



## **Briefing on the *Decentralisation and Localism Bill***

January 2011

**Contact:** Daniel Fluskey

**Tel:** 020 7520 2433

**E-mail:** [daniel.fluskey@ncvo-vol.org.uk](mailto:daniel.fluskey@ncvo-vol.org.uk)

## 1. Introduction

1.1 On 13 December 2010 the [Decentralisation and Localism Bill](#) (the Bill) was introduced in the House of Commons. The second reading of the Bill is scheduled to take place on 17 January

1.2 The Bill seeks to make legislative provision for the proposals outlined in [The Coalition: Our Programme For Government](#) and the Conservative Green Paper [Control Shift: Returning Power to Local Communities](#). These proposals are designed to enable a significant shift of power from central government to local government and communities. Key aims include:

- empowering communities;
- diversifying the supply of public services;
- strengthening accountability to local people; and
- opening up government to public scrutiny.

1.3 The Bill is a major piece of legislation which encompasses a number of policy areas which the Coalition Government has focussed on since coming into power. In [Decentralisation and the Localism Bill: an essential guide](#) decentralisation is described as “the biggest thing that government can do to build the Big Society”.

1.4 To achieve this the Bill will give communities certain rights, these include the right to buy community assets (such as shops, pubs and libraries); to challenge how services are being run and to bid to take over these services and the power to instigate local referendums on any issue. It also give new powers to local government. Also included are powers to create directly elected mayors in 12 cities, give local authorise a General Power of Competence, and give local communities the power to instigate a local referendum on any issue.

1.5 This briefing provides an overview of the main provisions of the Bill that will affect the voluntary and community sector. NCVO will be monitoring the passage of the Bill and working to influence any accompanying guidance. We would welcome your views on any aspects of the Bill. If you would like to feed in your views, or discuss NCVO's local government policy work further, please contact Daniel Fluskey on [daniel.fluskey@ncvo-vol.org.uk](mailto:daniel.fluskey@ncvo-vol.org.uk) or telephone 020 7520 2433.

## 2. Main provisions of the Bill

2.1 The Decentralisation and Localism Bill is in eight parts including: Local Government; Community Empowerment; Planning; and Housing. The Bill contains a number of proposals which will be of interest to voluntary and community organisations (VCOs). For the purposes of this briefing we focus on the relevant areas most likely to impact on our members and the voluntary and community sector (VCS). These are:

- new powers to local authorities;
- assets of community value; and
- community right to challenge

### *3. New powers to local authorities*

3.1 The aim of this Bill is for both communities and local government to be recipients of a radical power shift which will enable them to have more control and say over shaping their local area. To achieve this it will introduce a new general power of competence for local authorities. Until now, central government has prescribed what local authorities should do, for example in terms of setting up Local Strategic Partnerships or Local Area Agreements, and has set targets for them to achieve, most recently through the use of Comprehensive Area Assessments. The general power of competence in the Bill effectively reverses the current position, meaning that local authorities will be able to do anything that is in the interests of local people as long as it is legal.

The vast majority of relationships that civil society has with government and public bodies are at the local level. The general power of competence proposes a fundamental change as to how local authorities and councils can operate in the future. We welcome the flexibility and control that this will bring to local areas, allowing them to respond best to the needs of communities. However, good partnership working between sectors will be fundamental to this new power of competence being a success.

Although Local Strategic Partnerships have provided a structure for partnership working and a greater opportunity for the VCS to be involved at a strategic level, partnership should not depend on formal imposed mechanisms. Partnerships work best when both the VCS and local government come together sharing skills, knowledge, values and aspirations to work in the best interests of local people and communities. Concentrating on these outcomes and being flexible in how sectors work together could bring greater opportunities to see partnership as an ongoing process and a way of working that makes a positive and lasting difference.

With local authorities having greater power, independence, and flexibility in what they do and how they do it, local Compacts will become more important as a basis for improving the relationship between local authorities and the VCS. Mutually agreeing local Compacts and a commitment from both sectors to follow their principles will build better partnerships that can make a real difference to people's quality of life as well as the quality of their services.

### *4 Community right to challenge*

4.1 This new right will allow communities (defined as a voluntary or community body, or a body of persons or a trust which is established for charitable purposes, as well as parish councils) to submit an 'expression of interest' to the relevant authority (meaning a district, county, London borough council or any body carrying on functions of a public nature) to provide, or assist in providing, a service which that local authority provides. This means that if communities think that a local service is failing them, there is a formal process by which they can challenge the service and submit a proposal to run it themselves.

