LOCALISM ACT 2011 – BRIEFING NOTE

This briefing note has been prepared by the Legal team at CDC with a view to providing Members and senior officers of both CDC and SNC with a high level summary of the main provisions of the Localism Act 2011. It is not a substitute for specific legal advice on the provisions of the Act and its impact on both Councils and such advice should be sought to augment this note before relying on any of the information given below. This is not least because the detail of a lot of the provisions of the Act will not become fully clear until Regulations have been enacted and/or statutory guidance has been published. In addition very little of the Act is yet in force.

PART 1 – LOCAL GOVERNMENT

General Power of Competence – Councils are given the power to do anything that individuals generally may do. This will replace the "well being" power which is repealed. However while at first glance it is a huge increase in Council powers and it is unquestionably a significant expansion, there are various boundaries and limitations that are applied. Notably these include any pre-existing limitations which are imposed by other earlier legislation which overlaps with the new power. So, for example, any commercial activity will still need to be carried out via a separate company and the power to charge for discretionary services can only be exercised with the agreement of the service recipient and on a cost recovery basis. General public law principles such as "Wednesbury unreasonableness" and the public sector equality duty will still apply.

Transfer of Functions – the Secretary of State may by order transfer a local public function to a permitted authority (which does not include a parish council) where he considers that this would promote economic development or wealth creation, or increase local accountability. This could include the transfer of a specific County Council function to a District Council and vice versa.

Governance Arrangements

Section 21 of the Act inserts a new Part 1A and Schedule A1 to the Local Government Act 2000. It provides councils with three options of permitted governance arrangements. These are:-

- Executive arrangements, being either (a) a mayor and cabinet executive or (b) a leader and cabinet executive;

- A committee system;

- Prescribed arrangements.

Provisions relating to mayor and leader cabinet executives appear to remain unchanged and include most provisions of the so called 'strong leader model'. Councils choosing to operate committee systems may under Section 9JA(1) of Schedule 2 appoint one or more overview and scrutiny committees. Prescribed arrangements may be either imposed by the Secretary of State or proposed by a local authority to the Secretary of State. The conditions which must be met in order for a proposal for prescribed arrangements to be made are that the operation of the proposed arrangements would be an improvement on the current arrangements, they would be likely to ensure that the decisions made were taken in an efficient, transparent and accountable way and the arrangements would be appropriate for all local authorities, or those of a particular type, to consider. The Secretary of State will determine whether the proposal meets these conditions.

The provisions for changing governance arrangements are provided under Chapter 4 of Schedule 2. In order to make a change in governance arrangements, a resolution of the local authority is required. As soon as possible after passing this resolution, the council must produce a document setting out the provisions of the arrangements that are to have effect and make this publicly available for inspection at the authority's principal office. The authority must also publish details in one or more local newspapers which state the change which has taken place, the date on which the changes will take effect, the main features of the change, as well as details of the document available at the principal office and the address of the council's main offices. Once a change in governance arrangements has been made, another change may not be made within the period of five years unless approved in a referendum.

If a local authority is not operating a mayor and cabinet executive and the new form of governance does not involve a mayor and cabinet executive, then the change may have effect from the first annual meeting of the local authority to be held after the

meeting when the resolution was made or at a later annual meeting of the local authority specified in the resolution. The arrangements for changing to a mayor and cabinet executive are slightly different in that the relevant change time is either the third day after the day of the declaration of poll for the first mayoral election or, if there was no election, at a time during the third day after the day on which a poll would have taken place.

The Secretary of State can make transitional arrangements by order regarding ceasing or starting to operate a committee or Executive system. This is a wide power covering all aspects. The Secretary of State may restrict by regulation what can be delegated to and what can be from a committee, operating under the committee system.

The previous restrictions which gave certain permitted periods when councils can change from electing by thirds or halves to all out elections are removed. This has been replaced with the requirement that Council can change this by resolution but must specify the first year of ordinary elections which may not be the year of county council elections in two tier areas. A council may not then pass another resolution to change its electoral system for 5 years.

Pre-determination – a Councillor taking a decision is not to be taken to have had a closed mind just because he/she has previously done anything that indicated what view he/she might take in relation to the decision. This provision comes into force on 15 January 2012 but in fact appears to do no more than re-state the current legal position as established by recent case decisions.

