s intention for radical reform to ‘*make better use of social housing for those who need it most*’ (p. 21). Alongside the promised new framework for boosting supply through innovation by housing associations are proposals to encourage fuller market entry by profit distributing providers into the affordable housing market and a revival of the right to buy, this time with ‘*one for one replacement of homes sold*’ (p.21) using the new framework for producing social housing with much lower levels of public subsidy.
Amongst the ‘counter-productive rules’ (p.22) to be removed are long-term security of tenure, registration on local authority housing lists, and choice of homeless applicants of whether a private let is acceptable in discharge of homelessness duties. More positively the Strategy aims to ‘empower tenants to take a more active role in the management of their homes, supporting them in tackling anti-social behaviour’ (p.22), make it easier for tenants to move through home swaps and transfers. The strategy reports a positive result of the first round of bids under the new affordable homes framework which were expected to provide up to 170,000 new homes by 2015 using the 80% market rent formula, thereby generating an estimated 80,000 construction jobs. Further output increases are anticipated through ‘flexibility, innovation and efficient use of existing assets’ (p.24). But this is likely to involve further moves away from community based non-profit providers including ‘working in new ways and with new partners, new structures, increased specialisation and economies of scale... sub-contracting, partnership working and mergers, the opening up of the social housing register to for profit providers, new entrants to the sector, greater competition and innovation’ (p.25).

In a headline inviting revival of the Right to Buy, the strategy proposes ‘to help more people to realise their aspiration for home ownership and increase investment in further affordable housing’ (p.26). Despite the increased discounts that the Strategy considers are needed to reverse the decline in Right to Buy, the new policy promises to offer one for one replacement (thereby disarming one of the main long term criticisms of RTB) by using the much lower replacement subsidy requirements of the new 80% market rent affordable housing model. Further consultation is promised on this financial balancing act.

**Localism Act**

The social housing provisions set out in Part 7 of the Localism Act largely reflect the agenda for social housing developed through the CSR and consultation paper discussed above. The Act uses the term ‘registered providers’ to refer to non-local authority social landlords, most of whom are housing associations.

- **Allocations** Chapter 1 reasserts the centrally imposed exclusions on eligibility and reasonable preference categories and introduces the greater flexibility for authorities to exclude new applicants and ending the requirement to consider tenants and new applicants on the same basis.
- **Homelessness** Chapter 1 introduces the ability to meet homelessness duty by making a suitable private rented sector offer.
- **Tenure** Chapter 2 of the Act provides for new style flexible tenancies outlined in the discussion paper and for local authorities to prepare and publish tenancy strategies to which local registered providers should have regard.
- **Council housing finance** Chapter 3 provides for the abolition of HRA subsidy and the calculation of settlement payments with major implications for the remaining stock holding local authorities.
- **Mobility** Chapter 4 provides for standards to be set for registered providers on methods to assist tenants to exchange tenancies. This is linked to the intention to set standards for home swap providers and for all registered providers to make use of home swap services.
- *Regulation* Chapter 5 abolishes the Tenant Services Authority and transfers financial regulation to the Homes and Communities Agency.
- *Tenant complaints* Chapter 6 enhances the role of the Tenants’ Ombudsman to cover all social housing providers.

In addition there are provisions in Part 8 for the *Greater London Authority* to take on wider powers in relation to housing investment from the Homes and Communities Agency and in place of the abolished London Development Agency. This represents the most devolved arrangements for social and affordable housing development in the country. Related changes to the *Planning and regeneration framework* affecting social housing in Part 6 of the Act include the abolition of regional spatial strategies, introduction of neighbourhood plans and neighbourhood development orders, community right to build, new homes bonus and reform of the community infrastructure levy. In relation to *home ownership*, Part 7 Chapter 6 abolishes the requirement of the Housing Act 2004 for Home information Packs.