4.2 When considering a challenge, the local authority must consider whether accepting it would promote or improve the social, economic or environmental well-

being of the authority's area. If it is accepted, the local authority must then enter into a procurement exercise for the service. This means advertising the contract for the service to which any organisation, from any sector, can then submit a formal proposal to take it over. The form of this procurement exercise will be determined by the type of service that is being challenged and the value of the contract. Importantly, this means that while a community may come together in some form to challenge the running of a particular service, the procurement exercise that this triggers may find that an alternative group or a private sector organisation is actually awarded the contract.

NCVO welcomes and supports this new right for communities. Allowing people and communities to be involved in the running and delivery of public services they use is an important step towards encouraging greater participation and involvement in civic life. People should be able to have more control over the services they receive and be able to challenge the running of the service if they believe that it could be delivered better. Furthermore, giving communities a greater say in the running of services helps to ensure that these are more responsive to local needs.

While a right to challenge is to be welcomed, this has to be considered as part of the much wider context of public service delivery. Being able to challenge who runs a particular service can only go so far. Public service delivery cannot be improved just by transferring the organisation delivering it to another one. A radical rethink is needed to create long term positive transformation in public services. If the public sector focuses only on who delivers the service, rather than looking at changing the service itself, then any benefits to be gained from diversifying the supply of services will be restricted and limited. The Bill allows for local authorities to specify times within which communities will be able to put forward an expression of interest. We hope that these windows of opportunity will be joined up with commissioning processes so that the service is looked at as a whole before a procurement exercise is entered into.

The more that local people and service users can be involved in the commissioning process, designing and shaping what that service actually is, the more responsive it will be to local needs. This process would also make sure that the social, economic, and environmental well-being of the local area is at the centre of any changes that are made. These considerations should be put at the heart of the decision making process and should form the key criteria on whether a challenge and future delivery of the service would be of benefit for the community, not just be a tick-box exercise.

With this right to challenge, voluntary and community groups who run services on behalf of local authorities may be challenged themselves. Guidance and clarity will have to be given as to when services can be challenged and how existing contracts are honoured. Where voluntary and community organisations are contracted to run and deliver services that these contracts must be honoured and only brought to an end in appropriate circumstances and timescales.

Much of the detail on how the right to challenge will work in practice is to be set out in regulations that will accompany this Bill, including: what services will be excluded from the right to challenge; minimum time periods for decisions to be made; and the grounds on which an expression of interest can be rejected. NCVO will be actively

seeking views and comments from our members to feed into consultations on these regulations.

## 5. Assets of Community Value

5.1 The Bill will require local authorities to maintain a list of assets in their area which have community value, which could include post offices, village shops, and local pubs, even if they are owned privately. Communities will be able to nominate assets which they believe should be included in such a list. If an owner of one of these assets wishes to sell, community interest groups will have a set amount of time within which they can put together a written request to be treated as a potential bidder. The asset will not be able to be sold until this set amount of time has passed. The aim of this provision is to allow community groups time, or a window of opportunity, to be able to put together a viable bid.

Community assets, both buildings and land, can play a key role in strengthening communities, as a focus for community life and a resource to support local enterprise. NCVO therefore welcomes the provisions in the Bill to ensure interested community groups have an opportunity to consult with local people to develop appropriate plans and models to take on assets. However, as with the 'right to challenge' the importance is not necessarily *who* owns the asset, but *what* they do with it to ensure that their community benefits from it as much as possible.

At the time that the asset is ready to be disposed of (selling the freehold or leasehold of the land) local authorities should consider the needs of the community and what type of transfer may be most appropriate: this could include a short-term lease, managing the asset, or a transfer of a long leasehold. All relevant information on the asset must be made available upfront so that communities can make appropriate decisions about whether they would like to put forward a request. A full assessment of risk and the financial viability of the asset should be done so as to ensure that communities are not taking on a liability and that the amount of risk involved is proportionate.

