

# LOCALISM ACT 2011

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part 1: Local Government**

#### ***Chapter 4: Transfer and delegation of functions to certain authorities***

#### ***Section 15: Power to transfer local public functions to permitted authorities***

49. **Section 15** allows the Secretary of State by order to transfer a local public function to a “permitted authority”. *Subsections (2), (3) and (4)* allow for such an order to modify enactments for the purpose of making the transfer. Under *subsection (5)* the Secretary of State can only make an order if he or she considers that it is likely to promote economic development or wealth creation or increase local accountability in relation to each local public function transferred. Also, the Secretary of State can only make an order if he or she considers that the relevant local public function can be appropriately exercised by the permitted authority and the permitted authority has consented to the transfer. The Secretary of State must consult such persons as he or she considers appropriate before making an order.

#### ***Section 16: Delegation of functions by Ministers to permitted authorities***

50. This section allows a Minister of the Crown to delegate to a permitted authority any of his or her eligible functions, subject to such conditions as the Minister thinks fit. A function is eligible for these purposes as long as it does not consist of a power to make regulations or other instruments of a legislative character or a power to fix fees or charges and the Minister considers that it can be appropriately exercised by the permitted authority. No delegation to a permitted authority, or variation of a delegation, can be made without the agreement of the permitted authority. Before delegating a function the Minister must consult such persons as he or she considers appropriate. A delegation could be revoked at any time by a Minister of the Crown.

#### ***Section 17: Transfer schemes***

51. *Subsection (1)* allows the Secretary of State to make a scheme for the transfer of property, rights or liabilities to a permitted authority from a body or person from whom a relevant local public function has been transferred through an order under section 15. *Subsections (2)* allows a Minister to make a scheme for the transfer from the Crown to a permitted authority of property, rights or liabilities as a consequence of a delegation, or variation of a delegation, to a permitted authority under section 16. A Minister of the Crown may also make a scheme for the transfer of property, rights or liabilities from a permitted authority to the Crown as a consequence of variation or revocation of a delegation under section 16.

***Section 18: Duty to consider proposals for exercise of powers under sections 15 and 17***

52. **Section 18** places a duty on the Secretary of State to consider a proposal from a permitted authority for the transfer of local public functions and the transfer of property, rights or liabilities under sections 15 and 17 respectively. The Secretary of State is required to notify the permitted authority of what, if any, action he or she intends to take in relation to the proposal. *Subsection (2)* allows the Secretary of State to set out in regulations the criteria to which he or she should have regard in considering any relevant proposal. Before making such regulations the Secretary of State must consult such persons as he or she considers appropriate.

***Section 19: Orders under section 15: procedure***

53. This section sets out the procedure for Parliamentary consideration before an order under section 15 for the transfer of local public functions to a permitted authority can be made. Following appropriate consultation, the order must be laid in draft for 60 days, during which time formal representations may be made, and either House, or a committee charged with consideration of the order, can effectively block it. After this the order must be approved by a resolution of each House before it can be made.

***Section 20: Interpretation of Chapter***

54. This section defines terms used throughout Chapter 4 of Part 1. A “permitted authority” is defined as a county council in England, a district council, an economic prosperity board (established under section 88 of the Local Democracy, Economic Development and Construction Act 2009) or a combined authority (established under section 103 of the same Act). Only functions that fall within the definition of “local public function” may be subject to a transfer order under section 15. This is defined in section 20, in relation to a permitted authority, as a function of a public authority in so far as it relates to the permitted authority’s area or persons living, working or carrying on activities in that area, and which does not consist of a power to make regulations or other instruments of a legislative character. For these purposes, “public authority” includes a Minister of the Crown or a government department.