

Sitra Briefing

The Localism Act 2011



January 2012

This Briefing focuses on the implications of the Localism Act for the provision of housing with support or care.

1. Introduction

Scope and intentions of the Act

The Government believes the Act will decentralise power through:

- New freedoms and flexibilities for local government
- New rights and powers for communities and individuals
- Reform to make the planning system more democratic and more effective
- Reform to ensure that decisions about housing are taken locally

For each of these areas the legislation sets out detailed measures. The Government has provided a plain English overview of the Act¹ and the full text of the Act is available on the legislation website². This Briefing does not cover all aspects of the Act but aims to pick out those sections which would be most relevant to the provision of housing, support and care.

When the Act takes effect

The Localism Act was passed by Parliament and received Royal Assent in November 2011. It will be put into effect by a series of Commencement orders. The Government hopes to have the major measures put into effect by April 2012. But some aspects will be subject to further consultation or oversight by Parliament.

2. Change for local government

There are a number of measures affecting the way local government works. These include a general power of competence, referendums for local mayors, transfer of powers on economic growth to cities and other measures.

There are significant changes for housing in London. Powers, responsibilities, assets and services related to housing and regeneration are to transfer from the Homes and Communities Agency, London Development Agency, London Thames Gateway Development Corporation and Department for Communities and Local Government to the Mayor and the Greater London Authority. There will be a new London Housing Board and a revised London Housing Strategy, which is currently out for consultation³.

3. Rights and powers for communities and individuals

The Government believes that devolving power means giving local communities, charities and social enterprises the chance to deliver public services and buy community assets. The Government hopes this will make it easier for communities to improve local services and save important local facilities.

¹ <http://www.communities.gov.uk/publications/localgovernment/localismlainenglishupdate>

² <http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted>

³ <http://www.london.gov.uk/publication/revised-london-housing-strategy-public-consultation>

Community right to challenge

The Localism Act gives voluntary or community organisations, parish councils or employees of an authority the right to express an interest in taking over the running of a local authority service. This means that a local charity, for example, could ask for the chance to run a local authority day centre or care home.

The local authority must consider and respond to this challenge. Where it accepts it, the authority must run a procurement exercise for the service, in line with the regulations that apply to a service of that value and type, and give the challenging organisation a chance to bid. The authority must consider how the expression of interest and procurement exercise might benefit the social, economic or environmental well-being of the authority's area.

There are rules for rejecting an expression of interest. These include if the challenging body is not suitable to provide the relevant service, the service has been stopped or de-commissioned, the service is already subject to planned procurement, or a number of other reasons.

Community assets

Every town, village or neighbourhood is home to buildings or amenities such as community centres, libraries, swimming pools, village shops, markets or pubs. These might play a vital role in local life but be threatened with closure.

If a building or land is considered of value to a community, the Act allows the community to nominate it to be on a list maintained by the local authority. If any of the assets on the register are put up for sale, the Act then gives community groups the time to develop a bid and raise the money to bid to buy the asset. The Act allows six months to develop bids to buy the asset. This is sometimes referred to as 'community right to bid'.

The exclusions from this list include residential premises except where part of commercial premises (e.g. a pub or shop with a flat above, which could be listed) and land used for transport infrastructure (eg train lines).

4. Reform of planning

Among other changes to the planning system, the Act introduces a number of measures which may affect how new supported housing projects get approved and how social housing providers and service users are involved in development of the local community.

Neighbourhood planning

The Act introduces a new right for local communities to draw up a neighbourhood plan. The intention is that these can give full or outline planning permission for new developments of homes, shops or offices. Provided that they are in line with national planning policy, the wider strategy of the local authority and other legal requirements, the proposed neighbourhood plan would be approved if the majority of voters in a local referendum support it.

The Government has allocated funding to support local authorities and through grants to four organisations who will support communities needing help and advice with neighbourhood plans.⁴

Community right to build

This enables community organisations to take forward proposals for new homes, businesses or community facilities for their area. This will be subject to some constraints and the organisations have to meet minimum criteria but if they get a majority vote in a local referendum the development can proceed without

⁴ <http://www.communities.gov.uk/documents/planningandbuilding/pdf/1985896.pdf>

a separate, traditional planning application. Any income or benefit from the development is retained for the local community.

5. Social housing reform

Local authority allocation policies and tenancy strategies

The Act changes the law on allocating housing to enable local authorities to set their own housing allocation policies, although they must still give reasonable preference to those in housing need. They are no longer required to include transfers for existing social housing tenants within these policies.