Further consideration of the support that community groups will need to be able to build capacity and take on community assets will be fundamental to ensuring that successful community asset transfers occur. The Development Trusts Association *Asset Transfer Unit Evaluation* has shown that the most important success factors in undertaking successful and sustainable asset transfers are: the receiving third sector organisation having sufficient skills and capacity; a good business plan; and a viable revenue stream. Without these, taking on property can soon turn an asset into a liability. We would like to see a mandatory minimum period of 6 months included in the regulations to this Bill, from when the owner of the asset decides to sell before they are allowed to do so, to enable groups to have sufficient time to build this capacity and prepare viable bids.

Legislation governing asset transfers to community groups has existed in Scotland for some time. However, the process is thought to be bureaucratic and slow, meaning that only a small number of asset transfers to community groups have actually occurred. The provisions in this Bill should allow for a more straightforward process. However, community groups have first refusal on the asset if they submit a

bid in time in Scotland. This right of first refusal should be included in further regulations.

While the Bill is an important landmark in acknowledging and putting into place provisions to ensure that communities have an opportunity to submit a bid to take over an asset, it should be noted that asset transfers to community groups have been taking place around the country for some time. Areas where local authorities have been successful in engaging with communities and building in a strategic and planned approach have seen a greater number of asset transfers than others. What this demonstrates is that a pro-active and well-considered asset transfer policy which enables community groups to be involved and works with them to develop proposals and build capacity is the key success factor in asset transfers.

For example, the London Borough of Croydon's strengthening communities partnership provides a good model for how this can be achieved. The council would pay for a feasibility study for each asset to consider its condition, location, use, potential for community management, investment required, and potential sources of funding. If the asset was transferred to a community group support would be provided by Croydon Voluntary Action. Community groups would be expected to maintain the site themselves and no money would have been transferred along with the site.

## *6. Local Referenda*

6.1 The Bill gives new powers to instigate a referendum. A local authority must hold a referendum if they receive a petition to do so which is signed by 5% of electors in that local area. The duty is not absolute, the local authority will determine whether the matter is relevant to the local area and assess whether the petition is vexatious or abusive before a referendum is put forward.

6.2 Alongside being able to instigate local referenda, communities will also be able to vote on local development issues. The aim behind this is that communities and neighbourhoods will be able to come together to decide where new developments, including homes and shops, should be built and what green spaces should be protected. These proposals will then be voted on by people in a local referendum. Similarly, local groups will be able to come together to propose new developments. If these proposals receive 50% of support in a referendum then they will be able to be built without the need for planning permission, provided they meet certain safeguards.

NCVO supports measures that encourage people to engage with their communities and be involved in civic life. People should be able to feel that they have some say and control over what happens in their local area. A culture of participation and engagement should be built up widely amongst communities. Holding local referenda is one way of doing this, but it is not the only solution and consideration should be given in local areas as to how to best engage the whole of the community in local decision making and civic life.

It is essential that all people are able to have a say and participate. Given that people who are more socially and economically disadvantaged are less likely to be

involved in civic life and we are concerned that referenda may be called which further disenfranchises them. One of the main strengths of the voluntary and community sector is the ability to enable people who may be vulnerable or disenfranchised to get their voice heard, providing support and giving people the skills and confidence to be able to engage. Local authorities will need to work with the VCS to ensure that petitions for referendums and proposals for development and planning do not unduly threaten services and interests of marginalized groups and benefit the community as a whole while ensuring that everyone in their community has the right information and opportunity to participate in civic life.

## 7 *Next steps*

7.1 The Bill was introduced into the House of Commons on 13 December 2010. The second reading of the Bill is due to take place on 17 January 2011.

7.2 NCVO will be monitoring the passage of the Bill and working to influence any accompanying guidance. Where necessary we will pursue probing amendments to this legislation, on the basis of the interests outlined above, at the appropriate juncture. If you would like to assist NCVO in lobbying for such changes, please contact Chloe Stables, on 020 7520 2474 or email [chloe.stables@ncvo-vol.org.uk](mailto:chloe.stables@ncvo-vol.org.uk).

7.3 More detailed guidance will be issued for consultation on the Bill in secondary legislation and regulations. We will be actively seeking the views of our members and consulting with them to develop our position. If you would like to feed in your views, or discuss NCVO's local government policy work further please contact Daniel Fluskey on 020 7520 2433 or email [daniel.fluskey@ncvo-vol.org.uk](mailto:daniel.fluskey@ncvo-vol.org.uk).

NCVO  
Policy Team

January 2011