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## **The Localism Act 2011**

### **Purpose of report**

For decision and direction.

### **Summary**

The Localism Bill received Royal Assent on 14 November, bringing to an end eleven months of parliamentary lobbying by the LGA. When first published in December 2010, the Bill consisted of 405 pages, 208 clauses and 24 schedules. In its final iteration following Royal Assent, it has expanded to 484 pages with 241 clauses and 25 schedules.

This paper offers an update to the Board on the LGA's wins, the last minute reversal by Government on the issues of Standards, and the support the LGA is offering Members on the new legislation as well as the subject of senior pay.

### **Recommendations**

That the Board

- **note** the wins achieved by the LGA on behalf of Members, and the support to member councils in respect to the new legislative environment and also the issue of senior pay.
- **discuss** the reforms to the Standards regime, and offer direction on whether the LGA should draft a recommended code of conduct for member councils to utilise.

### **Action**

Officers to action in line with the Board's steer.

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**LGA wins**

1. The Localism Bill received Royal Assent on 14 November, bringing to an end the LGA's eleven month parliamentary lobbying campaign. A number of key wins were achieved for the sector, as detailed below.

*Elected Mayors*

2. Under the original Bill, the Secretary of State was given the power to enforce a "shadow mayor" onto an area in advance of that area holding a referendum on whether they wished to convert to an elected mayor leadership model. It was further suggested that regulations would require that new elected mayors took on the role of chief executive in their local authority.
3. After LGA lobbying, the Government completely removed all references to "shadow mayors" during the House of Lords stages, meaning that all areas will have a referendum before any structural changes are commenced. The Secretary of State will still have the power however to demand that an area holds a referendum. References to mayors as chief executives were also deleted, though this may still happen if local authorities vote for such a model.

*New Powers for Councils*

4. In the Bill as published the Secretary of State held the ability to confer new powers, and the functions of public bodies, onto new elected mayors.
5. The LGA worked successfully to ensure that any local authority will be eligible to make an application to the Secretary of State to have new powers / functions bestowed upon them, with the Secretary of State specifying criteria which must be taken into account when an application is considered. Orders to transfer functions will only be made if they promote economic development or wealth creation, or increase local accountability.

*Regulations on Area Committees*

6. The Government's original legislative proposal involved the Secretary of State issuing regulations on how local authorities would set up area committees and what functions could be delegated to them.
7. The LGA was successful in ensuring that these regulation-making powers were deleted from the Bill so councils will be free to set up whatever area committees

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they wish and give them whatever executive functions they consider appropriate without having to rely on regulations made by the Secretary of State.

*Timeframe for Changing Governance Arrangements*

8. The original Bill stated that councils would be able to change their governance systems but only after the next local election, which in some cases would have meant authorities not being able to change for as much as three years after the Bill came into effect.
9. Once again the LGA was successful in its lobbying. After the passing of a resolution to change governance arrangements, a local authority will now be able to make the change, in the case of moving to the mayoral model, three days after the election of the first mayor; or in the case of moving from the mayoral model, three days after the end of the term of office of the serving mayor. In all other circumstances, including moving to the committee system, a local authority will be able to make the change at the first annual meeting after the resolution or at a later annual meeting specified by the local authority in its resolution.
10. Local authorities therefore will be able to resolve at any time to change their governance arrangements and implement those changes at a time that best suits their circumstances.

*EU Fines*

11. The EU fines measures within the original legislation were potentially the most damaging to the sector. The Bill as introduced gave Ministers the power to arbitrarily pass on EU fines (given to the UK as a whole) to individual councils which the Minister decided were responsible for some, or all, of the fine.
12. The EU fines section has been completely changed in line with LGA lobbying.
13. A Minister will now have to lay before both Houses of Parliament (on a case-by-case basis) details of every council they intend to pass on a fine to, including the EU infraction and the UK legal obligation. This will then be subject to a vote in both Houses of Parliament.
14. An independent panel will also scrutinise, and advise, on any suggested fine, with some members of the panel nominated by local government, and make recommendations, which will be made publicly available.
15. The Government has furthermore committed to a statutory statement of policy that the LGA has drafted with the Department of Communities and Local Government (CLG), and which the Government will consult on. Amongst other

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things the LGA's draft statement gives councils a powerful role in the negotiation and transposition of EU laws.

16. Going forward, the LGA will be working to ensure that the Government does not use the public consultation on the statement as an excuse to dilute the document.

*Local Referendums*

17. The Bill as introduced, required local authorities to hold a non-binding referendum on any "local matter" if a petition of 5% of residents was submitted. The Secretary of State would decree in regulations what constitute a "local matter" and would issue further regulations dictating how referendums would be run, what publicity could be issued, and other associated details.
18. The Government initially agreed to delete the power for the Secretary of State to define a "local matter". After further LGA lobbying against the level of prescription, costs and regulation, the Government committed to remove local referendums provisions completely.

