

**SOUTH EAST ENGLAND COUNCILS
EXECUTIVE COMMITTEE MEETING**

Date: Friday 18 February 2011

Subject: **Localism Bill – Key Issues and Member Working Group**

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Recommendation:

The SEEC Executive is invited to discuss the key issues in the Localism Bill and potential role of a Task & Finish Group in reviewing key elements of the Bill as they affect SEEC Member Councils.

1. Introduction

- 1.1 On 13 December 2010, the long-awaited Localism Bill was published, described as providing the cornerstone for the Government's future devolution agenda. The Bill is a complex piece of legislation, containing 208 clauses and according to the LGA at least 142 order and regulation-making powers which central government can make.
- 1.2 The Bill contents cover provisions relating to councils and communities, housing and planning and regeneration. The Bill also relates to other Coalition Government policy strands such as the Growth White Paper, the Police Reform and Social Responsibility Bill and the increasing transparency agenda.
- 1.3 The Bill is now at the Committee Stage in the House of Commons, which includes the presentation of evidence from interested parties. The Committee stage is expected to conclude towards the end of March.
- 1.4 To accompany the Bill, the Government also produced a guide which set out the following six actions to deliver decentralisation:
 - Lift the burden of bureaucracy
 - Empower communities to do things their way
 - Increase local control of public finance
 - Diversify the supply of public services
 - Open up government to public scrutiny
 - Strengthen accountability to local people
- 1.5 The Localism Bill provides the legislative foundation for what the Government describe as 'a radical shift of power' from the centralised state to local government and local communities.

2. Analysis of the Bill

- 2.1 The attached table at Appendix A sets out the key areas of the Bill. Clearly, as the Bill progresses there could be changes to clauses etc, however as drafted the LGA say the Bill contains too many central controls and directions and is unnecessarily bureaucratic in its approach. Whilst it is now helpful to see the content of the Bill in more detail and the opportunities it provides, it is equally important to assess the potential for the Bill to introduce complexity and unnecessary bureaucracy at a time when it is least needed.
- 2.2 It is expected that the Bill will take many months if not longer before Royal Assent is granted. Some predict it could be up to a year or more due to the extent and complexity of the clauses within the Bill as drafted.
- 2.3 In the light of this, the Executive may wish to establish a Member Working Group to look in more detail at the potential benefits offered and the possible negative impacts of the Bill as they affect SEEC Member Councils. For example some common themes are starting to emerge in Appendix A, including:
- Some proposals seem unnecessarily complex and threaten administrative & cost burdens on local authorities
 - Some proposals maintain central control rather than offering genuine localism
 - Some proposals may not deliver adequate levels of democratic accountability and inclusiveness.
- 2.4 If the establishment of a Group is agreed, it is recommended that it reports on a recommended work programme to the next SEEC Executive Meeting in June.

11 February 2011

The Localism Bill (published 13 December 2010)

Main contents of the Bill	Issues of concern to SEEC Councils
Community Empowerment	
<p>Right to veto excessive council tax rises The public will be given the power to approve or veto excessive council tax rises - any local authority (including police, fire & larger parishes) setting an increase above a ceiling set by the Secretary of State will trigger a referendum of all registered electors in their area. If councils want to increase council tax beyond a specified level, they will have to prove the case to the electorate.</p>	<ul style="list-style-type: none"> • Government still sets a ceiling amount – is this proper localism?
<p>Local Referendums This gives local people (5% or more of the electorate) and councils the power to instigate a referendum on any local issue. The referendums will be non-binding but local authorities will be required to take the outcomes into account in decision making.</p>	<ul style="list-style-type: none"> • Cost and administrative burden of multiple referendums? • Managing community expectations re non binding results.
<p>Community ‘Right to Challenge’ A right for voluntary and community groups, social enterprises, parish councils and local authority employees delivering a service, to challenge a local authority, by expressing an interest in running or assisting to run any service for which they are responsible. A local authority must consider and respond to this challenge – eg through a procurement exercise.</p> <p>Linked to this, on 17 November 2010, the Cabinet Office launched plans to introduce ‘Rights to Provide’ across public services, where employers will be expected to accept suitable proposals from front-line staff who want to take over and run services as mutual organisations. The new right will only apply if guarantees are met – eg to deliver savings or improve quality of services. Where public procurement processes allow and savings are properly agreed, staff forming a mutual proposal will be awarded a contract to continue providing services rather than going through the full tender process.</p>	<ul style="list-style-type: none"> • Association for Public Service Excellence expects 25% of local service delivery could be divested to the third sector. • The LGA say this is unnecessary as community bodies and other relevant bodies already have the right to bid to provide local public services.

