

## National Assembly for Wales

### Localism Bill – Provisions relating to Wales January 2011

The *Localism Bill* was introduced in the House of Commons on Monday 13 December. This paper provides a guide to Welsh related provisions in the Bill.

The Bill gives the National Assembly for Wales legislative competence in respect of three matters:

- local referendums on proposed council tax levels;
- planning applications and enforcement;
- the Housing Revenue Account (HRA) and Housing Revenue Account Subsidy (HRAS) system in Wales.

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## **National Assembly for Wales**

Localism Bill – Provisions relating to Wales  
January 2011

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Members'  
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## Summary

The *Localism Bill* was introduced in the House of Commons on Monday 13 December by the Rt.Hon. Eric Pickles MP, Secretary of State for Communities and Local Government. The House of Commons has published a [comprehensive Research Paper](#) on the Bill. This paper provides a guide to Welsh related provisions in the Bill.

The Bill gives the National Assembly for Wales legislative competence in respect of three matters<sup>1</sup>:

- local referendums on proposed council tax levels;
- planning applications and enforcement;
- the Housing Revenue Account (HRA) and Housing Revenue Account Subsidy (HRAS) system in Wales.

The Bill also contains two Wales-only provisions that will confer a power for Welsh Ministers to decide the timing of council tax revaluations in Wales and a power for Assembly Ministers to give directions to Welsh local authorities who fail to produce new budget calculations after having their Council Tax capped.<sup>2</sup>

A number of provisions will apply to both Wales and England. These include:

- ensuring that councillors are not prevented from taking part in decisions where they have expressed a view on related issues (“Predetermination”);
- requiring local authorities to publish senior pay policy statements;
- repealing duties for local authorities to promote understanding of local democracy and make schemes for handling petitions;
- requiring ballots on all proposals for Business Rate Supplements, and enabling local authorities to give discretionary Business rate discounts.

The Bill also contains provisions which require a Legislative Consent Motion (LCM) in the National Assembly. These include the local authority pay accountability provisions, the repeals relating to local democracy and petitions and the homelessness provisions.<sup>3</sup>

This paper will explain more fully what powers are granted to the National Assembly for Wales and to Welsh Ministers in the Bill and the implications of the clauses that apply in Wales and England.

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<sup>1</sup> [Wales Office, Welsh Secretary welcomes Localism Bill to switch powers to communities, 13 December 2010](#)

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.



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# Localism Bill

## 1. Introduction

The *Localism Bill* was introduced in the House of Commons on Monday 13 December by the Rt.Hon. Eric Pickles MP, Secretary of State for Communities and Local Government. The Bill was announced in the Queen's speech on the 25 May 2010 which stated that it was intended to devolve greater powers to councils and neighbourhoods and give local communities control over housing and planning decisions. The House of Commons has published a [comprehensive Research Paper](#) on the Bill.<sup>4</sup>

The main elements of the Bill are to:

- give councils in England a general power of competence;
- set out the types of governance arrangement which will apply to local authorities in England and allows for mayoral referendums in specified areas;
- give new powers in England to help save local facilities and services threatened with closure, and give communities the right to bid to take over local authority-run services;
- abolishes the Standards Board regime in England;
- give a power for the UK Government to require local and public authorities in England to pay EU sanctions if found responsible for infringements of EU law;
- require public bodies in Wales and England to introduce a senior pay policy document;
- make changes to the major infrastructure planning regime in Wales and England;
- make changes to the business rate regimes in Wales and England including allowing local authorities greater discretion over rate relief; and
- give residents the power to instigate local referendums on any local issue in England and the power to veto excessive council tax increases.

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<sup>4</sup> [HC Library, \*Localism Bill: Local government and community empowerment\* \[Bill No 126 of 2010-11\] Research Paper 11/02, 11 January 2011](#)

The Bill gives the National Assembly for Wales legislative competence in respect of three matters<sup>5</sup>:

- local referendums on proposed council tax levels;
- planning applications and enforcement;
- the Housing Revenue Account (HRA) and Housing Revenue Account Subsidy (HRAS) system in Wales.