In summary, the reforms of social housing outlined above and enshrined in the draft Localism Act have a degree of coherence:

- **First and foremost as a means of addressing the deficit reduction aims** underlying the CSR by demand and supply management and moving to a new investment framework requiring significantly lower levels of grant per home procured.
- **Second as a move away from regionalism** (especially regional spatial strategies and regional development agencies) and **elements of top down regulation** (such as the consumer protection role of the TSA).
- **Third as a means of selective retention (and in some cases extension) of central controls and incentives** (e.g. reasonable preference criteria for housing allocations, exclusions of people from abroad from housing registers),
- **Fourth in ‘nudging’ local agents towards cost reduction** (this theme of creating incentive structures that favour lower costs or fewer funded local services runs through other sections of the Act).
- **Fifth as a move towards markets and the private sector** and a further blurring of the boundaries between social and private sector organisations (PRS and homelessness, caps to benefits, rents converge towards market levels, reduced grants for social housing, leading to commercial asset management approaches and higher levels of private debt, encouragement of market entry by profit distributing providers into the provision of affordable housing).

On the other hand, the Part 7 of the Act risks the impression of incoherence because it covers a fairly diverse range of aims and initiatives, some of which are likely to have conflicting impacts. For example, the increased use of the private rented sector in meeting homelessness duties is likely to increase housing benefit expenditure by increasing the number of claimants and the size of claim compared with traditional social housing. Similarly the increased mobility implicit in reduced security of tenure for new social housing tenants, periodic reviews of tenancies and enhanced transfer and home swap activity may run counter to the aim of developing the kinds of local community capacity required to build social solidarity and the ‘Big Society’. The increased churn and social polarisation resulting from housing benefit and social housing reforms will almost certainly make this harder to achieve.
Perhaps surprisingly, given its overall theme, Part 7 of the Act contains no new provisions for tenants within the social housing sector to enhance their role in self-management or local control of services of parts of landlord organisations, apart from a role in local services regulation following the abolition of the Tenant Services Authority. Although, Part 5 includes some more general provisions designed to empower communities and Part 6 covers neighbourhood planning and introduces a community right to build (see Chapter 2). While not included in the Act itself Ministers envisage requiring councils to help local authority tenants’ groups form housing associations to take over the ownership of their estates. However, in relation to large scale national housing associations the mechanisms for tenants to take control rather than power being devolved to them remain quite limited. A single Housing Ombudsman is created by Chapter 6 or Part 7 and following lobbying during the passage of the Act tenants will continue to have the right to make complaints direct to this body rather than having these filtered through elected politicians as originally proposed.

Six actions of localism - relevance to social housing

The above leads us to question the extent to which the social housing provisions of the Act can be seen as having a coherent approach in relation to localism. This question can best be addressed with reference to the DCLG’s (2010) essential guide to the Decentralisation and Localism Bill. The six actions of decentralisation set out in the guide provide an enticing agenda for reform of public services and one that has considerable relevance to the social housing sector.

The burden of bureaucracy is certainly recognisable in the social housing sector, not just compliance burden with the complex regulatory web that has been woven around housing associations and their activities over the past 30 years, but also in the increasingly centralised structures adopted by larger associations to manage their business and services. For example opportunities to develop strong local partnering arrangements to maximise local economic impact are often hampered by cumbersome centralised procurement strategies that remove local autonomy. While the present government’s reforms will remove many of the targets and regulations, key areas of central control will remain, particularly in relation to national development packages seeking the keenest numbers of new homes per £ of grant. It remains to be seen whether the strong competitive signals sent by the new investment framework will allow associations to remain locally responsive.

Empowering communities to do things their way remains an aspiration for many community based housing associations. Neighbourhood planning and community

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87 This apparent lacuna may reflect the existence of provisions such as the tenants’ right to manage for local authority tenants which has led to the development of a successful, but small scale tenant management organisations sector, and the existence of a community gateway tenant led model for stock transfer. It is surprising that these options have not been enhanced or publicised in the Government’s espousal of localism.

88 Brown, C. (2011) New laws could see homes transferred to residents; Inside Housing 7 January

89 op cit (DCLG, 2010b).
asset management are the bread and butter of such associations, but can conflict with corporate strategies in larger associations. If surpluses and asset capacity are to be used to offer the keenest development deals how much capacity will remain to work with residents and third sector partners on community investment activities?

*Increasing local financial control* could reverse the tide of centralisation in the finance and regulation of social housing. Local influence over new development was increased somewhat in the final days of the old investment framework by Local Investment Plans jointly commissioned by the Homes and Communities Agency and local authorities. However, now the much reduced scale of funding in any local area and the focus of the new framework on national packages by large associations seems likely to emasculate local control once again. Moreover, the removal of ring fences, for example around Supporting People budgets, is already proving difficult for housing services that need support funding to deliver.