<p>Community 'Right to buy' This will require local authorities to maintain a list of public or private assets of community value put forward for consideration by communities. When listed assets come up for disposal (either freehold or long leasehold), communities will be given the chance to develop a bid and raise the capital to buy the asset. This will help local communities save local facilities from possible closure.</p>	<ul style="list-style-type: none"> • Need to manage the list – eg community nominations to the list and ensuring private landowners do not dispose of land on the list without due process. • Responsibilities between districts & counties? • Is this too much regulation? Should decisions be made locally?
<p>Decentralisation and Strengthening local democracy</p>	
<p>General Power of Competence This will provide local authorities, including certain parish councils, with powers to do anything apart from that which is specifically prohibited by law. Councils will have new freedoms to run services free from Whitehall control. It will give local authorities confidence in their legal capacity to act on behalf of their communities and to act in their own interest to generate efficiencies and savings. It will give them increased confidence to set up banks, develop property, run new services and own assets.</p>	<ul style="list-style-type: none"> • What opportunities does this create for SEEC member councils, working alone or collectively?
<p>Local Authority Governance</p> <ol style="list-style-type: none"> 1. Committees - Councils, regardless of their size can return to the committee system of governance, should they wish. 2. Directly Elected Mayors - The Bill gives areas the right to have a mayor – for example to ensure a powerful local figure head to boost local economic growth and democratic engagement. The Government is committed to creating directly elected mayors in 12 English cities (none in the South East) but other areas can now choose to opt for a directly elected mayor. Mayors will be elected for four year terms. 3. Police and Crime Commissioners – Plans to introduce police and crime commissioners via the Police Reform and Social Responsibility Bill. 4. Predetermination - The Bill seeks to make clear that the normal activities of a councillor; campaigning, talking with constituents, expressing views on local matters and seeking to gain support for those views should not lead to an unjust accusation of having a closed mind on an issue that can lead to a legal challenge. 	<ul style="list-style-type: none"> • Potential for directly-elected mayors in the South East and changes to the role of councillors. • Will proposals mean more resources/more power directed to areas with mayors in the future? • Mayors may be expected to take on political <u>and</u> executive roles.

<p>5. Standards Board - The abolition of the Standards Board regime will revoke the centralist model code of conduct for councillors. The Bill also abolishes the need for a local authority to have a statutory standards committee. There will be a new criminal offence to deliberately withhold or misrepresent a personal interest.</p> <p>6. Senior Management Pay - To improve transparency and accountability about how senior pay for chief officers is set, the Bill will require local authorities from 2012-13 to approve and publish <u>annually</u> at Full Council a senior pay policy statement. Where councils want to depart from the pay policy, this would need to be voted on by Full Council.</p> <p>Targets and Inspection – the Bill builds on earlier decisions to scrap CAA, Local Area Agreements and the Audit Commission. Direction is to move away from bureaucratic micro-management but retain sensitive and proportionate regulation to ensure public safety and protection of the most vulnerable.</p>	<ul style="list-style-type: none"> • Potential for councils to retain some local standards Board arrangements to demonstrate commitment to high standards. • What level of inspection will be required to ensure public safety and protection without being burdensome on local councils?
<p>Cutting Barriers and Bureaucracy Linked to the Bill aims, CLG is pioneering a new approach in which civil servants act as ‘bureaucracy busters’. Councils, community groups, local institutions and individuals who need central government’s help to get rid of barriers can submit a request through the web at http://barrierbusting.communities.gov.uk</p> <p>The Government has just launched Round 2 for applications under the Sustainable Communities Act. This time there is no deadline and both communities and local authorities can submit applications online directly to the ‘Barrier Busting’ team website as and when they arise locally.</p>	<ul style="list-style-type: none"> • Opportunity to submit ideas for changes in legislation to free councils from unnecessary legal bureaucracy.
<p>Reform of the Planning System</p>	
<p>Abolition of Regional Strategies Ministers believe Regional Strategies and top down targets did not work effectively and that the target-driven approach to development was</p>	