Standards – the mandatory code of conduct is repealed and Standards for England disbanded. However principal authorities and parish councils will still have to have a local code of conduct and the District monitoring officer retains the role of monitoring officer for each of the Parish Councils in the relevant area. The local code must reflect stated principles of good conduct and contain requirement to register pecuniary and non pecuniary interests (to be defined) and notify certain types of pecuniary interest. Councils must make arrangements to enable decisions on allegations of breach of the local code to be made. This may or may not involve a Standards Committee but the current rules and procedures applying to such Committees (including for example mandatory independent chairs and non Councillor

membership) will be repealed. One or more independent persons must be appointed and his/her views must be sought before a decision on an allegation can be made. His/her views may also be sought by members the subject of a complaint. Sanctions such as disqualification and suspension will no longer be available but it will be a criminal offence to fail to register or notify a pecuniary interest.

Pay Accountability – this provision is already in force and requires Councils to prepare and adopt a pay policy statement each year. Such a statement must set out policies relating to the remuneration of chief officers, the remuneration of lowest paid employees and the relationship between chief officer and non-chief officer remuneration. The first statement (for 2012/13) must be approved by full Council by 31 March 2012.

PART 2 – EU FINANCIAL SANCTIONS

The EU sees local authorities as an emanation of the UK state. The Government would be fined for any breaches of EU law by local authorities. This part of the Act enables central government to pass EU fines on to local authorities. Local authorities will only have to bear these costs if they had: responsibility to comply with the EU obligation; demonstrably caused or contributed to the EU financial sanction; been designated by Order of Parliament; been first issued with a warning notice; taken the chance to make fair representations to an independent panel; been issued with a final notice. This part of the Act is not yet in force – probably April 2012.

PART 3 – EU FINANCIAL SANCTIONS: WALES

(applies to Wales only)

PART 4 – NON-DOMESTIC RATES

Section 69 gives local authorities more flexibility to grant discretionary relief from business rates, provided it is reasonable to do and having regard to the interests of its council tax payers. This will probably come into force in April 2012.

Section 71 cancels liability to backdated non-domestic rates in circumstances that may be prescribed in regulations. This comes into force on 15 January 2012.

PART 5 – COMMUNITY EMPOWERMENT

Chapter 1 – Council Tax

Voters will be given the power to approve or veto excessive council tax rises - any local authority (including police and fire authorities) and larger parishes setting an increase above a ceiling set by the Secretary of State and approved by the House of Commons will trigger a referendum of all registered electors in their area. Given the likelihood of getting voters to agree a tax increase, the ceiling set by the Government will effectively be the cap on council tax increases. These provisions came into force on 3 December 2011, subject to the Government setting the ceiling.

Chapter 2 – Community Right to Challenge

Voluntary or community bodies, charities, parish councils, two or more employees of an authority - and anyone else the Secretary of State may specify in regulations - can express an interest in providing or assisting in providing a service provided by or on behalf of that authority in the exercise of its functions. If accepted (and there are very limited circumstances when it can be rejected) by the authority, the expression of interest triggers a procurement exercise in which the body, that submitted the expression of interest, can bid. That does not necessarily mean that they will end up running the service they expressed an interest in. The right to challenge is not yet in force – probably April 2012.

Chapter 3 – Assets of Community Value

This part of the Act is the Government's response to the closure of local amenities (village pubs, local shops, etc), where community groups, who want to take them over, do not have enough time to organise a bid or raise the money. The Act requires local authorities to maintain a list of assets of community value. These assets can be

owned by anyone, not just the Council. When a listed asset comes up for sale there is a six-month moratorium, to give community groups time to develop a bid and raise the money to buy it. It is not a right of first refusal, nor does it restrict to whom the owner of the asset can sell, or at what price.

Land is of community value if its actual current main use (or its use 'in the recent past') furthers the social wellbeing and social interests of the local community AND it is realistic to think that this will continue (whether or not in the same way). The Secretary of State can exclude types of land or give powers to local authority to exclude land.
Local authorities will need to set up (in a form to be prescribed by regulations), publish and maintain, a list of nominated assets and a list of unsuccessfully-nominated assets, deal with requests to add or remove assets from the list, act as an intermediary between the landowner and the community group wanting to bid for the asset, publicise notices of disposal, compensate landowners and enforce the provisions.

These provisions should come into force in April 2012.

1. PART 6 - PLANNING REFORMS

Abolition of Regional Strategies. The Act provides for the abolition of regional strategies. Existing regional strategies (such as the South East Plan 2009) remain in effect until wholly revoked by order of the Secretary of State.

Duty to co-operate. The Act requires local planning authorities to co-operate with each other in the preparation of development plan documents, the preparation of other local development documents, and other activities that support the planning of development. This section of the Act is in force now.

Community Infrastructure Levy ("CIL"). Local planning authorities will have greater control over the setting of their charging schedules. Independent examiners will still decide whether a charging schedule is unreasonable but it is up to the local planning authority to make it reasonable.

