

# What's in the Localism Act?

June 2012 update from the Paul Lusk Consultancy

The Localism Act became law on 15<sup>th</sup> November 2011 after about a year of debate in Parliament. The Act gives community groups three new 'community rights:'

- The right to challenge - a right to ask to become the provider of a council service
- The right to bid - a right to get land or buildings listed as 'community assets' with the result that the owner must consider an offer from a community group before selling
- Planning - neighbourhood planning and a 'community right to build' give communities more say in planning decisions, and a right to give planning permission after approval in a local referendum.

The Localism Act is a huge piece of legislation with many other features, including significant changes on housing. This briefing note summarises the new community rights and housing changes.

## Community right to challenge

(Part 5, chapter 2, clauses 81-86 of the Act)

A community group can say that it is interested in taking over a service. It will also say what community benefits it will provide in running the service.

The regulations and statutory guidance<sup>1</sup> on the Community right to challenge are now all published and, barring unexpected developments, the right to challenge will come into effect on 27<sup>th</sup> June 2012.

A **challenge** is expression of interest in providing, or assisting in providing, a public service. If the challenge is accepted, the result is a 'procurement exercise'.

A challenge (expression of interest) can be made by any of:

- A voluntary or community body <sup>2</sup>

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<sup>1</sup> Visit [www.Communities.gov.uk](http://www.Communities.gov.uk) and search for community right to challenge

- A charitable trust
- A parish council<sup>3</sup>
- Any two or more employees of the authority receiving the challenge
- Others to be defined in Regulations<sup>4</sup>

A challenge can be made to a ‘public authority’ which means

- A county or district council or a London Borough, or
- Other bodies of a ‘public nature’ (defined in Regulations: so far this only includes Fire and Rescue Authorities)

The public authority can specify periods when challenges may be made, and can suggest changes to the wording of a challenge. If a challenge is accepted, the result is a procurement exercise - in other words, the public body invites tenders for the service. This must be in line with the law covering public tenders and contracts. This law now includes the 2012 Public Services Social Value Act which requires councils to consider social, economic and environmental improvement to its area in any contracting process.

When considering the Challenge and preparing the tender, the public authority must ‘consider how it might promote or improve the social, economic or environmental well-being of the authority’s area.’

## **Community right to bid – the community asset provision**

(Part 5, chapter 3, clauses 87-108 of the Act)

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<sup>2</sup> Voluntary means not-for-profit and ‘community’ means working for the benefit of the community

<sup>3</sup> This means a town, parish, community, village or neighbourhood council elected by local residents. In areas without a parish council, residents can call for a ‘community governance review’ to consider setting one up. For more information go to [NALC.gov.uk](http://NALC.gov.uk) or click [here](#).

<sup>4</sup> Regulations are ‘Statutory Instruments’ with details on using the powers given to ministers by Acts of Parliament.

This was at first announced as the ‘community right to buy.’ The aim is to give community groups a chance to make an offer for land and buildings that have a community use, before such property is sold.

Under the legislation, councils<sup>5</sup> will keep a register of land and buildings that are ‘assets of community value.’ This means that the property is currently in use mainly to ‘further social wellbeing or social interests of the local community’ or that it has recently been in such use and can return to such use within five years; in both cases there must be a realistic chance of the use continuing. An asset stays on the register for up to five years, though the registration can then be renewed.

Organisations including parish councils and community groups will be able to ‘nominate’ land and buildings to be included in the register. The main council can reject these proposals - and must publish a list of these refused nominations.

Once land or a building is on the register, the owner cannot sell it for a set period, unless the owner has first considered any bids from a ‘community interest group’ to buy it. There is provision for compensation for owners, and for enforcement including cancelling any sale that occurs without going through the procedures.

Once the owner tells the main council that he/she wants to sell, community interest groups have six weeks to register their interest in bidding. If there is a bid the owner cannot sell for a period of six months from the time he/she tells the council of the plan to sell. Otherwise, the owner can make a sale any time within eighteen months of making the notification.

Regulations were expected to come before Parliament in April 2012 but have still not appeared (as of 1<sup>st</sup> June). These will need to define ‘nominating bodies’ and ‘community interest group’ and will also set out the terms for compensation.

## **Community right to build, neighbourhood planning and neighbourhood development orders**

(Part 6 chapter 3 and schedules 9-11 of the Act)

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<sup>5</sup> Council here means a district or unitary council or a London Borough.

The Act gives neighbourhoods powers to vote to give planning permission for developments in their area. It also enables them to draw up their own neighbourhood plans.

The government is also (separately from the Localism Act) giving grants called ‘new homes bonus’ which it hopes will encourage neighbourhoods and councils to allow more homes to be built. There is also funding called a Community Infrastructure Levy (CIL) which developers/builders will pay to councils to pay for extra facilities needed in an area as a result of the extra development. This Levy was introduced in 2010 but under the Localism Act there will be more emphasis on the money being spent on priorities set by the local neighbourhood<sup>6</sup>.

