

The Decentralisation and Localism Bill
Pre-publication Briefing
New Local Government Network

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This briefing sets out:

- I. An introduction commentary from NLGN**
- II. Specific in-depth analysis of a series of major proposals from NLGN**

About NLGN

The New Local Government Network (NLGN) has been at the forefront of debates on localism, decentralisation and local democracy for over a decade. As a leading independent, cross-party, not-for profit thinktank we work with our local authority private and third sector partners to develop innovative proposals to transform public services and reinvigorate democracy. Drawing on recent research projects carried out by NLGN, we set out a series of reflections on key elements of the Government's Localism Bill and provide evidence and ideas on how localism could be made a reality.

PART I. The Localism Bill: reform or revolution?

NLGN's Introduction

The Government's Decentralisation and Localism Bill has been much heralded and trailed as a manifestation of the Coalition Government's domestic policy agenda. The Bill seeks to present a radical shift in policy and decision-making, containing a whole raft of measures, including the abolition of existing architecture, the revocation of regional government and strategy and the devolution of decision-making on planning to community level. In all, the Bill contains some two hundred clauses.

In the context of previous localist action, this potentially represents the single most significant piece of legislation on localism to emerge in decades.

But, does the Bill deliver on its promise?

To be determined a success, NLGN believes that the Bill must:

- link together coherently as a strategy for policy making and political decision-making to citizens and the actors on a local stage and complement other decentralising decisions taken by the Government;
- assist local authorities in managing the budget pressures over the next five years;
- represent a major philosophical shift in the balance of power, so contributing to the shift towards a viable and sustainable localist settlement.

1. A coherent localism?

The pace and scale of change puts the Bill as just one action in a far wider series of reforms. Schools reform, directly-elected police commissioners, GP commissioning and the integration of public health, reform of the benefits system, new methods to drive economic growth and reform to the criminal justice system all add to the complexity of public services and governance.

Across the policy and political landscape it is possible to articulate a series of expressions of decentralisation and localism, at times complementary, at times competing. Advocates of municipal localism could point to the new powers handed down to local government through the General Power of Competence; power is being handed direct to citizens with additional freedoms for communities to shape their own destiny separate from formal local democracy through direct democracy. The principles of the market have been applied to education and health services.

Through all this, the Localism Bill will be a fundamental contributor and also a clarifier of what localism means to the Coalition Government and in turn to citizens themselves. What coherence will it add? Below we explore three expressions of this.

There are core questions about the feasibility of devolution. Whilst the principle of subsidiarity should be applied as a key test of localism to which all public services and democratic structures should respond, issues of efficiency, feasibility and political representation remain fundamental to arriving at the optimum governance arrangement.

The Government's own criteria for decentralisation and localism references the key issue that the political world and the public services that emerge as a result of decentralisation and localism must be more coherent than before. Thus far, it is unclear whether all these additional new controls complement each other effectively. Will citizens understand the multiple democratic forums, channels and elected representatives that the Government is proposing? Could competing mandates lead to fragmented policy, incoherent strategy and avoidable tensions?

NLGN's research has argued strongly for a 'double devolution' or wider recognition of community-based decision-making and greater choice in public services as advocated through the Government's 'Big Society' narrative. Undoubtedly, greater power will reside in the hands of citizens through more devolved planning powers, through new forms of political leadership, through direct democracy. But core questions remain: power in the hands of which citizens? What is the role of local government as the principal repository of local democracy in these reforms? Are these reforms likely to contribute to a greater coherence for citizens who interact through democracy, taxation and receipt of public services? These are challenging questions to which the Localism Bill must provide clarification and elucidation.

On first reading, the legislation both increases and reduces the role of local authorities as the focal legitimate democratic entities at a local level. The General Power of Competence represents a welcome series of freedoms and a much needed acknowledgement of the democratic legitimacy of a council to make its own decisions unconfined by the ultra vires limitation. This represents both a significant philosophical shift towards local democracy and a practical transfer of power to the local level.

However, while the Localism Bill puts councils at the centre of many of its decisions, existing local representative democracy is potentially being sidelined in other parallel reforms, including elected police sheriffs, schools reform and GP commissioning. Joining these pieces together will be complex and require a new theory and practice of local political and civic leadership.