All local authorities must publish a tenancy strategy which sets out the principles which all social housing providers in its area must consider in setting their own tenancy policies. It has a duty to consult private registered providers (which is what the Act calls housing associations or registered social landlords) on its draft strategy. This strategy should include when the new fixed term tenancies are to be used instead of life time tenancies by social housing providers.

Homelessness duties

The Act introduces a significant change to local authorities' duties to people for whom they have accepted responsibility for under homelessness laws. They can now discharge, i.e. fulfil, their duty by an offer of rented accommodation from a private landlord. The private tenancy must be for a minimum term of twelve months and would need to meet the other requirements of suitability currently applied to offers of social housing, such as number of bedrooms.

Recognising that in many instances private rented housing is offered on a short term basis, the Act says that if the person who had this private tenancy becomes homeless again through no fault of their own within two years the local authority will again accept it has responsibility for them.

Fixed term tenancies

Local authorities are given the option of offering fixed term tenancies to new tenants and to family intervention project tenants. The Act calls them flexible secure tenancies and says they should be for a minimum period of two years but can be longer. There must be procedures for notices and reviews of decisions to end such tenancies. Introductory and demoted tenancies can be followed by flexible tenancies.

This option for local authority housing providers to use fixed term tenancies mirrors what private registered providers can do, as set out in the Directions to the regulator of social housing.

Social housing tenancies

There are a number of other measures affecting social housing tenancies. They include provision for:

- Secure and assured tenants being able to retain their current level of security of tenure if they exchange with a less secure tenant;
- New secure tenancies having only one right of succession to spouse or partner, although the landlord will have the discretion to offer more as currently for assured tenancies;
- Extending the period of time in which a social housing landlord can seek possession after the death of a tenant where someone other than the spouse or partner has succeeded and the property is too large for them;
- Extending the Right to Acquire for tenants of private registered providers who have assured shorthold tenants, subject to a number of exclusions;
- The courts to refuse to make a possession order against tenants of private registered providers if they have not had six months' notice to end their two year (or longer) fixed term tenancy.

National Home Swap scheme

The Act enables the social housing regulator to set a standard for registered providers on assisting tenants to make mutual exchanges of tenancies. It also empowers the Secretary of State to direct the regulator on the specific contents and objectives of this standard.

Social housing regulation

The Act confirms the abolition of the Tenant Services Authority and the transfer of its regulatory functions to a committee of the Homes and Communities Agency. It also creates the legal basis for a significant change in the role of the regulator. This role is now to enforce economic standards but to intervene in consumer standards only where failure by a registered provider to meet them causes serious detriment to tenants.

Housing complaints and the Ombudsman

The Act changes the way a tenant of social housing can make a complaint to the Ombudsman. The complaint must now be referred to the Ombudsman through an MP, councillor or designated tenants' panel. A tenant can only make a direct complaint if the designated referrer agrees they should or refuses to refer the complaint or eight weeks have elapsed since the end of the landlord's internal complaints process.

The responsibility of the Local Government Ombudsman for complaints about local authority housing services is transferred to the Housing Ombudsman who will now deal with all social housing tenants' complaints. The Act also enables the Secretary of State to make an order that the Housing Ombudsman can ask a court or tribunal to enforce their decision.

Other housing measures

The part of the Act dealing with housing also covers major changes to local authority housing finance. It confirms the abolition of Home Information Packs, defines housing run by co-operatives as exempt from HMO licensing and covers time limits relating to tenancy deposit schemes.

6. Related changes to social housing regulatory framework

The Localism Act created enabling powers for some of the changes to the regulatory framework intended to take effect from April 2012. These have been outlined in Directions to the Regulator 2011 and Statutory Consultation on Regulatory Framework from April 2012. The main changes are that private registered providers may:

- offer fixed term tenancies for a minimum period of two years instead of periodic (i.e. "life time") assured tenancies;
- charge "affordable" rents, defined as 80% of the equivalent market rent, including service charges, where it's part of a housing supply delivery agreement between a registered provider and the Homes and Communities Agency under the Agency's 2011-15 Affordable Housing Programme Framework.

From April 2012 the social housing regulator will monitor compliance by private registered providers with the economic standards. These are governance and financial viability; value for money; rent. The consumer standards will apply to both private and local authority registered providers of social housing but compliance is to be primarily monitored by the providers' own governing bodies and tenants. The social housing regulator will only intervene where there is "serious detriment" to tenants. The consumer standards are tenant involvement and empowerment; home; tenancy; neighbourhood and community.

Further information is available on the current Tenant Services Authority website⁵ and on Sitra's responses to the consultations.⁶

⁵ <http://www.tenantservicesauthority.org>

⁶ http://www.sitra.org/consultations_and_responses/