

What are the new powers for Local Authorities?

The General Power of Competence:

The General Power of Competence (GPC) will replace the Well-being Power from April 2012, and is intended to provide Local Authorities - and Town and Parish Councils that meet certain minimum standards - with the same capacity to act as an individual.

The Government has emphasised that the intention is to:

- allow authorities to act in their own financial interest to generate efficiencies, secure value for money outcomes and to raise money by charging for discretionary services and trade in line with existing powers.
- allow authorities to engage in activities, ruled by the Court of Appeal in the 'London Authorities Mutual Ltd' (LAML) case, as outside the well-being power, such as providing certain indemnities and guarantees and engaging in speculative activities.

Potential uses of the Power: Decisions will be subject to the general law, and governed by the existing regimes on taxation, precepting and borrowing (including Prudential Borrowing). When using the GPC, any charges must not exceed the cost of provision of services taking one financial year with another. Authorities are unable to do anything for a commercial purpose unless they do so through a limited company. Anything which is a statutory obligation, or which Authorities could not otherwise do using the GPC, is also precluded. The Secretary of State (SoS) will have a power to amend or repeal future legislation that may prevent Local Authorities from using the Power.

Limits on the use of the Power: The SoS will have a reserve power to intervene and place limits on what Authorities can do with the GPC (note that a similar power under the Well-being Power was not used during the ten-year period it was in force).

The General Power of Competence was due to come into force in April 2012, however it was brought into force early in February, in response to a court case on prayers at council meetings.

Local Authority Governance Arrangements

The Committee system: Councils now have the option of adopting a Committee system. Authorities will be able to discharge their functions jointly with other Authorities or decide that certain functions will be discharged by another Authority. Authorities operating the Committee system are not required to operate a formal Overview and Scrutiny Committee. Requirements for health, flooding, and community safety scrutiny will apply to committee system authorities – these may be

the responsibility of a relevant Committee or of a separate Scrutiny Committee. A late amendment was agreed that makes it possible for councils to resolve to change their governance arrangements and implement those changes without waiting until after the next local election.

New forms of governance: The Act allows for the introduction of new forms of governance, by introducing a fourth option that makes it possible for councils (and others) to propose different arrangements to the SoS. Proposals under this section would need to demonstrate that the new governance arrangement represents an improvement, is likely to ensure that decisions are taken in an efficient, transparent and accountable way, and that it is applicable to all authorities or particular description of authority.

Scrutiny arrangements: At a late stage in the Lords a group of amendments were agreed which:

- Remove prescription about matters which may be referred to scrutiny by councillors who are not members of a scrutiny committee;
- Remove the link between local government scrutiny and local improvement targets in Local Area Agreements;
- Put the scrutiny committees in non-unitary district councils in an equivalent position to those of other authorities by allowing them to hold partner authorities to account.

The New Standards Framework

The Act abolishes the Standards Board regime, including the Standards Board for England and Standards Committees of Local Authorities. The new regime applies to Local Authorities, including Town and Parish Councils. All will be under a duty to *'promote and maintain high standards of conduct by members and co-opted members of the authority'*.

The duty will include an authority:

- Adopting a Code of Conduct which applies to Members when they are acting in their capacity as Members. An Authority may revise its existing code or adopt a new code to replace its existing code. Codes must be consistent with the Nolan principles, and include a requirement for Members to register and disclose pecuniary and non-pecuniary interests.
- Having in place arrangements for the investigation of allegations (which must be made in writing) and for making decisions.
- Appointing at least one independent person whose views must be sought by the authority before it makes a decision following an investigation, and who is also available to any individual whose conduct is under investigation. The Act places restrictions on who may be appointed as an independent person.
- Publicising the adoption of its Code of Conduct, and advertising for independent people to put themselves forward for appointment.

Sanctions for failing to comply with the Code are a matter for the Authority, which is responsible for deciding whether to take action, and what action to take. Principal Local Authorities will be responsible for administering the standards regimes of Town and Parish Councils in their areas – Towns and Parishes will be required to adopt their own Code of Conduct.

Monitoring officers are required to maintain the register of pecuniary and non-pecuniary interests.

The new scheme is likely to be introduced on 1st July 2012.

What are the new Community Rights?