The Bill also contains two Wales-only provisions that will confer a power for Welsh Ministers to decide the timing of council tax revaluations in Wales and a power for Welsh Ministers to give directions to Welsh local authorities who fail to produce new budget calculations after having their Council Tax capped.<sup>6</sup>

A number of provisions will apply to both Wales and England. These include:

- ensuring that councillors are not prevented from taking part in decisions where they have expressed a view on related issues (“Predetermination”);
- requiring local authorities to publish senior pay policy statements;
- repealing duties for local authorities to promote understanding of local democracy and make schemes for handling petitions;
- requiring ballots on all proposals for Business Rate Supplements, and enabling local authorities to give discretionary Business rate discounts.
- changing the way local housing authorities may discharge the main homelessness duty under the *Housing Act 1996*.

The Bill also contains provisions which require a Legislative Consent Motion (LCM) in the National Assembly.<sup>7</sup> These include the local authority pay accountability provisions, the repeals relating to local democracy and petitions and the homelessness provisions.<sup>8</sup>

The Bill has been published in two volumes, one containing the 208 Clauses and the other the 24 Schedules.

This paper will explain more fully what powers are granted to the National Assembly for Wales and to Welsh Ministers in the Bill and the implications of the clauses that apply in Wales and England.

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<sup>5</sup> [Wales Office, Welsh Secretary welcomes Localism Bill to switch powers to communities, 13 December 2010](#)

<sup>6</sup> Ibid.

<sup>7</sup> [See MRS Quick Guide, Legislative Consent Motions, November 2010.](#)

<sup>8</sup> Op.cit, Wales Office, 13 December 2010..

## 2. The Bill: Clauses relevant to Wales

Most of the provisions of the *Localism Bill* relate to England only. However, some clauses relate to England and Wales and to England, Wales and Scotland. This section summarises the clauses relevant to Wales.

**Part 1, Clauses 1 to 7** of the Bill provide a general power of competence for local authorities in England. In doing so, Schedule 1 repeals the well-being powers in the *Local Government Act 2000* as far as they relate to England. **However, these well-being powers remain in place for Wales.**

**Part 1, Chapter 4 Clause 13** clarifies how the common law concept of "**predetermination**" applies to councillors in England and Wales. The Explanatory Notes to the Bill state:

Predetermination occurs where someone has a closed mind, with the effect that they are unable to apply their judgment fully and properly to an issue requiring a decision. Decisions made by councillors later judged to have predetermined views have been quashed. The clause makes it clear that if a councillor has given a view on an issue, this does not show that the councillor has a closed mind on that issue, so that if a councillor has campaigned on an issue or made public statements about their approach to an item of council business, he or she will be able to participate in discussion of that issue in the council and to vote on it if it arises in an item of council business requiring a decision.<sup>9</sup>

Clause 13 applies to members of all councils in England and Wales to which there are direct elections - although it applies both to elected and to co-opted members of those councils, and also to members of National Parks Authorities.

**Part 1 Chapter 6** sets out requirements for councils to prepare **senior pay policy statements** which they will then be required to follow when setting senior pay. This applies to Wales and England. Clause 21(1) places a requirement on a relevant authority **to prepare, annually, a statement setting out the authority's policy on the remuneration of its chief officers for the subsequent financial year.** It may also set out the authority's policies relating to other terms and conditions applying to chief officers. In preparing its statement, the authority must have regard to any guidance issued or approved by Welsh Ministers. This will require a **Legislative Consent Motion** in the Assembly.

**Part 1 Chapter 7** repeals the duties relating to **the promotion of democracy** and the provisions about **petitions to local authorities.** This will require a **Legislative Consent Motion** in the Assembly.

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<sup>9</sup>

**Clause 27 removes the requirements** for principal local authorities, in Wales and England, to **provide information to people about how local governance systems work**, including information on the role of the council, councillors, other relevant public bodies and civic roles such as magistrates, and how people can get involved.

**Clause 28 removes the requirements** for principal local authorities in England and Wales **to make, publish and comply with a scheme for the handling of petitions made to the authority**, and to provide a facility for making petitions in electronic form to the authority. **It also removes the powers of Welsh Ministers to make provision by order in relation to petitions schemes.**

**Part 3** contains two provisions in relation to business rates in Wales including changes to **business rate supplements** and **discretionary relief**.