Housing associations have long been among the biggest winners from the ‘fourth action of localism’ *to diversify supply of public services*. However, this experience has also brought important lessons. On the one hand housing associations have sometimes been seen as lacking legitimacy, distant from voluntary sector and former localist identities. Instead of being answerable to elected councillors, housing managers are overseen by a management board whose primary responsibility is to the organization itself, rather than to any broader constituency. At its starkest, stock transfer to housing associations has been seen as replacing publicly accountable bodies with quasi-private landlords, remote from communities, insulated from local opinion and ‘in hock’ to private lenders. On the other hand there have been positive experiences where associations have moved beyond paying lip service to their slogan ‘In Business For Neighbourhoods’ and taken part in groupings such as PlaceShapers and projects such as ‘Close Neighbours’ to enhance neighbourhood responsiveness and create the conditions for sustainable ways of providing citizen-led services. These conditions include supporting other local organisations, building capacity, competence and markets to trade services with one another. While associations may choose to outsource work to local groups, a weakness of the Localism Act framework may be that there is no mechanism for large and less responsive landlords to in turn be broken open as ‘big, giant state monopolies’ have already been.

*Opening up to public scrutiny* is perhaps the most weakly specified of the five actions. As set out in the guide it appears to be a recipe for public access to vast quantities of raw data on the minutiae, such as spending down to the last £500, at a

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94 http://www.placeshapers.org/
96 DCLG 2010b op cit. p. 9.
time when funding for benchmarking and meaningful analysis of data has been decimated by the ‘bonfire of the quangos’. An emphasis on costs rather than benefits reinforces the bias towards local reduction of services, for example by publishing CEO pay levels. Some housing associations have a good track record of producing community information, and being open to dialogue but the tradition of community led governance is only weakly established in the sector and the role of resident led scrutiny was just developing in the last days of the TSA regulation regime.

**Strengthening local accountability** touches in the Achilles heel of the housing associations sector’s successful upscaling experience. Seemingly growth has been at the expense of ‘focusing on the local people and places to which they owe their first allegiance’\(^{97}\) and the incentive structures on which this growth was founded. Alternatives might include community based ownership structures and a greater say for local residents in setting local priorities. Neighbourhood plans and local referenda for affordable housing schemes could reinforce such re-democratisation. It will be interesting to see how authorities reach decisions with housing association partners and residents on the relative priority of new homes, improving existing stock and community investment. Under the new investment framework new homes will partly be financed by the outcomes of local tenure strategies and exposure of existing properties to near market rents when relet. However, the Strategy for Housing indicates that the dominant themes of innovation, flexibility and efficiency are expected to lead to further upscaling of the sector through merger and the greater involvement of the profit distributing sector\(^{98}\)

**Competing logics: which way now for the social housing sector?**

Our consideration of the six actions of decentralisation in the context of the housing sector has highlighted some of the competing logics that have become embedded within the sector and which will affect the implementation of some of specific provisions within the draft Act. In particular the competing logics faced by large housing associations between scale and efficiency and cost reduction on the one hand and local accountability on the other (Mullins, 2006) will if anything be amplified by their engagement with some of these provisions.

There is already evidence that housing bodies are actively considering the new flexibilities to amend local policies in access to social housing. For example by giving priority to those in work or volunteering over and above housing need\(^{99}\), by increasing rents across existing stock as vacancies arise to finance new development\(^{100}\), and by introducing new forms of flexible tenancy for as little as two years\(^{101}\). The impact of these changes on the ability of the housing sector to meet the ‘actions of localism’ will require close evaluation.