<p>undemocratic, added unnecessary bureaucracy to the planning system and made local people 'anti-growth'. Councils will have the freedom to prepare/re-visit Local Plans without having to follow top-down targets. A simplified National Planning Framework will be introduced. CLG promises direct and substantial benefits for councils who support construction and a series of new measures will be implemented including:</p> <ul style="list-style-type: none"> a) A New Homes bonus. b) A 3-year £1.4bn Regional Growth Fund. c) Continuing Section 106 agreements but with greater transparency d) Continuing the Community Infrastructure Levy (CIL) but with three changes: <ul style="list-style-type: none"> • provision for some CIL funds to be passed to neighbourhoods where the development has taken place • funds can be spent on the ongoing costs of infrastructure, as well as the initial costs • local authorities gain greater control over setting charging levels, however charges will be subject to independent examiners. e) Proposals for local business rate retention. f) A new duty to cooperate between councils and other public bodies. g) Developers must consult local communities before submitting planning applications for very large developments. <p>Business rate discounts. Local authorities will have the power to grant a discount in business rates enabling them to respond locally to the concerns of local businesses</p>	<ul style="list-style-type: none"> • Overcoming barriers to development and adequacy of the incentivisation package. • Changes to the planning system risk disrupting development, with impacts on economic recovery <ul style="list-style-type: none"> • Questions about how localisation of business rates would work and any system for national equalisation of business rates.
<p>Local Plan Reform The Government wants to give local authorities and communities greater choice and control by removing the ability of the Planning Inspectorate to re-write local plans and by removing procedures on timetabling and monitoring which adds bureaucracy.</p>	
<p>Neighbourhood Planning There will be new powers and processes for Parishes and newly created neighbourhood forums to develop neighbourhood plans and</p>	

<p>neighbourhood development orders. These will enable communities to permit development – in full or in outline – without the need for planning applications. The Government believes that the current planning system is too centralised and bureaucratic, making it inaccessible to communities. Top-down enforcement of housing targets has created local opposition to development. New Neighbourhood Plans are designed to help lift the burden of centralised controls and give neighbourhoods and local areas the flexibility to innovate and control their own futures.</p>	<ul style="list-style-type: none"> • Are new proposals too complex? • Cost and administrative burden of neighbourhood planning? • Will the new neighbourhood-led approach be democratic, inclusive and accountable?
<p>Community Right to Build This will give local communities the power to take forward development in their area without the need to apply for planning permission, subject to meeting certain safeguards and securing 50% support of the community through a referendum. It will be for communities to identify suitable land, sources of finance and secure support for their proposals, but Government will put in place arrangements to provide help and guidance.</p> <p>This aims to tackle the lack of development in rural areas where local planning authorities are resistant to development and consequently restrict expansion despite communities themselves expressing a wish to see new housing and other facilities to safeguard the future of rural villages.</p>	<ul style="list-style-type: none"> • Will the new neighbourhood-led approach be democratic, inclusive and accountable?
<p>National Infrastructure This will replace the Infrastructure Planning Commission with an efficient and democratically accountable system that provides a fast-track process for major infrastructure projects and ensures Parliamentary approval of National Policy Statements before they can be designated. The Government believes the current system is unaccountable and that decisions should be taken by Ministers.</p>	<ul style="list-style-type: none"> • What is the role of local authorities in influencing national infrastructure decisions?
<p>Duty to Cooperate – between local authorities and other public bodies after regional strategies are abolished.</p>	