**Clause 35** amends the *Business Rate Supplements Act 2009* to provide that all proposals for the imposition of a Business Rate Supplement ("BRS") will require approval by a ballot of all persons eligible to vote, as opposed to the current position where a ballot is only required if the BRS is to fund more than one third of the total cost of the project to which the BRS relates. Clause 35(6) also requires that certain further information about the result of any ballot is to be published in the initial and final prospectuses for the BRS. The amendments would not apply in relation to a BRS that has already been imposed as the time the amendments come into force (whether or not the BRS is payable at that time)

**Clause 36** amends section 47 of the *Local Government Finance Act 1988* to **replace the limited circumstances in which local authorities can currently give discretionary relief with a power to grant relief in any circumstances**. This is subject to the condition that, except in the limited circumstances specified, the local authority may only grant relief if it would be reasonable to do so having regard to the interests of council tax payers in its area. The amendments also require a local authority to have regard to any relevant guidance issued by Welsh Ministers when deciding whether to grant relief under section 47.

**Part 4, Clause 57** confers legislative competence on the National Assembly for Wales. **The clause allows the Assembly to pass Assembly Measures in relation to local referendums on proposed increases in council tax levels.**

**Part 4, Clause 65** amends the *Local Government Finance Act 1992* to **provide the Welsh Ministers with the power, by order, to determine the timing of Council Tax revaluations in Wales**, rather than being bound to the timetable for Wales currently set out by the *Local Government Finance Act 1992*. The orders are subject to the affirmative resolution procedure in the Assembly.

**Part 4, Chapter 4 relates to Land of Community Value. Clause 71 places a duty on local authorities in Wales and England to maintain a list of assets of community value.** The clause specifies that assets will be removed from the list after five years (unless already removed) with a power to Welsh Ministers to amend that period.

**Clause 73 provides for procedures by which land may be included on the list, by community nomination or as specified by the appropriate authority in regulations** (which may also specify details regarding nominations and listing by the local authority on its own initiative). It also provides for regulations to set out procedures that local authorities will be required to follow in considering nominations. Clause 74 requires a local authority to consider a community nomination, and to accept it if the land nominated is in the authority's area and is of community value. It also requires the local authority to give the nominator written reasons for not listing the land. Clause 75 requires local authorities to give notice to specified persons of inclusion on or removal from the list together with a description of the statutory provisions. It also gives the appropriate authority power to make additional provisions about giving notice.

**Chapter 6 of Part 5 of the Bill makes provision in relation to significant infrastructure projects in Wales England, particularly the abolition of the Infrastructure Planning Commission (IPC).** The IPC is currently responsible for applications for development consent for those "nationally significant infrastructure projects" in Wales in the categories listed below:

- The construction or extension of a generating station of over 50 mega watts onshore or over 100 mega watts offshore;
- The construction of electricity lines above ground, unless not at or over 132 kilovolts or for a single consumer;
- The underground storage of gas in natural porous strata above certain thresholds and where the proposed developer is a gas transporter;
- The construction of cross-country pipelines (other than by gas transporters) over 10 miles long; and
- The construction or alteration of a harbour with an increase in facilities above certain thresholds.

The Bill will **abolish the IPC as an independent organisation and transfer its staff and resources to the Secretary of State.** The UK Government has stated that it will instead establish a Major Infrastructure Planning Unit (MIPU) which will form part of the Planning Inspectorate for England and Wales. As a consequence, **the Welsh Commissioners of the IPC will also be abolished.** The

MIPU will make recommendations to the UK Secretary of State on nationally significant infrastructure projects in Wales in the above categories. The Secretary of State will then make the final decision in accordance with the UK Government's approved National Policy Statements (NPSs).

The Bill also amends the *Planning Act 2008* to require House of Commons approval of the NPSs. Revised draft NPSs on energy were issued by the UK Government for further consultation in October 2010. Concerns had been expressed that the previous versions did not adequately explain the relationship between UK Government policy and the Welsh Government's planning policies on energy.<sup>10</sup> The revised draft NPSs are substantially unaltered in this respect.

The Minister for Environment, Sustainability and Housing stated in July 2010 that she was seeking to meet with the UK Minister for Planning and Decentralisation to argue that the Bill also provides an opportunity for the UK Government to **devolve responsibility for large-scale energy consents**<sup>11</sup>. At present however the Bill does not provide for this.