2. The Localism Bill in the context of the CSR

Given that the principal challenge facing authorities over the coming years will be a budgetary one, a fundamental question remains – how far will the reforms outlined in the Localism Bill go to provide potential solutions to the budget reductions announced by the Government in its CSR?

The frontloading of the budget cuts means that the Localism Bill will not have arrived in time to assist early responses from the sector. But, in the years ahead, how might the reforms drive efficiency and public service reform and redesign?

While the Bill is not being drawn on a blank canvas, the emerging picture is mixed. On the one hand, the Government is consulting separately on providing freedoms for councils to flex fees and charging for planning and licensing. NLGN will be keen to ensure that maximum flexibility is provided to local authorities on taxation, charging and local interventions through the General Power. The Bill will provide new opportunities for trading and charging for local authorities. This could involve a new suite of services and trading models. Capital finance reforms through TiF are likely to go a modest way to offsetting the reductions in capital grant and the increase in the rate of borrowing from the PWLB.

On the down-side, NLGN and others have been disappointed at the apparent lack of ambition in taking forward community-based budgets in the CSR. Although the Spending Review announced sixteen pilots of

community budgets, there remains significant scope to broaden out the application of these budgets to new localities and new policy areas.

3. A major localist shift?

Since May 2010, the Government has been swift to dismantle the systems of performance management and national targets, which were a characteristic of the national-local relationship over the past decade. This has included the abolition of the Comprehensive Area Assessment and the Audit Commission. The Bill seeks to replace this relationship with a philosophy of permissiveness and a framework of incentives.

Local permissiveness includes the General Power of Competence, the right of local authorities to decide on a committee or cabinet structure and the creation of Local Enterprise Partnerships. These represent significant new advances and freedoms for local democracy. However, it is clear that this is not an abiding philosophy. Rather, a stream of incentives and approval mechanisms are required for decisions that national politicians consider intrinsically unreasonable or excessive. While the cap on council tax rises has been removed, the Government has already introduced a powerful incentive to keep council reductions below the level of inflation; the proposed new privilege for the Secretary of State to set a tax threshold above which local referenda would be held is likely to undermine the message of localism. Between them, these measures are anti-localist in two senses: anti-permissive, because they act as powerful incentives to authorities to reduce council tax; anti-localist also because through doing this they increase the proportional reliance on central government funding.

Incentives can act as dynamic and political national frameworks to negotiate inter- and intra-area decisions or development, business enterprise and housing. NLGN has supported the adoption of incentive-based frameworks in preference to performance management and top-down targets. Recognition should be given to the fact that national incentives deliberately distort the natural political, social and economic market and equilibrium. Close attention will have to be given to the impact of these incentives and any unintended consequences.

Significant though this legislation is, communities will have to wait for wider change to make localism a full reality. Discussions about the merits of a constitutional settlement are ongoing and running in parallel to the Bill. Without greater financial and fiscal responsibility, local authorities will remain within the grip of national politicians and civil servants. It is to be hoped that the Local Government Resource Review which will start in January 2011 can identify a mechanism to localise business rates whilst retaining an element of redistribution. But other freedoms will also need to be discussed, including fiscal freedoms for devolved or assigned taxation; a greater say in the expenditure of the seventy percent of government money that currently bypasses councils; clarification of freedoms on TiF and social investment models.

Running through this lie three further crucial changes the Government should initiate. In the first place, the cultural impediments to decentralisation and localism should be recognised honestly. NLGN believes that a route map to localism could be sketched out through which citizens themselves could play a part in debating the balance of power.

A second and related challenge remains the concentration of power and the fragmented policy approach within Whitehall itself. The Government's White Paper on Public Service Reform to be published in January 2011 will be a key starting point from which to initiate a new centre – more responsive to citizens, more facilitative to local solutions, more outcome-focused across policy boundaries.

And, this raises a final test of the Government's localism. The Bill enshrines a series of rights for citizens and neighbourhoods to hold government to account, to take ownership of public assets and 'a right to bid' for public services. NLGN suggests that a similar philosophy and principle should encompass not just local council services but all government services. NLGN would like to see the 'right to bid' extended to localities themselves so that provision of public services is opened up to true contestability, efficiencies driven out and productivity driven up, and services delivered closer to citizens themselves.