*Community Right to Challenge*

19. The Bill originally gave the Secretary of State the power to decree all the practicalities of how the 'Community Right to Challenge' policy would work locally.
20. Following LGA lobbying, the Government introduced amendments during the House of Lords stages to delete the Secretary of State's powers to specify the minimum periods which authorities can specify for the submission of expressions of interest. The Government also deleted the Secretary of State's powers to specify the minimum and maximum periods which must elapse between the acceptance of an expression of interest and the commencement of a procurement exercise.
21. Instead, local authorities will be required to specify and publish details of these periods, which can be different for different cases.

*Assets of Community Value*

22. Had the Bill gone through unchanged, the Secretary of State would have been able to decree how this section of the Bill would work locally, dictating how a list of assets would look, how a council could amend the list, how they would need to go about contacting people who owned assets that were (or were not) added to the list, and how a list of rejected assets would look. The Secretary of State

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would have also specified in regulations the moratorium period before an asset on the list could be sold.

23. However, at Report Stage in the House of Lords the Government introduced amendments that defined an “asset of community value”, deleted some of the regulation-making powers for the Secretary of State (including to detail further issues for local authorities to take into account when considering whether to accept a nomination) and placed the moratorium period on the face of the Bill.

*Neighbourhood Planning*

24. The Bill introduced new neighbourhood forums, made up of at least 3 local people, which would have the power to submit neighbourhood plans and neighbourhood development orders designed to fast-track planning applications supported by the community. Originally, there were no powers for local authorities to ensure that forums operated fairly or to de-designate them if they didn't fulfil their functions.
25. As a result of LGA lobbying, neighbourhood forums will now incorporate a minimum of 21 people and can include representatives of local business interests. Councillors will now have the right to sit on neighbourhood forums if they wish to and councils will have the power to de-designate neighbourhood forums if they no longer fulfil their function. Councils will also be able to take representativeness and transparency, amongst other things, into account when deciding on applications to become neighbourhood forums, and act as examiners for the purposes of assessing neighbourhood planning and orders.

**LGA support for Member councils**

26. The LGA is offering a package of support to member councils on the new Act. This will be available to Members through the LGA website. The package will include:
27. **”Keeping it REAL: Responsive, Efficient, Accountable, Local”**: This will be the LGA's overarching narrative on public service reform, following the Public Service Reform White Paper. This was launched on 24 November 2011.
28. **A brochure on the General Power of Competence**: A discussion piece as opposed to guidance, this paper will scope out how the General Power of Competence changes the powers currently available to Councils and describes some of the risks involved. To be launched February / March 2012.
29. **Refreshing and re-launching the 2009 “Enterprising Councils”** document on trading and charging: This will offer an update in light of the General Power

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of Competence, as well as updated case studies. To be launched January 2012.

30. **A manifesto jointly launched with the charity Locality on the Community Right to Bid:** This will bring together the different ways of using public and private assets to meet social objectives. The document will include material on Assets of Community Value, Community Asset Transfer, and the public right to reclaim land. By joining these options up in this paper, councils will be helped to understand the range of tools available to transfer public assets to community organisations. To be launched January / February 2012.
31. **Seminar on community assets:** Linked to the Community Right to Bid manifesto, the LGA is looking to hold a seminar with Locality, potentially on 1 March in Bevin Hall. This will look to communicate existing learning on community asset transfer, while also cover the implementation of the assets of community value provisions within the Localism Act.
32. **The EU fines policy statement:** The LGA will continue to work to ensure the statement is not diluted in any way, particularly following the soon-to-be launched Government consultation on the document. A briefing has also been prepared for Members on the full implications of the new Government policy.
33. **Elements of the Productivity Programme** – this will also provide support to councils around making the most of the Act to deliver public service reform. The LGA will be working with Government to remove the barriers to effective procurement through ‘myth-busting’ and lobbying for streamlined procurement regulations that meet local government's needs. Questions about the Localism Act provisions will also be incorporated into the evaluation of the *Future Ways of Working* pilots, with the aim of identifying relevant learning (by mid-2013) about the opportunities presented by the General Power of Competence to do things differently.
34. **An evidence-based commissioning/third sector offer:** This will be a member support package, produced with 3<sup>rd</sup> sector partnerships potentially including NCVO, NAVCA, ACEVO, and CAB, to provide support on good evidence based decision making on commissioning / de-commissioning of services. The initiative will possibly include a pilot group of councils, and proactive support from LGA Peers. This will be developed January-March 2011.
35. **LGA/NALC Localism conference:** The LGA/NALC Localism conference will be **taking place on 22 March in Birmingham. This event** will look to support the joining up the different tiers of local government to discuss localism and particularly the General Power of Competence, community right to challenge/commissioning and use of assets.