**Chapter 2 of Part 6** makes amendments to the arrangements for **collection of the Community Infrastructure Levy (CIL)**. The CIL was introduced by the *Planning Act 2008*. It is considered a tax and as a result responsibility for it is not devolved. The CIL is a new charge which local authorities in England and Wales are empowered, but not required, to levy on most types of new development in their areas. The proceeds of the levy will provide new infrastructure to support the development of an area in line with local authorities' development plans. In Wales, the 22 county and county borough councils and the three national park authorities have the power to charge CIL.

The Bill contains Clauses that deal with the evidence base for the setting of CIL and the powers of the independent inspector. They also allow for regulations to specify the transfer of CIL receipts.

(4) After section 216 insert—

**216A Duty to pass receipts to other persons**

(1) CIL regulations may require that CIL received in respect of development of land in an area is to be passed by the charging authority that charged the CIL to a person other than that authority.

This Clause is explained in a DCLG statement on CIL which says that:

Some changes to the levy will require amendments to legislation and regulations. The Government will include provisions in the Localism Bill to limit the binding nature of

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<sup>10</sup> For example see the written evidence from the Infrastructure Planning Commission to the Sustainability Committee's inquiry into the Planning system: 14-SC-PL, [Evidence from the IPC](#), 9 June 2010

<sup>11</sup> Welsh Assembly Government Press Release: [Welsh Minister seeks talks on greater energy planning powers with UK Government](#), 13 July 2010

examiners' reports, and amend the Community Infrastructure Levy Regulations 2010 to give local communities more control over the levy, and make it more responsive to local needs.

**The Government will require charging authorities to allocate a meaningful proportion of their levy revenues raised in each neighbourhood back to that neighbourhood [...]**<sup>12</sup>

**Part 5 Chapter 7, Clause 119** confers legislative competence on the National Assembly for Wales. The clause **allows the Assembly to pass Assembly Measures in relation to various aspects of development management in Wales, including applications for planning permission, the exercise of local planning authorities' functions and the enforcement of restrictions under town and country planning legislation.**

**Chapter 1 of Part 6** provides that a local housing authority in England and Wales may fully discharge its duty to secure accommodation for unintentionally homeless persons by arranging an offer of **suitable accommodation in the private rented sector.**

**Clause 152** confers legislative competence on the National Assembly for Wales. The clause **allows the Assembly to pass Assembly Measures in relation to accounts, borrowing and subsidies relating to local authorities' housing functions.** The competence covers, in particular, the Housing Revenue Account and the Housing Revenue Account Subsidy system in Wales, and would enable the Assembly to make provision for Wales corresponding to that made for England by Chapter 3 of Part 6.

### 3. Provisions for Wales : Framework Powers

#### 3.1. *Local referendums on proposed council tax levels*

The Bill amends Schedule 5 to the *Government of Wales Act 2006* in Field 12 (local government) to insert:

Matter 12.19

Referendums on council tax increases by county councils, county borough councils, police and crime commissioners and fire and rescue authorities.

The Bill makes provision for referendums on council tax levels to be held in England. **The effect of Clause 57 is to allow the National Assembly for Wales to make similar provision in an Assembly Measure if it were so minded.**

Schedule 5 of the Bill inserts a new chapter into the the *Local Government Finance Act 1992* which sets out the procedures for council tax referendums in England.

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<sup>12</sup> Department for Communities and Local Government, Press Notice, [Clark: Communities to share in the advantages of development](#), 18 November 2010

The Conservatives announced in opposition that, if elected, they would abolish council tax capping and replace it with a system which made planned increases in council tax above a certain threshold subject to a local referendum.<sup>13</sup> Local electors would be able to veto an excessive increase if they wished to. The Coalition Government issued a consultation paper on the proposal in August 2010.<sup>14</sup>

The Rt. Hon. Eric Pickles MP argued that:

If councils want to increase council tax further, they will have to prove the case to the electorate. Let the people decide.

The new Government is committed to a review of local government resource, but such reforms must go hand in hand with measures to protect the interests of local taxpayers.