Council Tax Referendum

Local Authorities will be required to hold a referendum if calculations, based on principles determined annually by the SoS, result in council tax that is 'excessive'. An Authority that wishes to propose a council tax increase that exceeds that allowed by the principles set by the SoS will be required to produce a substitute set of figures (shadow budget), which will apply if their main proposal is not approved in a referendum.

Local Authorities will be required to conduct referendums on behalf of precepting authorities, but they will be able to recover their costs. Those entitled to vote in local elections will be entitled to vote in a referendum on council tax.

This policy was in force for the 2012/13 budget setting process

Community Right to Challenge

The Right to Challenge allows for Town or Parish Councils, voluntary and community organisations, not-for-profits, charities and social enterprises to trigger a procurement process by expressing an interest in providing, or assisting in the provision of, council services. It will also be possible for two or more Local Authority employees to put forward an expression of interest (note no local connection is needed for any challenge). This Power should be seen in the context of the Open Public Services White Paper, which is intended to open up public services to private and third sector providers.

The process: On receipt of an application, the Council will consider whether to accept or reject the proposal (with possible modifications). In reaching a decision, it will be necessary to consider the social, economic or environmental implications of the proposal. In the case of acceptance, the Council will carry out a normal

procurement exercise for the service - on a scale proportionate to the value and nature of the service - again taking account of its social, economic or environmental potential.

Councils will be responsible for setting the timetable, taking account of budgetary and decision making requirements, though the factors to be considered will be covered in guidance. It will be a requirement to publish details of the local framework to govern this process, and of certain stages in the process of an application.

The government estimates that this power should come into effect in October 2012. No date has yet been given for publication of regulations and guidance. A decision is pending on which, if any services, may be exempt from the scheme.

List of Assets of Community Value

Town and Parish Councils and local voluntary and community organisations will be able to nominate local land or buildings to be included in a List of Community Assets maintained by Local Authorities.

What is an asset of community value? A property/asset will be included where its current primary use furthers the social wellbeing or social interests of the local community, and where it is realistic to think that this use will continue. Social interests include culture, recreation and sport. A property will also qualify when it has been in such use in the recent past, and this may realistically recur within the next five years (whether or not in the same way as before). Regulations will exclude certain buildings or land – primarily wholly residential premises - and will allow the Local Authority to determine where the regulations apply to a particular property.

What are the District/Borough Councils' responsibilities? Councils must collate and publish the List of Assets and will also need to maintain lists of properties where nominations have failed in accordance with a five-year timetable. Local Authorities will be responsible for notifying owners and occupiers of listings and receipt of notices, and for publicising the possible sale of a listed asset. It will be necessary for neighbouring councils to cooperate where a property falls in more than one Local Authority area.

What are the implications of this Power? The effect of inclusion on the List will be to require the owner of the property to notify the Local Authority when intending to dispose of the listed asset. This will trigger a moratorium period during which community interest groups can apply to be treated as potential bidders. The owner will be able to begin the sale process after an interim period of six weeks if no bidder has come forward, if a written intention to bid is received in that time then the full six month moratorium period will apply. An eighteen month protection period has also been created: if this expires before the property is sold the original notification process must start again.

The proposal involves considerable interference in private rights, which are protected to some degree by the owner of a listed property being able to request a review of the listing, and by the introduction of an interim moratorium period. A property will

only remain on a List for five years, when a further application would need to be made. Listing will be recorded on the Land Registry. The Act provides rights of review and appeal on the listing of a property, and makes provision for compensation to be paid to landowners for losses arising from being involved in a lengthier sale period.

The Secretary of State has considerable Henry VIII powers to change the scope of the scheme- a situation that needs to be kept under closer control. DCLG are working on a revised impact statement including estimated costs to Local Authorities for maintaining the list and managing the scheme. DCLG have stated that the costs will be met by DCLG.

A series of regulations are required to put this Community Right into effect; these include closer definition of local community interest groups, reviews of listing decisions and owner's appeals, excluded transactions and excluded properties, arrangements for compensation and enforcement provisions. This Power is expected to come into force in October 2012.

What are the reforms to Planning?

The Act sets out the abolition of regional spatial strategies (RSS) as part of the planning framework and the return of powers over housing and planning matters to Local Planning Authorities (LPA).