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36. **Briefings on the implications of housing reform** – a series of policy briefings focused on specific aspects of the new legislation are also being prepared to assist Members with getting to grips with the implications of the new legislation and the wider housing reform agenda.
37. **A series of conferences** on the planning and housing agenda – these will aim to communicate the impact of the reforms for members and assist with their preparations, covering planning ('Planning for Growth' 22 February 2011), housing finance (14 December 2011), and a further planned event for elected members in late January.
38. **A series of practical master-classes for elected Members:** These interactive sessions will increase understanding of how to respond to the changes and provide practical tools and techniques to support councillors in their engagement with local people and external partners on issues of planning and housing. The events are being planned for Spring 2012, specifically targeted at councillors.
39. **Peer support** – Members have access to a Housing peer challenge if they wish, which offers councils an independent review of their housing service as well as providing the basis for substantive service improvement.
40. **The offer on planning – The Planning Advisory Service**, as part of the LGA, works with local authorities to help them to respond to the planning reform agenda and improve the delivery of planning, taking into consideration all the new implications of the Localism Act. This offer includes:
  - 40.1 Dedicated support for councillors to understand and respond to the planning reforms, including **leadership academies**, **ward councillor academies** and dedicated events.
  - 40.2 **Briefings and publications** which explain the planning reform agenda, including the recent publication 'Localism and the National Planning Policy Framework'.
  - 40.3 **Support for neighbourhood planning** including events on skills for neighbourhood planning and work with the neighbourhood planning front runner authorities to share lessons, work through barriers and exploit opportunities.
  - 40.4 Forthcoming **advice and case studies** to help members respond to the new **duty to co-operate**.
  - 40.5 **Events** on the community infrastructure levy and support for councillors around viability in planning
  - 40.6 Dedicated support to help members get their **Local Plan** in place.
  - 40.7 **Access to a Planning peer challenge**, which offers members a flexible look at their service and provides the basis for substantive improvement without adding to budget pressures.

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**Support for members on senior pay policies**

41. The LGA is also offering members support on the issue of senior pay.
42. Working with the Association of Local Authority Chief Executives (ALACE) through the Joint National Committee for Chief Executives and Chief Officers (JNC), the LGA has developed joint guidance on the preparation of local pay policy statements and the issues to be considered in deciding senior reward packages in a more open, accountable way.
43. The guidance note was issued on 25 November 2011 and supplementary notes on good practice will be developed as necessary. The LGA workforce consultancy team stands ready to help councils put the advice into practice.
44. A highly successful national conference was held on 16 November, at which the LGA Chairman, Cllr Sir Merrick Cockell, highlighted the importance of taking the recommendations set out in Will Hutton's report on fair pay in the public sector seriously. In particular, the Chairman issued a call for volunteer councils to come forward to work with the LGA in piloting ideas like putting some elements of senior pay on an "earn-back" basis.
45. The LGA has also developed a bespoke job evaluation scheme for senior posts, which is proving helpful for many councils in defining the relationships between roles in their senior teams.

**The new Standards regime**

46. Following numerous debates both in and outside Parliament on the issues of Standards, the Government introduced amendments to the Localism Bill at the final stage of its passage, House of Lords Third Reading.
47. The Bill as enacted requires all Local Authorities to publish a code of conduct that is consistent with the seven Nolan principles:
  - 47.1. Selflessness
  - 47.2. Integrity
  - 47.3. Objectivity
  - 47.4. Accountability
  - 47.5. Openness
  - 47.6. Honesty
  - 47.7. Leadership
48. During the debate, the Parliamentary Under-Secretary of State, Baroness Hanham noted that while there had been "broad agreement that the Standards



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Board regime has become a vehicle for vexatious, petty and politically motivated complaints...At the same time, concerns [had been] voiced that the provisions that we had set out...were too localist and not up to the task of ensuring the high standards of conduct”.

49. The measures within the new Act also include a requirement for local authorities to put in place a system to deal with allegations that members have breached the code, and to appoint an independent person through a transparent process. Where a local authority has investigated an allegation, it must seek the independent person's view before reaching a decision about the allegation. It must then have regard to that view.
50. The Leadership Board is asked to consider the Standards reforms, and whether the LGA (which has historically not taken a position due to political differences) should offer to draft a template Code to assist Member councils when preparing their own or alternatively whether we should look to support work which we understand the Association of Council Secretaries and Solicitors (ACSeS) is undertaking to prepare a draft code for council's to adopt.