This is a radical extension of direct democracy, as part of a wider programme of decentralising power to local communities. Power should not just be given to councils, but be devolved further down to neighbourhoods and citizens.<sup>15</sup>

However, some critics argue that the proposal is anti-localist and in practice will hamper the financial autonomy of councils. David Walker, in *The Guardian* wrote:

High up in the localism bill is a measure designed to intimidate councillors by threatening referendums on plans to raise tax above some centrally specified threshold.<sup>16</sup>

Welsh Ministers are currently empowered to impose a cap on council tax levels under existing legislation if they so wish. Answering oral questions in Plenary in early December 2010, the Minister for Social Justice and Local Government, Carl Sargeant AM, stated:

My position is that I stand ready to use my capping powers if necessary, and I believe that local authorities would be wise to consider that in their precept-setting arrangements. I have not received any indication as yet that authorities are considering large increases in their precepts, but I will use my capping powers if I need to.<sup>17</sup>

In a Written Statement about the Localism Bill, Mr Sargeant elucidated:

The Welsh Assembly Government believes that Welsh citizens should have a stronger role in the determination of annual council tax, and wishes to give further consideration to what is the best option for Wales in terms of controlling the setting of excessive council tax increases and holding referendums.

The Welsh Assembly Government have therefore sought Measure powers to enable it to legislate for the process to be followed in terms of defining the principles of excessiveness,

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<sup>13</sup> [HC Library, Council Tax: local referendums, Standard Note, SN/PC 05682, 1 September 2010](#)

<sup>14</sup> [DCLG, Localism Bill – Provision for referendums to veto excessive council tax increases: impact assessment – consultation stage, August 2010.](#)

<sup>15</sup> [DCLG, New people power to end the era of soaring council tax, Press Release, 20 July 2010](#)

<sup>16</sup> [David Walker, 'Eric Pickles' Bill is a farrago', The Guardian, 14 December 2010](#)

<sup>17</sup> RoP, 1 December 2010

the timing of any referendum process, the procedure and format of the referendums that are to be held and the resulting sanctions that authorities would face in the event that they fail to follow the statutory process.<sup>18</sup>

An Explanatory Memorandum<sup>19</sup> issued by Welsh Ministers in respect of Welsh provisions in the Bill stated that the powers would enable the Assembly to legislate for the circumstances in which referendums must be held on proposed council tax increases and the process to be followed. This would include:

- defining the principles of excessiveness that would trigger the need for a referendum;
- the timing of any referendum process;
- the procedure and format of the referendums that are to be held and
- the resulting sanctions that authorities would face in the event that they fail to follow the statutory process.

The Memorandum stated that the Assembly **could** make provision about:

- The publication of draft principles of excessiveness as a matter of routine at the time of the provisional local government settlement announcement in mid to late October. These could be subject to consultation along with the draft local government settlement proposals, with a view to the principles being confirmed at the time that the local government finance report is laid for debate and approval by the Assembly in December.
- Allowing authorities to conduct referendums with different options for increasing the council tax in their area, at least one of which must not be deemed excessive.
- Powers to specify arrangements for a referendum. This would include the framing of any referendum question and balloting arrangements.
- Provision that the costs of any referendum would be borne by the triggering authority.

### *3.2. Planning applications and enforcement*

Clause 119 of the Bill states:

**119 Powers of the National Assembly for Wales**

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<sup>18</sup> Written Statement by Carl Sargent AM, Minister for Social Justice and Local Government, Jane Davidson AM, Minister for Environment, Sustainability and Housing and Jocelyn Davies AM, Deputy Minister for Housing and Regeneration, *The Localism Bill*, 14 December 2010.

<sup>19</sup> Welsh Assembly Government Memorandum about Framework Powers for Wales in the Referendum Bill, December 2010.

(1) In Part 1 of Schedule 5 to the Government of Wales Act 2006 (Assembly Measures: matters), Field 18 (Town and Country Planning) is amended as follows.

(2) After Matter 18.3 insert—

*“Matter 18.4*

Applications for planning permission.