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\(^{97}\) DCLG 2010b op cit (p.11)  
\(^{99}\) Borresen R Housing Leapfrog, Inside Housing Dec 2\(^{nd}\) 2011 p.20 and Ellis P A Helping Hand Inside Housing December 2\(^{nd}\) 2011 p. 17  
\(^{100}\) DCLG 2011 op cit Chapter 3  
\(^{101}\) Duxbury –Residency Rodeo. Inside Housing Nov 25\(^{th}\) 2011 p. 12
One area where the tension between localism and cost reduction is particularly apparent is in the new framework for housing investment. While the opportunity to charge rents of up to 80% of market levels on new development and a portion of existing properties when they are relet was presented as a flexibility it has rapidly become a baseline assumption as it has become clear that grant per property is likely to be less than half that under the old framework. Furthermore, recognition that rent differences between social and 80% of market will be significant only in London and parts of the South have led to the need to consider a range of ways to reduce grant. A key focus of sector responses has been to secure additional borrowing by more commercial portfolio approaches to asset management; by selective sales of vacant properties and changes of tenure and rent levels to fit local markets. The tension between portfolio asset management by large multi-area housing associations and individual local authority partners is apparent: ‘in reality new supply would not always be possible or desirable in the areas of income generation’.

On the other hand the chapter has argued that the underlying principles of localism, as set out in the DCLG Guide to the Bill, are highly relevant to the social housing sector and if applied through detailed and specific policy initiatives could produce a reversal of the long term dominance of scale and efficiency over local accountability and control in the sector. A key area where this could develop is in new forms of engagement between local authorities and housing associations for example in local agreements on co-ordination, land and planning roles, local policies on rents and tenure balance and approaches to allocations required under the Localism Act. However, developing such agreements ‘may require a mature recognition of shared objectives/values as well as differences’. Further opportunities arise outside of the housing development realm through opportunities for neighbourhood based housing associations in the reform of local public service delivery. Here a direct link between localism and cost reduction is made by opportunities for pooling of approaches to the budgeting and delivery of a wide range of local services. Building on Total Place ideas, the Coalition’s community budgeting concept provides opportunities for relatively well-resourced locally-based housing associations to harness their assets and local relationships, to support local social enterprise and possibly becoming ‘the front door’ for all local public services. This could lead to ‘a long term vision for social landlords at the heart of their communities...key partners in the establishment of the Big Society’.

In practice it seems likely that the CSR led drivers of the Act’s main provisions, particularly in relation to new homes, will produce more of the same. The social housing sector faces a future of corporate control and flexible asset management by the larger development led housing associations on the one hand and local control and partnership and community accountability for assets on the other. More than

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103 NHF, 2011 op cit p.7.

104 Lupton et al 2011 op cit (p.20).


ever the drivers established by the CSR and Localism Act will require social landlords to make strategic choices on the balance between these futures.

**Table 1: Innovative practice in LEPs**

<table>
<thead>
<tr>
<th>LEP</th>
<th>Innovative practice</th>
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<tbody>
<tr>
<td>Greater Birmingham and Solihull</td>
<td>Identified the chief issues in relation to local regulation via a survey of businesses and focus groups throughout the area, and held a workshop between businesses, local and national regulators to identify key areas where a number of ‘quick wins’ can be made by changing the approach to regulatory enforcement.</td>
</tr>
<tr>
<td>Coventry and Warwickshire</td>
<td>The LEP office is located in Jaguar Land Rover at Gaydon. Local authorities and other partners have provided funds to resource two members of staff. A Delivery Board has been set up and a ‘LEP Access to Finance Group’ is facilitating interactions between businesses and financiers.</td>
</tr>
<tr>
<td>Humber</td>
<td>A group of 16 businesses have joined with the University of Hull, Hull and Humber Chamber of Commerce, Humber Chemical Focus, and four local authorities to pledge £2,500 each to help the new body get up and running.</td>
</tr>
<tr>
<td>Leeds City Region</td>
<td>Use of social media as a communication tool including a Youtube video and an excellent website and approach to networking.</td>
</tr>
<tr>
<td>Greater Manchester</td>
<td>Manchester’s inward investment agency, MIDAS, acting on behalf of the LEP, has signed a Memorandum of Understanding with UK Trade and Investment (UKTI), linked to the new national inward investment contract. Other LEPs have since signed similar memoranda.</td>
</tr>
<tr>
<td>York, North Yorkshire and East Riding</td>
<td>Collaborating with local banks and the British Banking Association to develop a Certificate in Business Growth.</td>
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Source: Pugalis et al (2012)<sup>107</sup>

**Conclusion**

LEPs were not to be defined in legislation and accordingly there is nothing in the Localism Act which gives a statutory role to the LEPs. However as this chapter has shown there are some provisions in the Act which concern economic development and the LEPs. The Act enshrines the General Power of Competence which means local authorities are now freed to do anything - provided they do not break other laws<sup>108</sup>. But, new clauses in the Act give the Secretary of State power to transfer local public functions to permitted authorities namely

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<sup>107</sup>Ibid.

