

# The World Will Be Your Oyster?

Reflections on The Localism Act 2011

Chapter One

March 2012

The Localism Act  
Introduction and Overview  
John W Raine

# Reflections on the Localism Act

-1-

## 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 15<sup>th</sup> 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*'.<sup>1</sup>

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)<sup>2</sup>.

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 standard cabinet model, which for more than a decade now has been required of all but the smallest authorities<sup>3</sup>.

---

<sup>1</sup> , HM Government (2010) Decentralisation and the Localism Bill: an essential guide, London: Department for Communities and Local Government, page 1.

<sup>2</sup> Department for Communities and Local Government (2011) A Plain English Guide to the Localism Act, London: DCLG.

<sup>3</sup> i.e. those with populations of less than 85,000.

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 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)<sup>4</sup>.

## **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.

---

<sup>4</sup> The Layfield Committee (1976) Local Government Finance in Britain, Report of an Inquiry, London: HMSO

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 responsiveness' (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?



UNIVERSITY OF  
BIRMINGHAM

**Institute of Local Government Studies**  
University of Birmingham  
Edgbaston, Birmingham B15 2TT

**[www.birmingham.ac.uk/inlogov](http://www.birmingham.ac.uk/inlogov)**