PART II: NLGN's Analysis of key proposals in the Localism Bill

Directly Elected Mayors

Proposals

- The Bill will seek to **create directly elected mayors in the 12 largest English cities outside of London**, and other cities that chose to participate.
- These will be **introduced subject to 'confirmatory referenda'** and 'full scrutiny by elected councillors'.
- During 2011, CLG will define what additional powers will be devolved to directly elected mayors.
- The **confirmatory referendums will take place in May 2012**. If cities vote to have a Mayor, the government will transfer additional powers and full executive authority and rapidly hold an election.

Implications and NLGN's response

- **NLGN believe there would be significant benefits to introducing mayors**. Visible and accountable civic leadership is required when bold decisions need to be taken in redesigning and reprioritising local services.
- NLGN's research suggests that **around twice as many people can identify their directly elected mayor as can identify council leaders** indirectly elected by their parties. Directly-elected mayors have a unique direct mandate and clear lines of democratic accountability. Both Ministers and the public can be clear "where the buck stops".
- NLGN have long called for a **new suite of powers** to be unlocked for mayors to incentivise the adoption of the mayoral governance model, **with additional powers made available to city-region mayors**. We also propose a new devolutionary framework for mayors: a 'gold' tier for local authority mayors and a 'platinum' tier for city-region mayors. Such a model would not only incentivise individual councils to adopt and retain the mayoral model, but promote the more difficult path of pooling sovereignty and creating pan-local authority city-region mayors where appropriate.
- To help reinvigorate democracy, increase interest and awareness in local issues and politics, and improve the representativeness of our leaders, **NLGN also calls for the introduction of open primaries for the selection of mayoral candidates**. As the televised leadership debates in the General Election race demonstrated, high profile platforms for leaders have the potential to capture the public imagination and spark far greater interest in policy and politics.

Referendums and direct democracy

Proposals

- The Queen's Speech of May 2010 includes provision to **'give residents the power to instigate local referendums on any local issue and the power to veto excessive council tax increases'** as part of the De-centralisation and Localism Bill.
- The proposals will **allow the Secretary of State and Parliament to agree on a set of principles to decide on a benchmark rise in council tax over which any increase must be approved by local referendum.**
- *Control Shift* also pledged to **'give power to residents to hold local referendums on any local issue by legislating to ensure that a referendum is held in a local authority area if 5 per cent of local citizens sign a petition in favour within a six month period.'**

Implications and NLGN's response

- NLGN's report *What's the verdict on local referendums?* argued that, while referendums and petitions provide a means by which the electorate can directly engage in participatory politics at a time when turn-out in elections is in decline, there are also significant problems and challenges associated with the approach.
- Academics have noted the **tendency of voters in referendums to opt for the status quo** in referendums where the stakes are high or the issues are complex. Research has also identified informational problems and concerns around the quality of decisions that are made due to the complexity of many issues.
- Experience of the USA suggests that **referendums often fail to protect minority rights.**
- The restriction on local authorities to raise council tax above a maximum established by the Secretary of State will **further limit the scope of councils and local communities to agree on priorities and resources.** The annual budget is a complex piece of negotiation and is perhaps the most important strategic decision that representative democracies take.
- It is **unclear what the cost of a referendum would be.** There is a danger that the costs of referendums would outstrip any proposed council tax increase.
- NLGN has developed alternatives to introducing compulsory referenda which would present additional community scrutiny decisions without undermining representative democracy. **NLGN's 'community proposal' would give a right for citizens to force an item onto the agenda for discussion at a full council meeting** if 5% of the local population had signed a petition on the subject. This would maintain the benefits of engaging people in the political process, without some of the more problematic elements of full-scale referendums.

A General Power of Competence

The proposed reforms

- The Bill introduces a 'General Power of Competence'. This **will free local authorities to do anything that is not specifically prescribed through law, legal guidance or regulation.**
- The legislation is set to repeal the *Well-being Powers* defined through the Local Government Bill 2000 on which councils relied for many activities beyond their usual scope.