The Act allows regulations to be made requiring some CIL to be passed to the neighbourhoods where development takes place. The Act clarifies that CIL can be spent on the ongoing costs of infrastructure as well as the initial costs of new infrastructure.

Neighbourhood Planning

Neighbourhood Development Orders ("NDO"). An NDO is an order that grants planning permission in a neighbourhood area for development specified in the order. Planning permission will not be required from the local planning authority. A parish council or neighbourhood forum can request an NDO from the local planning authority. The authority must make the NDO if more than 50% of those voting in a referendum favour it, unless the authority consider it breaches European law.

Community Right to Build Orders ("CRBO"). A CRBO is a type of NDO providing for community-led site-specific development. It gives community organisations the right to take forward development in their area without applying for planning permission, subject to qualifications.

Neighbourhood development plans. This is a plan setting out policies in relation to the development and use of land in a neighbourhood. It will be made by the local planning authority on the initiative of parish councils or neighbourhood forums and will form part of the statutory development plan.

The Act allows regulations to be made to enable local planning authorities to recover costs incurred in putting NDOs or neighbourhood development plans in place.

Pre-application consultation. The Act requires developers to consult local communities and any other specified persons before submitting planning applications for certain developments. Regulations will set out the thresholds for which developments this requirement applies to. Developers will be required to have regard to any responses before submitting their planning applications. The practical arrangements for this process will be set out in regulations.

Planning enforcement

Power to decline retrospective applications. There is a power to decline to determine a retrospective planning application for a development that is subject to an enforcement notice.

Concealment of unauthorised development. The Act allows local planning authorities to apply to the magistrates' court for a planning enforcement order ("PEO") to enable enforcement action to be taken when the statutory time limits have expired and the breach of planning control has been concealed.

An application for a PEO can be made at any time within a 6 month period following the date the authority considers it has sufficient evidence to justify an application to the magistrates' court. If the PEO is made, enforcement action can be taken whether or not the statutory time limits have expired.

Local finance considerations. The Act makes it clear that local finance considerations can be a material consideration when deciding applications for planning permission. Local finance considerations mean grants or other financial assistance provided by government; and sums an authority receives in payment of CIL. The weight to be given to any material consideration is still a matter for the local planning authority.

PART 7 – HOUSING

Chapter 1 - Allocation and Homelessness

Local housing authorities will have the freedom to determine who should qualify to go on their waiting list, although rules on eligibility will still be set centrally. Tenants who wish to transfer, but who are not in housing need, will be removed from the scope of the allocation rules. This should be in force by April 2012.

The Act gives Local Authorities the power to end a homeless duty by making an offer of suitable accommodation in the private rented sector without needing the homeless applicant's agreement. There will be safeguards – an offer of private sector housing will only bring the homeless duty to an end if the accommodation is suitable for the whole household, the private sector tenancy would need to be for a minimum fixed term of 12 months, and the duty would recur if, within 2 years, the applicant becomes

homeless again through no fault of their own (and continues to be eligible for assistance). This should be in force by April 2012.

Chapter 2 – Social Housing: Tenure Reform

Local Housing Authorities are required to prepare a tenancy strategy, which should set out the objectives of the housing authority and to guide lettings policies of all social landlords in the district who will be consulted on its preparation. This should be in force by April 2012.

Social landlords will be able to grant tenancies for a fixed length (minimum two years) rather than tenancies for life, although this power will remain. There are no automatic succession rights to spouses or partners. Existing tenants will not be affected. This should be in force by April 2012.

Chapter 3 – Housing finance

The Housing Revenue Account subsidy is being abolished. This is not relevant to CDC or SNC as neither have a housing stock.

Chapter 4 – Housing Mobility

Section 176, when it comes into force, will create a 'national home swap scheme'.

Section 177, which comes into force on 15 January 2012, allows housing association tenants who are also members (e.g. shareholders) of their landlord organisation to take up incentive schemes to help them move out of the social rented sector into owner occupation.

Chapter 5 – Regulation of Social Housing

The Office of Tenants and Social Landlords (also known as the Tenants Services Authority) will be abolished and have its functions transferred to the Homes and Communities Agency, probably in April 2012.

Chapter 6 – Other Housing Matters

The Housing Ombudsman will take over certain functions, in respect of investigating complaints about social housing management, from the Local Government Ombudsman. This will probably come into force in April 2012.

Home Information Packs (HIPs) were suspended on 21 May 2010. Clause 183 of the Act will formally abolish them on 15 January 2012.

There are new provisions regarding tenancy deposit schemes (section 184) and an exemption from the Houses in Multiple Occupation licensing for buildings that are run by co-operatives (section 185). Both these provisions should come into force in April 2012.

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