Community Infrastructure Levy

The Act retains the Community Infrastructure Levy (CIL) but includes some provisions for communities to have more control over how the Levy is spent and how that spending is monitored (the government is currently consulting on regulations related to this change).

Neighbourhood Planning

In summary, the act creates provisions for Town and Parish Councils or neighbourhood forums to:

- prepare Neighbourhood Development Plans that, if they pass certain tests such as aligning with existing plans and receiving a majority in a local referendum, will be adopted and become a material consideration;
- put forward Neighbourhood Development Orders to secure planning permission for developments they support.

Local people can choose to draw up either a Plan, or a Development Order, or both.

A "neighbourhood development plan" is a plan which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan.

A "neighbourhood development order" is an order which grants planning permission in relation to a particular neighbourhood area specified in the order.

Examination: Once a Neighbourhood Plan or Order has been prepared, an independent examiner will check that it meets the right basic standards.

A Draft Order meets the basic conditions if—

- (a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order,*
- (b) having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order,*
- (c) having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order,*
- (d) the making of the order contributes to the achievement of sustainable development,*
- (e) the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),*
- (f) the making of the order does not breach, and is otherwise compatible with, EU obligations, and*
- (g) prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order.*

If it fails the check, the LPA needs to consider the examiners views and decide whether to make those changes. If the changes are significant, the Town or Parish Council may decide whether to consult their local community again before proceeding.

Referendum: If the NDP or NDO meets the basic standards, the District/Borough Council will organise a referendum. Electors living in the parish/town concerned will be entitled to vote. In certain cases where the proposals put forward impact on a neighbouring area, people from affected neighbourhoods may be allowed to vote. If more than 50% of people voting in the referendum support the Plan or Order, then the local planning authority must bring it into force.

Implications: An adopted NDP will be taken as a material consideration in planning decisions by the LPA. An adopted NDO will grant planning permission for development that complies with the Order. Planning permission granted by a NDO, can be subject to conditions or limitations, which are specified in the Order. Regulations may make provisions entitling Town and Parish Councils, in prescribed circumstances, to require any application for approval with conditions to be determined by them instead of a LPA.

Regulations, yet to be published, will make provisions for the content of a NDP and detail further the role of the LPA, including making provisions for the payment by a LPA of remuneration and expenses of the examiner.

Neighbourhood Planning is expected to be enforced from October 2012.

Community Right to Build: A Neighbourhood Development Order is a Community Right to Build Order, if it is made by a community organisation. Community organisations can make a Community Right to Build Order in areas of a Town or Parish Council, if more than half of the members of the organisation live in the neighbourhood area.

The Duty to Co-operate in relation to planning of sustainable development:

Each person who is:

- a) A local planning authority,*
- b) A county council that is not a local planning authority, or*
- c) A body, or other person, that is prescribed or of a prescribed description,*

Must cooperate with every other person who is within paragraph a), b) or c) in maximising the effectiveness with which the following activities are undertaken:

- *The preparation of DPDs,*
- *The preparation of Marine Plans under the Marine and Coastal Access Act 2009*
- *Activities that are considered to prepare for the above and activities that support the above.*

This Duty requires Councils to engage constructively, actively and on an ongoing basis in any process by which the above are undertaken.

Nationally significant infrastructure projects

The main change here is that applications for consent for development of major infrastructure projects will now be decided by the Secretary of State, following a recommendation by a planning inspector from the Major Infrastructure Planning Unit. Currently these decisions are made by the independent Infrastructure Planning Commission, which will close and be replaced by the Major Infrastructure Planning Unit. The Major Infrastructure Planning Unit will sit within the Planning Inspectorate and continue to use the framework set out by the national policy statements. The government says that this change will 'return democratic accountability to major infrastructure applications'.

What are the reforms to Social Housing?

The most significant changes for Authorities are, that they can:

- offer homeless people tenancies in private sector accommodation instead of being obliged to offer social housing;
- offer new social housing tenants shorter, fixed-term (minimum two year) tenancies;
- decide who goes on housing waiting lists, with central government setting out who it feels has the greatest housing needs;
- keep rental income to spend on housing investment locally.

The government says that the changes set out in the Act will give Local Authorities 'the flexibility to better manage their housing stock by adapting to meet local needs'.