Implications

- NLGN's research has unearthed a **range of activities that could be undertaken with these new powers**, including:
 - Councils providing a new series of offers to their residents and charging for a new range of services. These could include **estate agency, insurance or banking services to residents.**
 - The bill could potentially see a renaissance of 'Gas and Water Municipalism', with **councils investing in twenty-first century infrastructure such as Wifi technology or green technologies.**
 - It would **reduce the legal complications and 'de-risk' innovative approaches such as council trading and joint ventures.**
 - The Power and its freedoms should position authorities at the forefront of the local public sector. This may act as **an incentive for other parts of the public sector to pool budgets to exploit the additional powers of the council.**
- NLGN is extremely concerned that the Bill will apply restrictions to local councils. We believe it is **fundamentally important that the Bill does not use secondary legislation to limit the actions of local democracy.** This has characterised the failure of previous legislation.
- The **legislation should provide for additional flexibility on tax raising powers.** This could be contained to revenue neutral adjustment or wider freedoms could be given to local authorities.

Planning reform and housing

The proposals

- The Bill will **abolish Regional Spatial Strategies, return decision making powers on housing and planning to local councils** and introduce a 'Duty to Co-operate' on local authorities to plan strategically. The Government will rely on the New Homes Bonus to incentivise new house building.
- Financial benefits associated with development to residents through the **Community Infrastructure Levy**.
- **The Infrastructure Planning Commission will be abolished** and a Major Infrastructure Planning Unit created in the Planning Inspectorate with more decisions made by Parliament and Ministers.
- **Local forums and parish councils will be able to develop neighbourhood plans** to shape planning decisions in their localities. If local people vote in favour of new 'Neighbourhood Plans' in local referendums, councils will have to adopt them.
- The Bill will create the ability of '**Local Housing Trusts**' to plan housing developments if they can show they have the support of the local community, and that they meet some basic planning criteria. Any profits would have to be reinvested in the local community.
- The legislation will introduce a **strong presumption in favour of sustainable development**.
- The Bill **devolves the currently centralised Housing Revenue Account Subsidy System (HRA SS)** and replaces it with a new, transparent, self-financing arrangement.

Implications and NLGN's recommendations

- Proper linkages need to be established to ensure cross-boundary strategic planning and effective linkages with housing growth. It is unclear how a '**duty to cooperate**' would function. **LEPs provide a natural geography for making decisions on housing growth and supporting infrastructure**. This may require legislative change.
- The purpose of a valid planning process should be to allow all those who have a significant stake in the outcome to input and influence the decision either directly or through representative democracy. Planning decisions often have an impact beyond their local boundaries – especially decisions on infrastructure – and **safeguards will need to be built in to ensure that the system does not become excessively fragmented** and that voices of those who may have an interest in the decision can be heard.
- It is **unclear so far how local communities will get an opportunity to input into national decisions especially on linear schemes** where local communities are unlikely to benefit themselves.
- NLGN welcomes the move to a more devolved housing finance settlement. **The debt-reallocation process must not leave any local authority in a worse position** that it is in currently and must not instantly prohibit plans for new social house building through unmanageably high debt-levels.

A 'right to bid'

Proposals

- The Localism Bill will provide '**New powers to help save local facilities and services threatened with closure**, and give communities the right to bid to take over local state-run services.' This will mean that residents can demand the right to provide a service for lower costs or save a service that the council is seeking to discontinue.

Implications and NLGN's response

- Significant complexities are likely to exist when councils are seeking to transform or re-engineer services for the future and local communities wish to retain a particular expression of these services. This means that the legislation should be sufficiently flexible for the dialogue at the local level to take these factors into consideration.
- It is also important to note that councils will be responsible for prioritising across local public services and that **the 'community right to bid' is likely to have to feature within a much wider debate about the role of councils, their partners and communities themselves.**
- The **implications of the 'right to bid' should be applied across the whole of Government including Whitehall departments and agencies.** It is not clear why criteria or methods applied to local government should not apply also to the rest of the state. NLGN would like to see a situation where communities and localities could bid to run services currently organised and/or run through Whitehall departments. This might include local government itself bidding to run services on behalf of its communities where it felt it could do these more cheaply.