<sup>108</sup>DCLG (2011) A plain English guide to the Localism Act London: DCLG
those that promote economic development or wealth creation. The Act also says that a minister of the Crown may delegate to a permitted authority any of the minister’s eligible functions, the permitted authorities being ‘combined authorities’ and Economic Prosperity Boards. This would suggest the decentralisation of economic development policy to the LEPs and local authorities is possible. This provision was sought by the ‘Core Cities Group’ and it can be seen while this would encourage and formalise cross authority working, it may also lead to the rationalisation of authorities to drive down costs. The Act does support localism in economic development to a certain extent. However, LEPs and the local authorities that serve them do not have complete control over the funding for economic development that is available; central government is in control and given that LEPs have to bid for some of the funds, it is government that is taking the decisions on how monies will be used. Nonetheless, there is some indication that LEPs are ‘doing things their way’ and there is evidence that they are undertaking some innovative actions and are not subject to central government interference. There may be a bright future for LEPs.
Reflections on the Localism Act

George Jones and John Stewart

While the Localism Act contains a limited number of proposals that sustain localism it has serious weaknesses as an expression of localism. The main defect is that the Government’s approach does not recognise that the main barriers to the development of localism lie in central government itself and that localism will not develop its potential unless there is fundamental change in the working of central government. Those barriers are reflected and reinforced in the Act because its development has been conditioned by the dominant centralist culture of central government with the result that the Bill could as well have been called the Centralism Act.

A further significant weakness of the Act is that the Government’s policies involve both decentralisation to local authorities and decentralisation to local communities and citizens, but it has failed to clarify the relationship between these two approaches, with the danger that the latter undermines the former.

Localism and centralism in the Act

Some sections in the Act give expression to localism and decentralisation to local authorities, but they are set within a framework that remains centralist, an almost inevitable result of a system of central government dominated by the culture of centralism. Examples of localism include the proposed general power of competence, which we hope will overcome the restrictions placed by the courts on the powers of well-being. The provisions placing the responsibility for maintaining standards of conduct on local authorities rather than on the external Standards Board show confidence in local authorities and localism. Centralism is directly challenged by the repeal of the elaborate provisions in the Local Democracy, Economic Development and Construction Act 2009, specifying in great detail how local authorities should deal with petitions, a classic example of centralism, which assumed that those in central government, who did not have to deal with local petitions, knew better how to deal with them than those who have to deal with them in practice.

The electorate have to sign a petition to secure one. Leicester was originally included as a twelfth authority but the council adopted the elected-mayor model without a referendum. This centralist provision sits uneasily with the localist one allowing authorities to reintroduce the committee system. Generally there is no suggestion that the plethora of regulations and guidance on political While there are other examples of localism in the Act, centralism is more powerful. The Secretary of State will decide whether the expenditure proposed by an authority is excessive and a local referendum is held.
The Secretary of State has decided that eleven large cities must hold referendums on elected mayors even though their councils have not decided to hold one, and their citizens have not sought one even though only 5% of structures will be eliminated or even significantly reduced. Alteration of a local authority’s internal political structures is even excluded from the general power of competence. One would expect a competent authority to be able to determine its own internal political arrangements.

Local authorities must consider whether an expression of interest by a community group, in providing one or more of its services, would promote or improve social, economic and environmental well-being. But it can be rejected only on grounds to be specified by the Secretary of State by regulation. Centralism trumps Localism.

The Secretary of State will define community value in the bureaucratic procedures proposed for local authorities in compiling lists of local assets of community value, although what is of community value should be a matter to be determined locally rather than at the centre.

These examples are only a few of the powers being given to the Secretary of State. The Act contains provisions for over 100 orders and regulations in addition to the 483 pages in the Act with its 223 clauses and 34 schedules. We foresee the Act being accompanied by panoply of regulations and orders, as well as by almost endless pages of guidance, as the centre seeks to determine what should be done locally, rather than the local authority which knows local conditions and is accountable locally. It is ironic that a Localism Act contains so many means by which central government can prescribe how local authority powers are to be used, their procedures developed and criteria to be applied by them.