Social Housing Provisions

Allocation: The Act allows councils to set criteria for whom they will accept onto social housing waiting lists, and to refuse to allow people who do not qualify to join the list. Every Local Housing Authority (in England) needs to prepare an Allocation Scheme which sets out their priorities for determining housing need (for example, the Act says that 'reasonable preference' should be given to homeless people, people occupying unsanitary or overcrowded housing, people who need to move on medical needs and so on). The allocation scheme should also set out the procedure a local housing authority will follow for allocating housing accommodation.

Homelessness: A key change relating to homelessness is that councils can fulfil their duty to someone who is homeless and has a 'priority need' (such as having dependents) by offering them a single privately rented housing tenancy for one year. Previously, councils were obliged to offer a social housing dwelling unless the tenant asked for a private sector one.

Social Housing: Local Housing Authorities must now prepare a Tenancy Strategy to guide decisions social landlords working in their area make on:

- the kinds of tenancies they grant
- the circumstances in which they will grant a tenancy of a particular kind
- the length of tenancies
- the circumstances in which they will grant another tenancy when an existing one expires.

For new social housing tenants, landlords can now issue fixed-term ('flexible') tenancies: social housing no longer comes with a 'tenancy for life'. The length of the fixed term has been subject to much debate, and guidance on how this should be applied is still vague. However, the Act does set a minimum of two years.

Social Housing Regulation: There are also reforms to how the social housing sector is regulated. The Act paves the way for Tenant Panels, which social landlords will be expected to support, whose purpose is to 'refer complaints against the social landlord'. Social housing tenants will now have a single body to contact when making complaints about their landlord: the Independent Housing Ombudsman (previously they could also contact the Local Government Ombudsman). This change aims to achieve greater consistency across the social housing sector.

Social housing tenancy exchanges: The government has announced the launch of HomeSwap Direct, a national home swap scheme for social housing tenants. The service means that social housing tenants will be able to search an online database of all available properties. The government says that this service will help social housing tenants to 'find a home that better meets their needs and to exercise greater control over their lives'.

Self Financing: The Localism Act enacts the legislation required to replace the Housing Revenue Account Subsidy System with self-financing for council housing, which will come into force in April 2012. Local authorities will now keep the rent they collect from social housing tenants and use it to maintain housing locally.

Reform of social housing regulation: the second Commencement Order (Jan 12) included initial legislative preparations for the formal implementation of changes on 1st April 2012.

Policy	Actions	Responsibility	Timescale
General Power of Competence	Assessment of the potential uses of the Power	Legal	April
Governance Arrangements	Assimilation of all information on Governance and implications and opportunities for both Authorities.	Legal and Member Services	April
Standards	Develop a 'local code' and arrangements for the investigation of allegations and decisions. Advertise and appoint at least one independent person for consultation on investigations. Publish the Code. Work with Local Town and Parish Councils to administer their schemes.	Legal	Work on going, expected to be completed by July.
Council Tax Referendum	Monitor 'excessive' principles as set by SoS during budget setting process.	Finance & Elections	Already in force
Community Right to Challenge	A comprehensive business plan to enable the Councils to be ready to receive challenges to deliver our services.	Community and Procurement	Awaiting Regulations expected to be enforced Oct 2012.
List of Assets of Community Value	A defined method to develop the List, to include assessing assets, receiving requests from communities, moratorium, sale of assets and processing compensation claims from landowners. A business plan for the long term maintenance and five year review of the List. An agreed method and Strategy for Asset Transfer.	Community and Assets	Awaiting Regulations expected to be enforced Oct 2012.
Community Infrastructure Levy	Monitor guidance and develop a charging schedule. Consult with community on charging schedule.	Strategic Planning	Late 2012 / Early 2013
Neighbourhood Planning	A defined method to deliver, engage, advise and support communities in the development of effective Neighbourhood Plans across South Hams and West Devon, abiding by our Duty to Support (within the Act). A defined appropriate method for inspecting Neighbourhood Plans to ensure aligned with Local Plans. A plan to handle referenda to support Neighbourhood Plans. A defined method for processing Neighbourhood Development Orders / Community Right to Build Orders.	Strategic Planning and Community	Awaiting Regulations expected to be enforced Oct 2012.
Social Housing	Understand all the requirements and prepare an Allocation Scheme and Tenancy Strategy	Housing Advice	Expected April 2012

Timetable for Implementation (subject to further Regulations)