Regional Development Agencies and Local Enterprise Partnerships (LEPs)

The proposals

- The Government is **abolishing Regional Development Agencies (RDAs)** and emphasising the role that Local Enterprise partnerships (LEPs) will play in stimulating private sector growth and rebalancing local economies.
- **By April 2012, the government will manage out all RDA function, assets, commitments and liabilities** and transfer them to other bodies, including LEPs,.
- The Local Growth White Paper has already set out initial proposals for the functions, governance and responsibilities for LEPs which will be established between now and April 2012. **A Regional Growth Fund has been established to encourage private sector enterprise** and support places that are currently heavily reliant on the public sector to make the transition to private sector-led growth, with the first bidding round ending January 2011.

Implications and NLGN's response

- NLGN welcomes the Government's ambition to create a more integrated and locally-led approach to economic development. The role of LEPs in transport, housing and strategic planning has been given particular emphasis by the Government.
- **NLGN disputes whether moves to transfer a range of powers previously held by RDAs to Whitehall and arms length bodies is consistent with the Government's vision for localism** or plans for locally-led economic growth. Inward investment and key sector development, for example, look as though they will be centralised.
- NLGN believes that **LEPs provide the right vehicle to steer and input into skills strategies and funding and the Work Programme.**
- With the movement away from RDAs, **the Government should take the opportunity to give LEPs access to a single capital pot** for transport, housing, economic development and regeneration.
- **NLGN is concerned that the legal status for LEPs** must allow easier access to European funding, borrowing powers and a function to lead on capital infrastructure.
- We recommend that the localist spirit of the coalition's Programme for Government should be captured in a new presumption in favour of devolution. Thus NLGN propose that the Government create a new statutory 'duty to devolve'. Where a LEP wishes to have particular flexibilities and powers to drive economic growth, they should be granted if a number of key tests are met.

Tax Increment Financing and capital investment

Proposals

- As announced in September, the Government is set to introduce the concept of Tax Increment Financing. **This would allow local authorities to capture the increase in income from business rates that would flow from infrastructure investment and borrow against this future income.** The additional revenue generated would then be used to pay back the loan. This is a freedom under the Prudential Borrowing Code.

Implications and NLGN's response

- **NLGN welcomes the shift that this represents towards making local authorities independent financial entities** and the spur that this could to much-needed local infrastructure investments and improvements.
- With the reduction of capital grant by 45 percent over the period of the parliament and the increase in the rate of borrowing from the Public Works Loans Board, it will be important for the legislation to introduce a workable and suitable option.
- We urge the Government to refrain from the temptation to impose centralising controls over the usage of TIF by outlining a permissive and transparent framework under which TIF can be employed.
- To increase the array of capital raising mechanisms available to local authorities NLGN is undertaking new research to help understand how some emerging theory may be turned into practice. This centres on the viability of using municipal bonds, public and private sector pension funds and local authority reserves and investments to fund local infrastructure projects.

Local financial autonomy

Proposals

- The Bill is set to **give 'greater financial autonomy to local government and community groups'**. This centres around proposals on business rates.
- The Bill will **give councils the power to set local discounts on business rates, provided they are funded locally**. Supplementary business rates can be introduced but only when agreed upon by the business community.
- The Government is carrying out a review of local government resources from January especially focusing on business rates reform.
- The Government has already committed through the Comprehensive Spending Review to reduce ring-fencing and specific grants.

Implications and NLGN's response

- The ability to introduce **business rates discounts will be a helpful tool** for local authorities as they seek to encourage new business enterprises in their communities.
- NLGN voices **caution over the right of business to veto any increase in rates**. NLGN would urge the Government to consider whether an obligation to consult local businesses on business rates changes would be more appropriate given that locally accountable politicians have been elected to make decisions of this nature.
- **NLGN believe that a much fuller local financial autonomy is crucial to thriving local democracies and effective devolution**. These reforms therefore should be seen as the first in a series of steps.
- **The Government should commit itself to giving local authorities the powers to raise the majority of their own income sustainably and fairly**, ending their over-reliance on central government grant while maintaining scope for equalization.