The government’s overall idea is to give local communities more incentive to support development. How this will work remains to be seen. Full scale Neighbourhood Planning (with communities taking legal planning powers) may or may not take off. However, local neighbourhoods are being encouraged and supported to prepare local planning strategies and priorities, to guide the planning authority and developers in deciding on things like how to use CIL.

The way neighbourhood planning works is like this:

- A parish council can apply for its area to be a ‘neighbourhood area’. If there is no parish council, a group be recognised as the ‘neighbourhood forum’ for a proposed ‘neighbourhood area’ provided they have at least 21 members and a constitution giving all local residents, employees and councillors a right to join.
- A neighbourhood area can have a neighbourhood plan, which sets out planning policies for the area. With the approval of a local referendum, the parish council or forum is entitled to have a neighbourhood plan drawn up.
- The parish council or forum can also call a referendum for a neighbourhood development order giving planning approval for a particular development or a group of developments.

There is a special type of neighbourhood development order called a ‘community right to build order’<sup>7</sup>. This order is made by an incorporated organisation (a company

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<sup>6</sup> For guidance on CIL published in 2011 look on communities.gov.uk or click [here](#)

<sup>7</sup> Look on the Communities and Local Government website or click [here](#).

or an Industrial and Provident Society) formed for the benefit of an area and controlled by local residents. If passed in a referendum of local residents, it gives planning permission for a particular site in a neighbourhood area (whether or not there is already a parish council or a recognised neighbourhood forum; the community right to build order may also cause a new neighbourhood area to be recognised). The government is offering grants towards the cost of local consultation and preparing proposals. For more information see the Community Right to Build funding guidance from the Homes and Communities Agency<sup>8</sup>. Advice is available from Locality<sup>9</sup>.

## Housing

(Part 7 of the Act)

This gives effect to the proposals in the November 2010 social housing policy [consultation](#). The Localism Act:

- Amends the law on housing allocations giving councils more power to manage waiting lists and offer private accommodation to priority homeless applicants
- Creates new Flexible Tenancies and requires councils to have a strategy for the social housing tenancies available locally
- Abolishes housing revenue accounts and introduces new free-standing business plans for council housing
- Abolishes the Tenant Services Authority and replaces it with a regulation committee in the Homes and Communities Agency, and changes the way housing complaints are considered.

### New tenancy framework:

Flexible Tenancies are a new option for councils to be able to offer if they choose. They will last at least two years (normally five) with no maximum period. The landlord (the council) must tell first tell the tenant that it is a flexible tenancy before the new tenant accepts it. Six months before the end of the fixed period, the landlord has to give the tenant notice if the landlord wants the tenant to leave.

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<sup>8</sup> [www.homesandcommunitiesagency.gov.uk](http://www.homesandcommunitiesagency.gov.uk) or click [here](#).

<sup>9</sup> [www.locality.org.uk](http://www.locality.org.uk)

Flexible tenancies are a form of secure tenancy and will have most of the same rights.

All housing authorities (i.e. district, borough or unitary councils - whether or not they own homes) must have a tenancy strategy which sets out the kind of tenancies (including short term tenancies) on offer locally from social housing providers. This includes housing associations. Housing associations will not offer flexible tenancies. They can already offer 'assured shorthold' tenancies for a limited period. New guidance will allow them to use this power to offer their equivalent of flexible tenancies.

**Regulation:**

There is still a housing standards framework<sup>10</sup> and the HCA (as Regulator) will still have enforcement powers over landlords. The Localism Act recognises two different sets of standards. **Economic** regulation covers governance, financial viability and value for money for 'private sector housing providers' (including housing associations but not councils). The HCA will actively collect information and report on these.

Other standards are '**consumer**' standards - the service provided to tenants. The HCA will not collect information on this area. It will only act if it learns there is a risk of 'serious detriment' to tenants, based on information provided to it - for example by the Housing Ombudsman, a group representing tenants, a council or a councillor. It will be up to tenants, through scrutiny, to check if consumer standards are being met.

The Housing Ombudsman Service (HOS) will consider complaints about all social housing providers from April 2013 (a change from the current situation where council housing complaints come under the Local Government Ombudsman). Complaints can be referred to the HOS by a recognised tenant panel, or by any Member of Parliament, or by a local councillor. A tenant can also refer a complaint directly to the HOS.

Tenant panels<sup>11</sup> to consider complaints (and other service matters) will not be compulsory - they will be recognised for this purpose by social landlords (councils and housing associations) if they choose to.

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<sup>10</sup> The social housing regulatory framework is published by the Homes & Communities Agency, click [here](#).

<sup>11</sup> The National Tenant Organisations have published a study of Tenant Panels, see <http://nationaltenants.org/tenantpanels>