Social Housing Reforms	
<p>Social Housing Allocations reform The Government wants to give back to local authorities the freedom to determine who should qualify to go on their housing waiting list. The rules on eligibility will continue to be set centrally but the Bill will make it easier for existing social tenants to move within the social sector, by removing transferring tenants who are not in housing need from the scope of the allocation rules – they will no longer have to compete with those on the waiting list in housing need. The current arrangements encourage false expectations and long waiting lists (currently almost 1.8 million households). This measure will allow local authorities to set waiting list policies that are appropriate to their local area.</p>	<ul style="list-style-type: none"> • Successful implementation of many of the social housing reforms will depend on housing associations' response. A patchy response could lead to uneven application of policies and possible tension between councils and housing association partners.
<p>Reform of Homelessness legislation Homeless people need somewhere suitable to live, but do not necessarily need social housing. Under the current legislation they can insist on expensive temporary accommodation until social housing becomes available. New proposals would allow them to be housed in private rented accommodation.</p>	<ul style="list-style-type: none"> • This is a generally welcome change. • However, if it takes time for wider changes to start delivering new homes, this will put pressure on supply possibly leading to greater homelessness.
<p>Social Housing Tenure reform Currently, social landlords normally only grant lifetime tenancies. The Bill will enable local authority landlords to grant tenancies for a fixed length (minimum two years). This will give more freedom to local authority landlords, allowing them to manage their stock more effectively and ensure that the occupation of social housing better reflects actual need. New social rents should be set at 80% of the market rate.</p>	<ul style="list-style-type: none"> • Concerns that the combination of rents at 80% of market rate and housing benefit caps will drive poorer tenants out of London and other high cost areas to already-struggling parts of the South East.
<p>Reform of Council Housing Finance This will replace the current annual centralised system for subsidising council housing and replace it with a locally run system. Under the new system, councils will keep their rental income and use it locally to maintain their homes. To achieve this, the Bill will enable a one-off payment between Government and each council. This will put all Local Authorities in a position where they can support their stock and housing</p>	<ul style="list-style-type: none"> • Concerns about allocation of large amounts of debt to local authorities to rebalance the system.

<p>debt from their own income in future. The aim is to give councils full control over spending and service provision, enabling better long term asset management and more transparency and accountability of landlords to tenants.</p>	
<p>National Homeswap Scheme This will provide a swap of accommodation between two or more tenants where each party moves permanently into their exchange partner's property. This would require landlords to participate in web-based exchange schemes that enable tenants to see a wide range of properties across providers in England.</p>	
<p>Reform of Social Housing Regulation This will reform the regulatory system for social housing; abolish the Tenant Services Authority and transfer its remaining functions to the Homes and Communities Agency. It will also change the Ombudsman regime applicable to social housing complaints.</p>	
<p>Facilitating moves out of the social rented sector The Government is keen to help realise social tenants' ownership aspirations, which can allow more effective use of social rented stock. The Bill will ensure that housing association tenants who are also members (e.g. share holders) of their landlord organisation are allowed to take up incentive schemes which encourage moves into owner occupation. Current legislation precludes gifts (including incentive payments) to tenant members.</p>	
<p>Other Issues</p>	
<p>Finance and data provision EU Fines -The Bill contains powers for the Secretary of State to order English councils to contribute to the UK's obligation to pay EU fines if their actions have contributed to the fine.</p> <p>Simplified funding streams and new 'Community Budgets' in all areas by 2013.</p>	<ul style="list-style-type: none"> • LGA say this is unconstitutional • Costs could be significant. Municipal Journal estimate councils could face more than £1billion in fines for failing to improve air quality or recycling rates

Transparency – By January 2011, all councils are required to publish every item of expenditure over £500. CLG also require transparency from public sector bodies on contracts, salaries and staffing.

Better information on what public spending achieves – future focus will be on outcomes not processes. Principle will be to release knowledge as raw data so that anyone can analyse the information.

Service Choice - Service users should be able to choose new providers if existing providers fail to deliver an adequate service. Government will work with the public sector to develop and expand this bottom up model of accountability – eg via individual budgets.

Scrapping Bin Taxes. So-called 'bin tax' schemes would have allowed local councils to charge residents for household rubbish collections or fine families for having a full bin.

Scrapping Home Information Packs although energy performance certificates will still be required.

Greater powers for the Mayor of London and the GLA whilst abolishing the London Development Agency.