It is as if central government’s instinctive response is to act through command and control enforcing detailed prescription. Yet localism will develop only if centralism in the culture and processes of central government is effectively challenged. The Act shows that, far from being so challenged, these attitudes and practices have deeply influenced the so-called Localism Act.

We had hoped that in the parliamentary process the powers to make regulations and orders would be largely eliminated, making the Bill into a real Localism Act. The number was reduced from 142 but over 100 remain. A few centralist proposals were cut out. The provisions for the Secretary of State to appoint shadow mayors before the referendum, and the provisions requiring new mayors to propose to the council they should act as chief executives, have been removed. The excision of all the clauses governing petitions for referendums does not prevent such petitions but does take out the powers proposed for the Secretary of State to determine the criteria for decisions by local councils as to whether to hold the referendum. These changes were necessary because their implication had not been fully thought out and the debates exposed the problems they would create.

A challenge to centralism
Centralism pervades central government in forming its attitudes and determining its procedures and practices. It draws strength from the culture of the various
departments of central government, which do not trust local authorities to run their own affairs and know no other way to deal with them than through regulation and detailed guidance designed to ensure they act in ways determined by the centre. Departmental attitudes are reinforced by ministers who have their own views as to how local authorities should act and wish to require them to act in that way. There are plenty of examples even in the Department of Communities and Local Government which sponsored the Act. Its Secretary of State has introduced what is in effect a new specific grant for weekly collection of domestic waste, even though he has argued specific grants are inconsistent with localism. He has required all authorities to publish details of any expenditure over £500. He asserted that all authorities should approve senior pay policy statements and therefore he saw it as right to require them to do so in the Localism Bill, later amended in the Act to require the approval of general pay policy statements with special attention to the policies governing the remuneration of chief officers. These duties may be sensible for local authorities, but it should be for them to decide, as localism suggests. The centralism implicit in the accepted ministerial role is well illustrated by the letter sent by Bob Neill, a junior CLG minister, to all Leaders informing them they should provide an effective refuse collection even in difficult circumstances, as if they did not already know that and many of them were being successful in doing so. Ministers believe they must act even when localism means matters should be left to local authorities to deal with. One suspects that at times localism is seen by both ministers and departments as giving freedom to local authorities to do what central government wants.

Past experience suggests that ministerial words calling for localism do not translate into localism in practice because of the dominance of centralism in central government. Michael Heseltine, the Secretary of State in 1979, announced a bonfire of 300 controls, but the centralist culture remained unchallenged and over time new controls were introduced, more than replacing those abolished. The Labour government often set out policies for decentralization to local authorities but the reality was detailed control in targets, inspection, prescriptions and guidance. There is no better illustration of this approach than the at least twelve regulations, five directions and nearly two hundred pages of guidance specifying exactly how local authorities should introduce new political structures, virtually all of which will remain in force after the Localism Act.

The Bill shows centralism is a powerful influence even in the Department of Communities and Local Government. In other departments the culture of centralism is even stronger. Unless challenged this culture of centralism will prevent localism becoming more than words from a Minister or in a White Paper as has happened in the past. If the Government wants, as it asserts, to see localism developed in practice, it must recognise the need for changes in the attitudes and practices of the departments of central government. Words by themselves will not be sufficient. Measures are required to entrench localism.

We have given evidence to three select-committee inquiries arguing for changes to bring about a new pattern of central-local relations through a semi-constitutional statute giving statutory expression to the principles of localism. Whitehall departments recognise statutes more readily than words that carry no legal weight.
A statute is not enough to secure change. Procedures for monitoring and enforcement are needed. There should be a unit in the very centre of government – probably in the Cabinet Office - to monitor the operation of the principles set out in the statute, ensuring its application by departments. Even more important would be a joint committee of the two Houses of Parliament with responsibility for monitoring central-local relations in accordance with the principles, reporting to parliament both annually and on specific proposals. Similar recommendations were put forward by the CLG Select Committee in its 2009 report *The Balance of Power: Central and Local* but were neglected by the then government. The necessity for these proposals gains urgency from the need to ensure that the Government’s commitment to localism informs the culture and practice of central government in all departments. Without such changes localism will remain a topic more spoken about than acted on. The weakness of the Government’s approach to localism is that it has not recognised the need for a change in the centralism entrenched in the workings of central government itself.