This does not include—

- (a) the cases in which planning permission is required,
- (b) obligations, entered into in connection with applications, that—
  - (i) restrict, or require, the doing of anything in, on, under or over any land, or
  - (ii) require payments to be made,
- (c) applications for urgent development made—
  - (i) by or on behalf of the Crown, or
  - (ii) in respect of land in which there is any Crown interest, or
- (d) appeals (and further appeals) and other challenges in respect of—
  - (i) decisions made on applications, or
  - (ii) failures to make decisions.

*Matter 18.5*

The exercise or discharge, otherwise than by the authority whose functions they are, of functions of an authority in its capacity as a local planning authority.

*Matter 18.6*

Planning permission ceasing to have effect where the development to which it relates has been begun but not completed.

*Matter 18.7*

Enforcement—

- (a) where things are done without any planning permission that is required,
- (b) where there is a failure to comply with any condition or limitation subject to which planning permission has been granted,

- (c) of prohibitions or requirements imposed for the preservation, in the interests of amenity, of particular trees or woodlands, and
- (d) of provisions restricting or regulating, in the interests of amenity or public safety, the display of advertisements.

*Not included in matters 18.4, 18.5, 18.6 and 18.7*

Matters 18.4, 18.5, 18.6 and 18.7 do not include—

- (a) criminal liability for acts or omissions done or suffered by or on behalf of the Crown, or
- (b) any requirement for consent in relation to any step taken for the purposes of enforcement in relation to land in which there is any Crown interest.
- (3) In the Interpretation of the field, before the definition of “local planning

authority” insert—

““Crown interest” includes an interest—

- (a) belonging to Her Majesty in right of the Crown, in right of the Duchy of Lancaster or in right of Her private estates,
- (b) vested in a government department or held in trust for Her Majesty for the purposes of a government department, or
- (c) belonging to the Duchy of Cornwall;”.

### The Written Statement from the Welsh Ministers said:

The Welsh Assembly Government has recently undertaken a review of the planning application process in Wales informed by an independent report (Study to Examine the Planning Application Process in Wales, June 2010). Key themes emerged which highlighted where change is needed, including reducing uncertainty and delays, the need for planning decisions to be made at the appropriate level and the need for local planning authorities to be more responsive by increased use of shared resources and expertise through better cross boundary working. The Welsh Assembly Government is seeking Measure powers in these and related areas, so that it can take forward its policy at the appropriate time.<sup>20</sup>

The Welsh Government Memorandum on the framework provisions in the Bill explains in more details the reasons for seeking additional competence<sup>21</sup>. Although executive powers in relation to town and country planning have been devolved to the Welsh Ministers, legislative competence is currently restricted to passing Measures in relation to local planning authority development plans and to

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<sup>20</sup> Op.cit, Written Statement, 14 December 2010.

<sup>21</sup> Welsh Assembly Government Memorandum about Framework Powers for Wales in the Referendum Bill, December 2010.

plans of the Welsh Ministers. The Bill would extend this legislative competence in four areas:

- The preparation, processing, consideration and determination of planning applications seeking planning permission for development or for amendment of existing planning permissions (Matter 18.4);
- The exercise or discharge of local planning authority functions otherwise than by the authority whose functions they are (Matter 18.5);
- Planning permission ceasing to have effect where a development has begun but has not been completed (Matter 18.6);
- The consideration of and taking of enforcement action to prevent, restrict or remove development (Matter 18.7).

The Welsh Government suggests that Matter 18.4 would allow the Assembly to pass a Measure in connection with the introduction of a statutory hierarchy of development to determine who decides different categories of development. Such a statutory hierarchy has recently been introduced in Scotland.

It also suggests that Matter 18.5 would enable a Measure to be passed to vary the definition of a local planning authority, so that for example two or more authorities would be required to work together to exercise local planning authority functions. It would also enable provision to be made in connection with shared planning services, for example for a lead authority to provide a specialist service on behalf of other authorities.

Finally the Welsh Government suggests that Matter 18.7 would enable a Measure to be passed to make provision about the enforcement of breaches of planning control such as removing the need for Welsh Ministers to confirm unopposed completion notices, additional powers for local authorities to remove works where a completion notice has been confirmed and removing the time limits for taking enforcement action.

It is not clear whether or not the competence sought also includes applications for listed building consent or conservation area consent. However, the Welsh Government Memorandum states that **powers have not been sought** in relation to the **planning appeals system**.

### *3.3. The Housing Revenue Account (HRA) and Housing Revenue Account Subsidy (HRAS) system in Wales.*

Clause 152 of the Bill states:

152 Powers of the National Assembly for Wales

In Part 1 of Schedule 5 to the Government of Wales Act 2006 (Assembly Measures: matters) in Field 11 (housing) after Matter 11.8 insert—

Matter 11.9

“Accounts of local authorities in respect of land, housing and other buildings relating to their housing functions.

Matter 11.10

Borrowing by local authorities for the purposes of their housing functions.

Matter 11.11

Subsidies or payments replacing subsidies from the Welsh Ministers to local authorities, or from local authorities to the Welsh Ministers, in respect of local authorities’ housing functions.”

The clause provides framework powers for the National Assembly to pass Assembly Measures relating to local authority housing finance. This includes individual local authority Housing Revenue Accounts (HRA) and the Housing Revenue Account Subsidy (HRAS) system. The HRAS system in Wales has recently been the subject of a review commissioned by the Welsh Government and led by Professor Steve Wilcox.<sup>22</sup> A review of the HRAS system in England in 2009 led to a commitment from the previous UK Government to abolish the system. The current UK Government is also committed to abolishing the system in England, and this is reflected in Chapter 3 of the Bill.

The HRAS system is administered in Wales by the Welsh Government, but controlled by HM Treasury. Any entitlement to subsidy is based on notional income and expenditure within an authority’s HRA. The HRA is a ring-fenced account containing income and expenditure relating to a local authority’s housing stock.

Under the HRAS system, local authorities with housing stock receive subsidy from Welsh Ministers if they are assumed to have a deficit on their HRA so that the account can be balanced. This is funded through redistributing income received from local authorities deemed to have a surplus on their HRA, with additional funding from HM Treasury if necessary.

Where a local authority is assumed to have a surplus on its HRA it must pay this amount to Welsh Ministers – this is known as negative subsidy. Any sums paid to Welsh Ministers under HRAS are treated as Annually Managed Expenditure (AME) by HM Treasury, and so are not available to spend on anything else as this

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<sup>22</sup> Welsh Assembly Government, Jocelyn Davies (Deputy Minister for Housing), [Review of Housing Revenue Account Regime and Review of Social Sector Rent Policies](#), Cabinet Written Statement, 17 November 2009

income is netted off total AME resources provided by the Treasury to the Welsh Government.

The system was intended to be redistributive, with those local authorities expected to have more income than is necessary to balance their HRA effectively subsidising those areas where income does not meet needs and HM Treasury covering any additional funding requirement. However, at present, all local authorities with housing stock in Wales are assumed to have a surplus on their HRA so all pay negative subsidy to Welsh Ministers, which is returned to HM Treasury through the arrangements described above.

Local authorities that have transferred their housing stock to a Registered Social Landlord are not part of the HRAS system.

On 8 December 2010, the Deputy Minister for Housing and Regeneration, Jocelyn Davies AM, announced in plenary that she had received the evidence from Professor Wilcox's review and that the Minister for Business and Budget has made representations to HM Treasury for the system to be abolished in Wales. She also highlighted differences in local authority housing finance between the UK administrations post-devolution:

To give the Chamber a flavour of the difference between the various administrations, since devolution, the claw back to the Treasury from all English local authorities comes to £653 million; Scotland has gained £82 million, and Welsh local authorities have handed back £900 million. If it was unfair to England, it is gross injustice to Wales, when you consider that we have 5 per cent of the stock, but that our local authorities have parted with £900 million. We put in the case to the UK Government that this is the opportunity to do it; the localism Bill gives us the opportunity in terms of powers, but I hope that the UK Treasury will see that this has been an injustice that has gone on for many years, and that should it now be put to an end.<sup>23</sup>

The Bill will also insert Matter 11.10 which will allow Assembly Measures relating to borrowing by local authorities for the purposes of their housing functions.

## 4. Powers for Welsh Ministers

### 4.1. *Timing of Council Tax Revaluation*

The Bill contains two Wales-only provisions which give powers to Welsh Ministers. The first, Clause 65, will confer a power for Welsh Ministers to decide the timing of council tax revaluations in Wales.