**Decentralisation to communities and to local authorities**

As well as decentralisation to local authorities the Government’s localism policies involve decentralisation to communities. The Government has not clarified the relationship between these two approaches to decentralization, although it appears it sees the relationship being determined by detailed regulation rather than by local authorities working with communities. Nick Boles, an influential Conservative MP, has recognized in his recent book *Which Way’s Up?* the role of local authorities in working with communities, arguing “...local communities should be given the power and the freedom to take charge of their own destinies, and that, to do so, they need strong and independent local government, representing the wishes of local people and trying out new ways of working that make life better for them...” (pages xviii – xix). He recognises that community empowerment requires strong local government and presumably not national control and regulations as in the Localism Act.

There are many issues to be faced in decentralisation to communities. What is a community? Is decentralisation about only communities of place or does it include those of background, interest and need? What are the organizational and geographical boundaries of communities? Will there be gaps and overlaps between communities? If communities overlap, which will prevail on specific issues? What if more than one group claims to be the sole expression of the community? Is the community group genuinely representative of the community? How is openness in the governance of a community group given expression? How is the community group accountable to the community?

How are financial accountability, legal requirements and probity ensured? How far should the community group be bound by the policies of the local authority? What is the role of the local authority in determining these issues?

Problems could arise if these issues are not resolved as decentralisation to communities develops. Unrepresentative community groups could arise, dominated by a few individuals and sectional interests, with little regard for the local public interest. There could be limited accountability of groups to local people. Early
enthusiasm could be eroded by time. Individuals initially sustaining the group could leave the area. The requirements for open government could be ignored. Financial irregularities could occur, even financial scandals. Conflicts may arise between the local authority and community groups, unless the relationship is clear, close and productive of a shared understanding. While disagreements on individual issues are inevitable, the danger is they can lead to sustained controversy which could undermine not merely localism but the Government’s aspirations of the Big Society.

The Government should face the issue of how decentralisation to communities relates to decentralisation to local authorities, and recognise this relationship cannot be dealt with by national regulations that control the relationship through national rules and procedures. The difficulties can be resolved only by placing responsibility for involving and empowering communities on local authorities that understand local communities and can work with them in resolving all the issues raised.

The local authority and communities are linked together in shared concerns for local areas. Local authorities can resolve these issues with community groups provided they act with enthusiasm seeing community involvement and empowerment as strengthening local government and local democracy. Only with a readiness by the local authority to work closely with communities can a balance be found between the need for a flexible approach to community involvement and empowerment and local policies to ensure full representation of and accountability to the community, financial and legal probity and an awareness of authority-wide policies. This balance is likely to be more easily achieved in working with parish councils in rural areas and urban equivalents, but there must be scope for other forms of community groups which can give expression to these same requirements.

A neglected essential element
There is a huge gap in the Act. A Localism Act that lived up to its name would have dealt with the financing of local government. Centralism will prevail as long as local authorities are so massively dependent for their resources on central government. They become supplicants for funding from central government rather than engaging in a dialogue with their citizens about local priorities. A genuine Localism Act would give legislative authority to the decentralisation of local taxation, so that local authorities draw the bulk of their resources from their own voters with taxes whose rates they determine.

Conclusion
The Government’s policies for localism are to be welcomed in principle but should be criticised in practice. While the Act contains a limited number of proposals for localism, they are set in a centralist framework based on the attitudes and practices dominant in the workings of central government. Centralism dominates localism in the Act, and the need for change in central government is not even recognised. Rather, centralism is entrenched by the many new powers, regulations and orders.
In addition there is a lack of clarity as to the relationship between decentralisation to local authorities and decentralisation to communities that can be resolved only at local level rather than by nationally-imposed decisions embedded in regulations.

Much remains to be done to make localism a reality, especially decentralisation of local-government financing. Localism will not develop unless central government itself changes, yet there is no sign in the Act that such change is likely. It is drafted in a way that suggests the principle put forward by Nick Boles that decentralisation to communities depends on strong and independent local government has not even been recognised. Rather, the Act sees local-authority relations with communities as requiring detailed controls, which far from strengthening local government would weaken it. Central government apparently knows no other way to act in local affairs than through command and control expressed in regulation, guidance and detailed prescription. If localism is to develop, central government has to learn new ways.