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<sup>23</sup> [RoP, 8 December 2010](#)

The current legislation relating to the revaluation of council tax bands in Wales is the *Local Government Act 2003*,<sup>24</sup> (“the 2003 Act”) which made provision for the revaluation that took place in 2005.

Section 77 of the 2003 Act inserted section 22B into the *Local Government Finance Act 1992*<sup>25</sup> (“the 1992 Act”), which provides for a statutory revaluation cycle for the council tax in England and Wales. Section 22B(2) required new lists to be compiled and to come into force for England on 1 April 2007<sup>26</sup> and 1 April 2005 in Wales. Section 78 of the 2003 Act gives powers to change the number of council tax band.

Section 22B(3) of the 1992 Act requires that further new lists must be compiled and come into force no more than ten years after the date of the previous (2005 and 2007) lists. This means that the period between revaluations will be no longer than ten years.

The Bill further amends the relevant section of the 1992 Act in respect of Wales so that Welsh Ministers may make an Order at any time for a new valuation list to be compiled on 1 April in any specified year – in effect a revaluation for council tax purposes.

In practice, this means that Welsh Ministers may delay a further revaluation indefinitely which is the case in England when the provisions relating to the timing of English revaluation in the 1992 Act were repealed and amended in 2006, thereby preventing the planned 2007 revaluation from proceeding. The *Council Tax (New Valuation Lists for England) Act 2006*<sup>27</sup> replaced the provisions in the 1992 Act with a power for the Secretary of State to set the date of the first revaluation and of further revaluations by Order, subject to affirmative procedure in Parliament. Clause 65 of the Bill requires any Order made by Welsh Ministers to be approved by a resolution of the National Assembly for Wales.

## 4.2. Powers related to capping Council Tax

Section 56 of the Bill makes provisions for amendment of other legislation in order to allow for referendums relating to council tax increases. Schedule 6 (council tax referendums: consequential amendments) leaves in place provisions relating to council tax capping in Wales. This allows current arrangements to

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<sup>24</sup> *Local Government Act 2003* (Chapter 26). <http://www.hmso.gov.uk/acts/acts2003/20030026.htm>

<sup>25</sup> *Local Government Finance Act 1992* (Chapter 14) [http://www.opsi.gov.uk/acts/acts1992/ukpga\\_19920014\\_en\\_1](http://www.opsi.gov.uk/acts/acts1992/ukpga_19920014_en_1)

<sup>26</sup> The UK Government subsequently abandoned plans for revaluation in England.

<sup>27</sup> *Council Tax (New Valuation Acts for England) Act 2006* (c.7)

continue until such a time that an Assembly Measure is passed that makes provision for referendums on council tax increases to be held.

## 5. The Referendum on Assembly Powers

The passage of the the Localism Bill at Westminster coincides with the referendum on whether to commence Part 4 of the *Government of Wales Act 2006* (“the 2006 Act”), giving the Assembly general legislative competence in subjects specified in Schedule 7.

The Welsh Government Explanatory Memorandum explained that the matters listed in the framework powers in the Bill are not set out in the same detail in Schedule 7 but they already fall within the broader subjects in the Schedule. Specifically:

- matters 11.9 to 11.11, relating to local authority accounts, borrowing and subsidy in respect of their housing functions, would come within the subject “Housing and housing finance” in paragraph 11 in Part 1 of Schedule 7;
- matter 12.19, relating to referendums on Council Tax increases, would come within the subject “Local government finance” in paragraph 12; and
- matters 18.4 to 18.7, relating to planning applications and enforcement action would come within the subject “Town and country planning” in paragraph 18.

The Memorandum further explained:

This means that in the event of an affirmative vote in the referendum (due to be held on 3 March 2011), the Assembly would be able to legislate in relation to these matters. But in the event of a “no” vote the current process will continue, whereby the Welsh Assembly Government will be able to seek legislative competence for the Assembly on a case by case basis through framework powers in Acts of Parliament and Legislative Competence Orders (LCOs) under section 95 of the 2006 Act. Under this scenario, the framework powers in this Bill would confer legislative competence on the Assembly in the specific areas of referendums on council tax increases, development management and the Housing Revenue Account (HRA) and HRA subsidy.